

WORK PACKAGE ONE CONSTRUCTION ESCROW AGREEMENT

THIS WORK PACKAGE ONE CONSTRUCTION ESCROW AGREEMENT is entered into with an effective date of _____, 2018, by and between Plum Creek Water Reclamation Authority ("PCWRA"), Castle Pines Metropolitan District ("CP"), Castle Pines North Metropolitan District ("CP North"), and the Town of Castle Rock (the "Town"), collectively, the "Parties."

WITNESSETH:

WHEREAS, the Parties intend to enter into an agreement ("Expansion Agreement") to implement a construction project to expand PCWRA's wastewater treatment facilities (the "Project") in accordance with the provisions of Article VII, Section 4, of the PCWRA Establishing Agreement of December 14, 1989 ("Establishing Agreement"), and other provisions of the Establishing Agreement that govern plant expansions; and

WHEREAS, the Parties have agreed to fund the Project costs at the following pro rata amounts:

CP	1.11 %
CP North	13.68 %
Town	85.10 %
PCWRA	0.11 %

WHEREAS, PCWRA intends to engage a general contractor (the "Contractor") to perform construction services for the Project; and

WHEREAS, PCWRA intends to engage the Contractor to begin construction services for a portion of the work ("Work Package One") which is critical to maintaining the overall completion schedule of the Project, prior to execution of the Expansion Agreement and appropriation of funding for the Project in its entirety.

WHEREAS, the Contractor has identified the scope and estimated cost of construction for Work Package One (Exhibit A).

WHEREAS, the Contractor will submit to PCWRA from time to time, but no more frequently than monthly, a payment application ("Application") which will contain a description of the work completed since the last payment and the amount claimed due for such work; and

WHEREAS, the Parties have agreed to deposit funds into an Escrow Account to be maintained by PCWRA in trust and without compensation to pay for the costs of the Work Package One construction services pending execution of the Expansion Agreement; and

WHEREAS, the funds to be held by PCWRA in trust shall be disbursed by PCWRA for payment of the construction costs in accordance with procedures hereinafter set forth in this Work Package One Construction Escrow Agreement.

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

1. The foregoing recitals are acknowledged to be true and correct, and are incorporated herein by reference.
2. Upon the date hereof, each party shall deposit with PCWRA funds in the amount of each party's pro rata share of Work Package One estimated construction costs as shown below:

CP	\$ 154,176.66
CP North	\$ 1,903,143.26
Town	\$ 11,834,637.40
PCWRA	\$ <u>15,395.68</u>
Total Work Package 1:	\$ 13,907,353.00

These funds are to be administered by PCWRA in accordance with this Work Package One Construction Escrow Agreement, but not to be construed as revenues of PCWRA. Such funds deposited with PCWRA will be held in a separate "Escrow Account" in the Colorado Local Government Liquid Asset Trust aka ColoTrust. The funds on deposit in the Escrow Account shall bear interest to the extent available consistent with the disbursement requirements set forth herein.

3. PCWRA shall provide to the Town, CP, and to CP North copies of the monthly statements for the Escrow Account showing deposits and disbursements including cumulative itemized accounting of all deposits and disbursements to date. Such statements shall include a brief description of the construction work associated with each disbursement from the Escrow Account as well as identify any variances from the Contractor's estimated construction costs for Work Package One.

4. The funds held in the Escrow Account shall be released for payment of the construction costs upon delivery of each Application, subject to the following:

a. Application Review: PCWRA's Manager or designee, a representative of CP, a representative of CP North, and a designated representative of the Town shall review each Application, and sign approval of the same no later than ten (10) business days after receipt; provided, however, that the Application will not be approved for payment, or may be approved for payment of a lesser amount, if one or more of the Parties identifies in writing a legitimate concern about the amount of the Application or the work upon which the Application is based.

b. Disbursement of Funds: If all Parties approve the Application, PCWRA

shall cause funds to be disbursed from the Escrow Account in accordance with the amount listed in the Application or in such lesser amount as may be approved by the Parties.

c. Insufficient Funds: If the Escrow Account does not contain sufficient funds to cover the amount listed in the Application, PCWRA shall immediately notify the Parties of such insufficiency, and PCWRA shall not process the Application until sufficient funds are deposited into the Escrow Account to cover the funds requested in the Application.

5. Once the Expansion Agreement has been executed by the Parties, PCWRA shall thereupon transfer any and all funds held in the Escrow Account, together with accrued interest thereon, if any, into the Expansion Fund established pursuant to the Expansion Agreement, and thereafter all Project costs, including Contractor fees and other construction costs, shall be paid from the Expansion Fund. At that time PCWRA shall provide a final accounting of the Escrow Account to the Town, CP, and CP North and a statement of the funds transferred to the Expansion Fund from the Escrow Account.

6. The Parties agree that the funds deposited into the Escrow Account shall be held by PCWRA exclusively for the payment of the Contractor pursuant to Applications as hereinabove set forth, and other construction-related costs authorized by mutual agreement of the Parties, and for no other purpose, until the Expansion Agreement is signed as provided in Section 5. above.

7. PCWRA undertakes to perform only such duties as are expressly set forth herein and no other duties shall be implied. PCWRA shall not be liable for any action taken or omitted by it in good faith.

8. This Work Package One Construction Escrow Agreement may be executed in any number of counterparts each of which shall be deemed an original and of which shall together constitute one and the same Work Package One Construction Escrow Agreement. The Parties may execute and deliver this Work Package One Construction Escrow Agreement by forwarding (by facsimile, electronic transmission in PDF format or other means) copies thereof showing execution by the Parties.

9. The terms of this Work Package One Construction Escrow Agreement shall be binding upon the Parties hereto and their respective Board and Council members, agents, employees, successors and assigns.

10. Nothing in this Work Package One Construction Escrow Agreement shall be construed to benefit any person or entity not a Party hereto.

SIGNED and dated as above written.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

David L. Corliss, Town Manager

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water

ATTEST:

**PLUM CREEK WATER RECLAMATION
AUTHORITY**

Shauna Nolte, Administrative Assistant

Weston Martin, Manager

Approved as to form:

Darryl L. Farrington, Attorney

ATTEST:

**CASTLE PINES NORTH
METROPOLITAN DISTRICT**

Janet Burnham, Secretary

David McEntire, President

ATTEST:

**CASTLE PINES METROPOLITAN
DISTRICT**

EXHIBIT A

MOLTZ 60% CONSTRUCTION COST ESTIMATE - WORK PACKAGE ONE

PCWRA WWTP - 3.0 MGD CAPACITY EXPANSION

7/12/2018

CSI CODE	DESCRIPTION	Work Package One 60% Cost Estimate
	DIRECT COST TOTAL	\$ 10,588,861
01	General Requirements <i>(within General Conditions)</i>	
02	Existing Conditions	\$ 554,324
03	Concrete	\$ -
04	Masonry	\$ -
05	Metals	\$ -
06	Wood Plastics, and Composites	\$ -
07	Thermal and Moisture Protection	\$ -
08	Openings	\$ -
09	Finishes	\$ -
10	Specialties	\$ -
11	Equipment	\$ -
12	Furnishings	\$ -
13	Special Construction	\$ -
14	Conveying Equipment	\$ -
21	Fire Suppression	\$ -
22	Plumbing	\$ -
23	Heating, Ventilating, and Air Conditioning	\$ 11,752
25	Integrated Automation	\$ -
26	Electrical	\$ 649,223
27	Communications	\$ -
28	Electronic Safety and Security	\$ -
31	Earthwork	\$ 1,089,740
32	Exterior Improvements	\$ -
33	Utilities	\$ 439,256
40	Process Integration	\$ -
41	Material Processing and Handling Equipment	\$ -
43	Process Gas and Liquid Handling and Storage Equipment	\$ 164,566
46	Wastewater Equipment	\$ -
N/A	30% Equipment Costs <i>(provided by BMCD, without UV equipment)</i>	\$ 7,550,000
	UV Equipment <i>Submittals Only</i>	\$ 130,000
N/A	Material Cost Contingency	\$ -
	GENERAL CONDITIONS TOTAL	\$ 1,619,224
	General Conditions (Not-to-Exceed from Exhibit B)	\$ 1,619,224
	FEE TOTAL (Based on Direct Cost and General Conditions)	\$ 976,647
	Fee (Overhead & Profit) [8%]	\$ 976,647
	SUBTOTAL CONSTRUCTION COSTS	\$ 13,184,732
	OTHER INDIRECTS TOTAL (No fees on these costs)	\$ 722,621
	Contractor's Contingency on Direct Work [5%]	\$ 317,666
	Commercial General Liability Insurance [.18%]	\$ 21,975
	Other Insurances (pollution liability, etc.) [Inc w/ Labor Burden]	\$ -
	Contractor Payment & Performance Bonds [0.60%]	\$ 73,249
	Builder's Risk Insurance [0.17%]	\$ 49,369
	ALL Building Permits/Plan Review Fee/Use Tax - (ALLOWANCE)	\$ 190,000
	Preconstruction (Not to Exceed from Exhibit B)	\$ 70,363
	TOTAL CONSTRUCTION COSTS	\$ 13,907,353