

**INTERGOVERNMENTAL WATER INFRASTRUCTURE COST SHARING AND
CAPACITY ALLOCATION AGREEMENT
(OUTTER MARKER ROAD WATERLINE)**

THIS INTERGOVERNMENTAL WATER INFRASTRUCTURE COST SHARING AND CAPACITY ALLOCATION AGREEMENT ("the Agreement") is made and entered into this _____ day of _____ 2017 (the "Effective Date"), by and between the DOMINION WATER & SANITATION DISTRICT, acting by and through its Sterling Ranch Water Activity Enterprise ("Dominion"), and the TOWN OF CASTLE ROCK, a Colorado home rule municipality, acting by and through the TOWN OF CASTLE ROCK WATER ENTERPRISE ("Town") (individually a "Party" and collectively, the "Parties").

WITNESSETH:

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

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 of Castle Rock; 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, 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, 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’s WISE Project water is delivered by means of the Town’s system; and

WHEREAS, by Construction Contract dated November 1, 2016, the Town of Castle Rock has contracted with Garney Companies Inc. to construct a 36-inch waterline as further described in **Exhibit A** (the “Infrastructure”) as part of its participation in the regional Water Infrastructure and Supply Efficiency (WISE) Project (“WISE Project”);

WHEREAS, Dominion desires to acquire the right to convey WISE Project water through the Infrastructure;

WHEREAS, the Infrastructure constitutes Local Infrastructure, as that term is defined in the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement (Organizational Agreement), to which the Parties are members;

WHEREAS, the Town and Dominion are parties to the Cost Share Agreement for the design of the Infrastructure dated December 10, 2015, in which Dominion contributed \$145,130 towards the design services agreement with Burns & McDonnell;

WHEREAS, the Town and Dominion have accepted the final design of the Infrastructure and have separately reconciled their respective share of the cost of such design;

WHEREAS, Dominion will pay its proportionate share of the costs of the construction and operation and maintenance of the Infrastructure necessary to convey Dominion Water;

WHEREAS, Dominion has determined it needs to acquire 4.2 MGD or 29% of the transmission capacity of the Infrastructure as initially configured;

WHEREAS, upon completion of the Infrastructure, the Town will wholly own, operate, and maintain the Infrastructure and Dominion will acquire a perpetual license to use capacity in the Infrastructure for the conveyance of Dominion Water in accordance with the terms of this Agreement;

WHEREAS, the Parties agree it is in their best interest to share in the funding of the construction and installation of the Infrastructure as further set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. All capitalized terms used herein shall have the following meanings under this Agreement:

Agreement means this Intergovernmental Water Infrastructure Cost Sharing and Capacity Allocation Agreement (Outter Marker Road Waterline).

Additional License Fees means any payment required by this Agreement in addition to (i) Base License Fees, (ii) License Option Payments, and (iii) Dominion's pro rata share of all operational, maintenance and standby costs imposed under the Castle Rock/Dominion Infrastructure Operations Agreement, including Variable Operating Costs.

Appropriation means the procedure by which the Board of Directors specifically appropriates funds for a purpose. The term "Appropriation" includes an initial Appropriation and any Supplemental Appropriation.

Base License Fees means the quarterly License payments required of Dominion during the License Term for and in consideration of the right to possess and use the Licensed Capacity as provided in Section 4.2.

Board Authorized Representative means the person or persons authorized by resolution of the Board of Directors to perform any act or execute any document on behalf of the Dominion with respect to this Agreement.

Board of Directors means the Board of Directors of the Dominion Water & Sanitation District as the same is constituted during the term of this Agreement.

Business Day means any day, other than Saturday or Sunday, or a legal holiday.

Castle Rock/Dominion Infrastructure Operations Agreement: means the agreement between the Town and Dominion (however such agreement is finally captioned) governing the ownership, on-going operation and the "wheeling" of water through the Town infrastructure, including the Outter Marker Road Pipeline, which will be executed prior to the License Commencement Date.

Director of Castle Rock Water means the Town's Director of Castle Rock Water or the written designee of the Director of Castle Rock Water (which designee shall also be a duly authorized officer or other representative of the Town).

Dominion Outter Marker Road Pipeline Interest means the Dominion's perpetual license in the Outter Marker Road Pipeline acquired by and through, and subject to the terms and conditions of this Agreement.

Effective Date means the first day of the month following the execution of this agreement by the Parties.

Event(s) of Default means any event as defined in Section 11.1 or 11.3 of this Agreement.

Event of Nonappropriation means the termination and non-renewal of this Agreement by Dominion's exercise of its right, for any reason, to not enact by the last day of each Fiscal Year an appropriation resolution or ordinance for the ensuing Fiscal Year which includes (a) amounts authorized and directed to be used to pay all License Option Payments, (b) amounts authorized and directed to be used to pay all Base License Fees and (c) sufficient amounts to pay such Additional License Fees as are estimated to become due.

Fiscal Year means a calendar year.

Force Majeure means, without limitation, the following: strikes, lockouts, or other industrial disturbances, acts of public enemies, orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority, insurrection, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accidents to machinery, transmission pipes or canals, or any other cause or event not within the control of Town or Dominion.

Hazardous Substance means and includes: (a) the terms "hazardous substance," "release and removal" which, as used herein, shall have the same meaning and definition as set forth in paragraphs (14) (22) and (23), respectively, of Title 42 U.S.C. §9601 and in Colorado law, provided, however, that the term "hazardous substance" as used herein shall also include "hazardous waste" as defined in paragraph (5) of 42 U.S.C. §6903 and "petroleum" as defined in paragraph (8) of 42 U.S.C. §6991; (b) the term "superfund" as used herein means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, being Title 42 U.S.C. §9601 et seq., as amended and any similar State statute or local ordinance applicable to the Project, including, without limitation, Colorado rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto; and (c) the term "underground storage tank" as used herein shall have the same meaning and definition as set forth in paragraph (1) of 42 U.S.C. §6991.

Initial Term means the period that commences on the License Commencement Date and terminates on December 31 of the same Fiscal Year.

Initial Option Term means the period that commences on the Effective Date and terminates on December 31 of the same Fiscal Year.

Interest Rate: means 3.55% per annum, calculated as of the date of this Agreement as the weighted average interest rate for all outstanding Castle Rock Water debt, plus 1%.

License Commencement Date means the date the Outter Marker Road Pipeline is operational, as certified by the Town, whether or not it is transporting water.

License Fees means the combined Base License Fees and Additional License Fees due under this Agreement.

License Option Payment means the quarterly payments in the same amount as Base License Fees, accruing prior to the License Commencement Date as provided in Section 4.4.

License Term means the Initial Term and any Renewal Terms as to which Dominion may exercise its option to renew this License by affecting Appropriations of funds for the payment of Base License Fees and Additional License Fees during such Renewal Term.

License Option Term means the Initial Option Term and any Renewal Option Terms as to which Dominion may exercise its option to renew the option on the License by affecting Appropriations of funds for the payment of License Option Payments and Additional License Fees during such Renewal Option Term.

License Value the cost of the Licensed Capacity equal to a percentage of the final cost of the Outter Marker Road Pipeline, as such costs are determined under this Agreement. As of the date of execution of this Agreement, the construction License Value is estimated to be \$4,227,167 based on 4.2 MGD of Licensed Capacity, and inclusive of the various costs delineated in **Exhibit C**.

Licensed Capacity means 4.2 MGD of the Outter Marker Road transmission capacity licensed to Dominion under this Agreement.

Organizational Agreement means the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement executed by the members of the WISE Authority.

Outter Marker Road Pipeline means the 36-inch pipeline and associated infrastructure to be constructed by the Town in accordance with this Agreement, also referred to as the “Infrastructure,” as further described in **Exhibit A**.

Permitted Encumbrances with respect to the Licensed Capacity, means: (a) easements, covenants, restrictions, liens and encumbrances (if any) to which title to any portion of the Outter Marker Road Pipeline was subject when the Town constructed it, and (b) terms conditions and restrictions on the use of the Licensed Capacity by the Town or Dominion under the terms of this Agreement.

Prepayment Price means the unamortized balance of the License Value as of the date of closing of the Prepayment Option which can only occur on or after the Effective Date.

Renewal Term means any portion of the License Term commencing on January 1 of any year after the Initial Term and terminating on or before December 31 of the same year as provided in Article III of this Agreement.

Renewal Option Term means any portion of the License Option Term commencing on January 1 of any year after the Initial Option Term and terminating on or before December 31 of the same year as provide in Article 3 of this Agreement.

Supplemental Appropriation means any Appropriation after an initial Appropriation in respect of Base License Fees or Additional License Fees due under this Agreement.

Town means the Town of Castle Rock, by and through the Town of Castle Rock Water Enterprise, only in its capacity as licensor under this Agreement and not in respect of any other capacity, power or function of the Town.

Town Authorized Representative means the Director of Castle Rock Water as specifically set forth herein, and, additionally, the person or persons authorized by ordinance or resolution of the Town Council to perform any act or execute any document on behalf of the Town with respect to this Agreement.

Town Council means the Castle Rock Town Council.

Variable Operating Costs means those costs which are imposed based on actual utilization of the Outter Marker Road Pipeline, i.e. the carriage of water, in accordance with the Castle Rock/Dominion Infrastructure Operations Agreement.

ARTICLE II REPRESENTATIONS OF THE PARTIES; RESERVED LEGISLATIVE POWERS

Section 2.1 Representations of Dominion. Dominion represents to Town the following:

(a) Dominion is a quasi-municipal corporation and political subdivision duly organized and existing under the Special District Act and other laws of the State and Dominion has lawfully constituted its Sterling Ranch Water Activity Enterprise and is entering this Agreement in its Sterling Ranch Water Activity Enterprise capacity. Dominion is authorized to enter into this Agreement and to carry out its obligations under this Agreement. Dominion has duly authorized and approved the execution and delivery of this Agreement and all other documents related to the execution and delivery of this License.

(b) The Licensed Capacity will be used at all times in connection with Dominion's governmental and proprietary purposes and functions and in compliance with all terms and conditions of this Agreement.

(c) Dominion has completed its due diligence on the Licensed Capacity, including the obligations and restrictions Dominion will assume with use or retention of the right to use the Licensed Capacity imposed through this agreement and all applicable agreements and documents.

(d) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Dominion is a party, or violates any statute, regulation, rule, order of any court having jurisdiction, judgment or administrative order applicable to Dominion.

(e) There is no litigation or proceeding pending against Dominion affecting the rights of Dominion to execute this Agreement or the ability of Dominion to make the payments required hereunder or to otherwise comply with the obligations contained herein.

Section 2.2 Representations of Town. The Town represents to Dominion the following:

(a) The Town is a municipal corporation and political subdivision duly organized and existing as a home rule municipality under the provisions of Article XX of the Constitution and laws of the State and Charter. The Town is authorized to enter into this Agreement and to carry out its obligations under this Agreement.

(b) There is no litigation or proceeding pending against the Town affecting the right of the Town to execute this Agreement or the ability of the Town to make or to otherwise comply with the obligations contained herein.

(c) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions of this License conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Town is a party or by which Town or its property is bound, or violates any statute, regulation, rule, order of any court having jurisdiction, judgment or administrative order applicable to Town.

(d) Upon completion of construction of the Infrastructure, the Town will own the Infrastructure free of any lien or encumbrance or claims of any other parties but subject to the terms, conditions and restrictions of this agreement.

(e) The Town shall comply with all terms and conditions of this Agreement as it may be amended from time to time.

Section 2.3 Financial Obligation. The annual financial obligations of Dominion under this Agreement shall not constitute or give rise to a general obligation or other indebtedness of Dominion. In the event that funds are not specifically budgeted and available from an Appropriation which has been effected by Dominion to meet the financial requirements of this Agreement for the next Fiscal Year, Dominion shall have no further financial obligation accruing in the succeeding Fiscal Year. In the event of such Nonappropriation, the Town shall retain all payments received or accrued under this Agreement, through the date of termination.

ARTICLE III LICENSE OF THE PROPERTY

Section 3.1 License of the Property. Upon the License Commencement Date, the Town licenses the Licensed Capacity to Dominion (the “License”) in accordance with the provisions of this Agreement for the License Term.

Section 3.2 Duration of the License Term. The License Term shall commence as of License Commencement Date. The Initial Term for the License shall terminate on the following December 31st. The License may be renewed solely at the option of Dominion, for four (4) Renewal Terms.

Not later than December 15 of the Initial Term or any Renewal Term, Dominion’s Authorized Representative shall give written notice to Town that either:

(a) Dominion has effected or intends to effect on a timely basis an Appropriation for the ensuing Fiscal Year that includes (1) sufficient amounts authorized and directed to be used to pay all of the Base License Fees as are estimated to become due and (2) sufficient amounts to pay such Additional License Fees as are estimated to become due, all as further provided in Article IV of this Agreement, whereupon the License shall be renewed for the ensuing Fiscal Year; or

(b) Dominion has determined, for any reason, not to renew the License for the ensuing Fiscal Year.

Irrespective of whether such notice is given by Dominion to the Town, Dominion’s option to renew or not to renew the License shall be conclusively determined by whether or not the applicable Appropriation has been made before December 31 of each Fiscal Year, and payment of all License Fees, all as further provided in Article IV of this Agreement.

Section 3.3 Termination of License Term. The License Term shall terminate upon the earliest of any of the following events:

(a) The expiration of the Initial Term or any Renewal Term during which there occurs an Event of Nonappropriation pursuant to Section 3.2 and Article IV of this Agreement (provided that the License Term will not be deemed to have been terminated if the Event of Nonappropriation is cured as provided in Section 4.8);

(b) The assignment of the License to the Licensed Capacity to Dominion under this Agreement upon payment to Town of the Prepayment Price; or

(c) an uncured Event of Default and termination of this License by the Town under Article IV and Article XI of this Agreement.

Except for an event described in subparagraph (b) above, upon termination of the License, Dominion agrees to peaceful delivery of the Licensed Capacity at its own cost and expense on or prior to March 1 of the Renewal Term in respect of which an Event of Nonappropriation has occurred.

Termination of the License Term under subparagraphs (a) or (c) above shall terminate all unaccrued obligations of Dominion under the License, and shall terminate Dominion's rights of possession to the Licensed Capacity under this License (except to the extent of the holdover provisions of Sections 4.9 and 11.2(c)(i)). All obligations of Dominion accrued prior to such termination shall be continuing until Town agrees that such accrued obligations have been satisfied.

Section 3.4 Town's Covenant of Quiet Enjoyment. The Town covenants that Dominion shall, during the License Term, peaceably and quietly have, hold and enjoy the Licensed Capacity except as expressly required or permitted by this License. The Town shall not interfere with the quiet use and enjoyment of the Licensed Capacity by Dominion in compliance with the Castle Rock/Dominion Infrastructure Operations Agreement during the License Term so long as no Event of Default which remains uncured beyond any applicable notice and cure period shall have occurred.

Section 3.5 Reservation of License Option. In exchange for the timely payment of the License Option Payments during the Initial Option Term or any Renewal Option Term, Town shall reserve for the exclusive use of Dominion its contractual right to the Licensed Capacity.

Section 3.6 Project Improvements. The Town has completed the design of the Infrastructure. Town shall construct the Infrastructure, and has acquired all required easements for the Infrastructure (collectively, the "Project") as generally described in **Exhibit A**. Town has competitively bid the design and construction of the Project in accordance with applicable law and its internal procedures and policies and has selected a general contractor to construct the project, and professional engineering firm for construction phase services. Town shall pay all such Project costs, subject to contribution by Dominion as set forth in Section 3.7, below. Attached as **Exhibit B** is a timetable for completion of the Project indicating that the Parties shall seek to have the Infrastructure operational prior to the end of 2017. Town will make diligent and good faith efforts to meet the various Project milestones as indicated on **Exhibit B**. The construction contract for the Project shall contain customary provisions to assure that the contractor adheres to the construction timetable. However, the Parties acknowledge that despite such efforts, unavoidable delays may be encountered with a project of this nature. The Parties shall hold regular status update and progress meetings as mutually agreed upon to keep Dominion reasonably informed regarding the progress of the Infrastructure construction, but no less frequently than once per quarter.

Section 3.7 Allocation of Design, Construction, and Installation Costs.

A. The estimated costs of constructing and installing the Infrastructure (the "Infrastructure Costs"), including Dominion's proportional share of the Infrastructure Costs ("Dominion Estimated Costs"), are set forth in **Exhibit C**, which is attached hereto and incorporated by this reference (the "Estimated Costs"). The Infrastructure Costs include without limitation, the Town's time to administer the Project and the costs of the Town's agent that will provide construction and contract management. Town staff time shall not be tracked. Instead, the costs of Town staff time pertaining to the construction project management shall be set at one-half percent (0.5%) of the Infrastructure Costs. The costs also include cultural resources monitoring. The Parties acknowledge the Estimated Costs are a general estimate of the

Infrastructure Costs, based on completion of a competitive bidding process by the Town, award of a contract and execution of that contract with the successful bidder. The Estimated Costs shall be adjusted to reflect actual costs upon completion of the Project. The contract for construction of the Infrastructure was approved by Town Council and fully executed with the successful bidder on November 1, 2016 and a Notice to Proceed has been issued to the contractor.

B. The actual Project costs may vary from the Estimated Costs. Upon completion of construction of the Infrastructure, the Town shall prepare an amended **Exhibit C** (“Amended Exhibit C”) showing the actual final costs incurred (“Final Infrastructure Costs”) and Dominion’s adjusted proportional share of the cost of Infrastructure Costs (“Dominion Final Cost”), and the Amended Exhibit C shall be appended to the original Exhibit C and incorporated as a part of this Agreement. Town shall provide a copy of the Amended Exhibit C to Dominion upon completion of the Infrastructure. At Dominion’s request, Town shall provide records relating to the construction of the Infrastructure, including copies of each draw request from Town’s general contractor, together with paid invoices or such other documentation as may be available and reasonably requested for Dominion to verify the Final Infrastructure Costs. The Parties shall cooperate to resolve any disputes concerning either the Final Infrastructure Costs or the Dominion Final Cost informally. If the Parties are unable to resolve their dispute informally, they shall submit the dispute to nonbinding mediation before a mutually agreeable mediator. If the Parties remain unable to resolve their dispute within sixty (60) days of commencing mediation, the Parties may pursue any remedies lawfully available to them.

C. Upon completion of the Project, Dominion’s proportional share of the Final Infrastructure Costs shall be finally adjusted as set forth in the **Amended Exhibit C**.

D. The Estimated Costs may increase at any time during design, construction or installation of the Project. Accordingly, the Estimated Costs may be adjusted at any time by the Town. Town shall administer the Project in substantially the same manner and with the same care as other Town projects of a similar scope and nature. Castle Rock shall manage all change orders and costs adjustments. Adjusted cost estimates will be made based upon actual construction bids or change orders. If the Estimated Costs are adjusted, Town shall give written notice to Dominion.

Section 3.8 Infrastructure Ownership, Capacity allocation, and Insurance.

A. Infrastructure Ownership. Town shall be the sole owner of the Infrastructure.

B. Capacity Reservation and Allocation. Town hereby grants to Dominion a perpetual, non-exclusive License for capacity in the Infrastructure subject to Dominion’s performance of its obligations under this Agreement.

C. Access Restriction. Dominion acknowledges that the License granted herein is for capacity in the Infrastructure only. Dominion shall not at any time access the Infrastructure or other facilities or property owned or controlled by the Town, except pursuant to the terms, restrictions and conditions set forth herein.

D. License Capacity. The total capacity of the Infrastructure is 14.3 MGD. The License to Dominion is limited to 4.2 MGD, which may be sold or assigned by Dominion pursuant to the same procedures as set forth in Section 5.F of the Organizational Agreement relating to the assignment or sale of Participant pro-rata shares.

E. Capacity Restriction. If capacity in the Infrastructure is restricted on account of maintenance, emergencies, force majeure, or legal or regulatory requirements, Town shall forthwith advise Dominion of such capacity restriction and the anticipated duration thereof, and apportion capacity in the Infrastructure based upon Dominion's proportional share of Infrastructure capacity.

F. Conveyance and Delivery of Non-WISE Project Water. Dominion may use its licensed capacity in the Infrastructure for the delivery of non-WISE Project water; provided the quality of the non-WISE Project water being delivered through the Infrastructure meets the standards set forth in **Exhibit D**.

G. Revocation of License. The License granted herein shall be revocable by the Town in the event of a default by Dominion and Dominion's failure to cure such default in accordance with the provisions of Article XI.

H. Limitations. The allocation of costs set forth herein between Dominion and the Town is intended to apply solely to the costs of designing and constructing the Infrastructure, and shall not be construed to include costs and fees related to the maintenance, repair, or replacement of the Infrastructure, or conveyance or "wheeling" of Dominion Water through the Infrastructure. Such costs and other related terms and conditions, including without limitation, metering, delivery scheduling, volume restrictions, and other related matters will be the subject of a separate agreement by and between Dominion and the Town, which the Parties contemplate executing at a later date.

I. Warranty. The Town shall be the sole owner of the Infrastructure, subject to the rights of Dominion as further set forth herein. Town represents and warrants to Dominion that the Town either has, or will obtain, all necessary right, title and interest in the Infrastructure to convey the License set forth in this Section 3(B) and enter into this Agreement. The Town does covenant and agree that it shall warrant and forever defend Dominion in its quiet and peaceful possession of its License rights granted herein against all and every person or persons. In the event that the License or any part thereof is challenged by the person or entity granting rights, interests or title to the Town or any portion thereof, the Town shall, to the extent permitted by law, take all necessary actions to acquire the requisite interest needed to satisfy its obligations hereunder; provided that Dominion may be required by the Town to pay its proportional share of the costs related to actions taken by the Town if the need for such actions was not due to the negligence of the Town. The representations and warranties of this Section are for the sole benefit of Dominion and shall not be deemed to be given to any third party.

J. Insurance. The Town shall procure and maintain property insurance for the Infrastructure that is substantially similar to the coverage maintained by the Town for other similar Town-owned water infrastructure. If the Infrastructure is damaged, The Town shall allocate all proceeds from the insurance policy towards repairing the Infrastructure.

ARTICLE IV PAYMENTS BY DOMINION

Section 4.1 Payments to Constitute Currently Budgeted Expenditures of Dominion. Dominion's obligation to pay License Option Payments, Base License Fees, Additional License Fees and any other obligations under this License shall be from year to year only, shall extend only to moneys for which an Appropriation or Supplemental Appropriation has been effected by Dominion. No provision of this License or License Option shall be construed or interpreted as a general obligation or other indebtedness of Dominion within the meaning of any constitutional or statutory debt limitation. This License or License Option shall not directly or indirectly obligate Dominion to make any payments beyond those for which an Appropriation or Supplemental Appropriation has been effected by Dominion for Dominion's then current Fiscal Year.

Section 4.2 Base License Fees. The Base License Fee during the Initial Term and each Renewal Term is \$220,025 per quarter, until such time as the License Value has been fully amortized in accordance with Section 4.5. The Base License Fee shall be adjusted for partial quarters on a per diem basis. Dominion shall pay Base License Fees for which an Appropriation or Supplemental Appropriation has been effected by Dominion, directly to the Town during the Initial Term and any Renewal Term on the first Business Day of each quarter (January, April, July, and October). Should Dominion fail to enter into any Renewal Term for any reason other than an uncured default by the Town, the Town shall retain the Base License Fees and any Additional License Fees and this Agreement shall terminate, in which event neither party shall have any further rights or responsibilities hereunder.

Section 4.3 Additional License Fees. All Additional License Fees shall be paid by Dominion on a timely basis when due directly to the Town or to the designated payee to whom such Additional License Fees are owed. Town will provide Dominion with billings and invoices Town receives applicable to the Licensed Capacity. Dominion shall provide Town with copies of records evidencing timely payment of all Additional License Fees.

If Dominion fails to pay any Additional License Fees during the License Term as such Additional License Fees become due, the Town may (but shall not be obligated) pay such Additional License Fees and Dominion agrees to reimburse Town, to the extent permitted by law.

Except for non-renewal and non-appropriation as set forth in this Article IV, if Dominion fails to perform any act which Dominion is required to perform under this Agreement, the Town may, but shall not be obligated to, following ten (10) days' written notice to Dominion and Dominion's failure to perform within said ten (10) day period, perform or cause to be performed such act, and any reasonable expense incurred by the Town in connection therewith shall be an obligation owing by Dominion (from moneys for which an Appropriation has been effected) to the Town, and shall bear interest at an annual rate of 12% until paid and shall be a part of Additional License Fees.

Section 4.4 License Option Payments. In order to reserve Licensed Capacity in the Otter Marker Road Pipeline, prior to the License Commencement Date, Dominion shall make an initial License Option Payment in the amount of \$678,960. Beginning with the 2017 third quarter payment due 9/30/2017, Dominion shall make additional License Option Payments in the amount of \$220,025 per quarter (to be adjusted on a per diem basis for any partial quarters). The initial License Option Payment shall be due July 5, 2017 and thereafter License Option Payments shall be due on the tenth Business Day of each quarter (January, April, July, and October) until the Lease Commencement Date, at which time the Base License Fees under 4.2 shall commence. Each License Option Payment shall be applied to amortize the License Value in the same manner as Base License Fees in accordance with Section 4.5, below. Should Dominion fail to enter into the Initial Term for any reason other than an uncured default by the Town, the Town shall retain the License Option Payments and this Agreement shall terminate, in which event neither party shall have any further rights or responsibilities hereunder.

Section 4.5 License Value/Prepayment Option Price. The amortization of the License Value as twenty (20) License Option Payments is illustrated on *Exhibit E*. The amortization schedule will be adjusted (retroactively and prospectively) to reflect the final License Value based on the final cost of the Infrastructure under this Agreement. Interest on the License Value shall commence November 1, 2016. Each License Option Payment and Base License payment shall be applied first to interest, and then to the unrecovered License Value.

Section 4.6 Exercise of Prepayment Option. After, but not before the License Commencement Date, Dominion may pay for the Licensed Capacity at the Prepayment Price in accordance with Article VIII, at which time all prospective Base License Fees will terminate.

Section 4.7 Manner of Payment. The Base License Fees and License Option Payments for which an Appropriation or Supplemental Appropriation has been effected by Dominion, and if paid, the Prepayment Price, shall be paid by Dominion by wire transfer or certified funds or other method of payment acceptable to the Town. The obligation of Dominion to pay the Base License Fees, License Option Payments and Additional License Fees as required under this Article IV and other sections hereof in any Fiscal Year for which an Appropriation or Supplemental Appropriation has been effected by Dominion for the payment of the Base License Fees, and License Option Payments and Additional License Fees in such Fiscal Years shall not be abated through accident or unforeseen circumstances, or under any other agreement between Town and Dominion.

Dominion shall, during the License Term, make all payments of Base License Fees and Additional License Fees in such Fiscal Years and shall not withhold any Base License Fees or Additional License Fees, for which an Appropriation or Supplemental Appropriation has been effected by Dominion, nor shall Dominion assert any right of set-off or counterclaim against its obligation to make such payment required hereunder.

Section 4.8 Nonappropriation; Supplemental Appropriation. In the event that Dominion gives notice that it intends to not renew the License as provided in Section 3.2 or Dominion shall not effect an Appropriation or Supplemental Appropriation, on or before December 15 of each Fiscal Year, of moneys to pay all reasonably estimated Base License Fees

and reasonably estimated Additional License Fees coming due for the next ensuing Renewal Term, an Event of Nonappropriation shall be deemed to have occurred; subject, however, to each of the following provisions:

(a) In the event the Town does not receive the written notice provided for by Section 3.2(a) or evidence that an Appropriation or Supplemental Appropriation has been effected by Dominion on or before December 15 of a Fiscal Year, then the Town, shall declare in writing delivered to Dominion an Event of Nonappropriation on the first Business Day of the January following such Fiscal Year or such declaration shall be made on any date on which (1) the Town received official, specific written notice from Dominion that this License will not be renewed or (2) the Town has determined that a Supplemental Appropriation has not been effected by Dominion to provide the Base License Fees remaining to be paid in the then current License Term.

(b) The Town shall waive any Event of Nonappropriation which is cured by Dominion, within 21 days of the receipt of notice as provided in (a), above, by a duly effected Appropriation or Supplemental Appropriation to pay all Base License Fees and sufficient amounts to pay reasonably estimated Additional License Fees coming due for such Renewal Term.

In the event that during the Initial Term or any Renewal Term, any Additional License Fees shall become due which are not included in a duly effected Appropriation or Supplemental Appropriation and moneys are not specifically budgeted and appropriated or otherwise made available to pay such Additional License Fees within 60 days subsequent to the date upon which such Additional License Fees are due, an Event of Nonappropriation shall be deemed to have occurred upon notice by the Town to Dominion to such effect.

If an Event of Nonappropriation occurs, Dominion shall not be obligated to make payment of the Base License Fees or Additional License Fees or any other payments provided for herein which accrue after the last day of the Initial Term or any Renewal Term during which such Event of Nonappropriation occurs; provided, however, Dominion shall continue to be liable for Base License Fees and Additional License Fees allocable to any period during which Dominion shall continue to occupy, use or retain possession of the Licensed Capacity. If an Event of Nonappropriation occurs, the Town shall retain all License Option Payments and Base License Fees paid by Dominion through the date of License expiration.

Dominion shall vacate or surrender possession of the Licensed Capacity by March 1 of the Renewal Term and thereby cease all utilization of the Outer Marker Road Pipeline in respect of which an Event of Nonappropriation has occurred and shall deliver the Licensed Capacity to Town on or prior to such March 1.

In the event that an Event of Nonappropriation has occurred and is continuing, the Town may proceed to exercise all or any License Remedies; subject to the holdover rights of Dominion existing prior to March 1 in accordance with Section 4.9.

Section 4.9 Holdover. If Dominion fails to vacate the Licensed Capacity after termination of this License, with the written permission of the Town, it will be deemed to be a

holdover licensee on a month-to-month basis, and will be bound by all of the other terms, covenants and agreements of this Agreement. The amount of Base License Fees to be paid during any period when Dominion is deemed to be a holdover licensee will be equal to 110% of the Base License Fees and Dominion shall also be responsible for Additional License Fees accruing during the holdover period.

ARTICLE V

MAINTENANCE, TAXES, INSURANCE AND OTHER CHARGES

Section 5.1 Utilization of the Licensed Capacity by Dominion. Subject to its right to not appropriate, Dominion shall at all times during the License Term utilize the Licensed Capacity in strict conformance with the Castle Rock/Dominion Infrastructure Operations Agreement, this License and applicable state and federal laws and regulations. Further Dominion shall maintain its separate facilities and infrastructure connecting to Licensed Capacity in good condition and repair.

Section 5.2 Hazardous Substances. Dominion shall not cause or permit any Hazardous Substance to be brought upon, generated at, stored or kept or used in or about the Licensed Capacity. If Dominion's use of the Licensed Capacity results in contamination of the Licensed Capacity, or if contamination of the Licensed Capacity by Hazardous Substance otherwise occurs for which Dominion is legally liable for damage resulting therefrom, Dominion shall, to the extent allowable by law, defend the Town from claims for damages, penalties, fines, costs or losses. This duty to defend is not an indemnification, it is expressly understood that Dominion is not indemnifying the Town and expenses of such defense shall constitute Additional License Fees. Without limiting the foregoing, if the presence of any Hazardous Substance on the Licensed Capacity caused or permitted by Dominion results in any contamination of the Licensed Capacity, Dominion shall provide prior written notice to the Town and promptly take all actions at its sole expense (which expenses shall constitute Additional License Fees) as are necessary to effect remediation of the contamination in accordance with legal requirements.

Section 5.3 Modification of the Licensed Capacity. Dominion may modify or make improvements to the Licensed Capacity only if: (a) expressly authorized in the Castle Rock/Dominion Infrastructure Operations Agreement, (b) necessary to receive and transmit water from the Licensed Capacity into the Dominion proprietary system, and (c) approved by the Town, which approval shall not be unreasonably withheld. Modification and improvements to the Licensed Capacity shall be made at Dominion's sole cost and expense, and the same shall be subject to this License and shall be included as Licensed Capacity under the terms of this License.

Section 5.4 Taxes, Other Governmental Charges and Utility Charges. In the event that the Licensed Capacity shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, Dominion shall pay the *pro rata* amount of all such taxes, assessments and governmental charges then due, as Additional License Fees. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, Dominion shall be obligated to provide for Additional

License Fees only for such installments as are required to be paid during the upcoming Fiscal Year. Except for Permitted Encumbrances, Dominion shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Licensed Capacity (including, without limitation, any taxes levied upon the Licensed Capacity which, if not paid, will become a charge on the rentals and receipts from the Licensed Capacity, or any interest therein.).

Section 5.5 Provision for Liability, Property and Worker's Compensation Insurance. To the extent required Dominion shall, at its own expense, cause casualty and/or property insurance to be carried and maintained with respect to the Licensed Capacity in an amount equal to the estimated replacement cost of the Licensed Capacity. Dominion may, in its discretion, insure the Licensed Capacity under blanket insurance policies which insure not only the Licensed Capacity, but other property as well, as long as such blanket insurance policies comply with the requirements hereof.

Dominion shall, at its own expense, cause commercial general liability insurance and public liability insurance, including blanket contractual liability or specific contractual liability insurance for this License, to be carried and maintained in connection with the use and possession of the Licensed Capacity. Such coverage shall be in amounts not less than the limits of liability per occurrence set by the Colorado Governmental Immunity Act as the same may be amended from time to time, for claims which the defense of sovereign immunity applies. The public liability insurance required by this Section may be by blanket insurance policy or policies.

Section 5.6 Governmental Immunity. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded Town, or its Town Council, officers, employees, servants, agents, or authorized volunteers, pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded the Town, or its Town Council, officers, employees, servants, agents, or authorized volunteers, pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 6.1 Damage, Destruction and Condemnation. If during the License Term, due to causes not attributable to the action of Town,

(a) the Licensed Capacity is destroyed (in whole or in part), or damaged by fire or other casualty; or

(b) title to, or the temporary or permanent use of, the Licensed Capacity or the interest of Dominion in the Licensed Capacity is taken under the exercise of the power of eminent domain by any governmental body or by any person, firm, or corporation acting under governmental authority; or

(c) title to or the use of the Licensed Capacity is lost by reason of a defect in title thereto;

then Dominion shall be obligated to continue to pay Base License Fees and Additional License Fees provided that in the event of receipt of funds from insurance proceeds, condemnation proceeds, or settlement amounts under any warranty claims against contractors, Town shall apply funds attributable to the Licensed Capacity for the purpose of offsetting obligations to pay Rentals and/or deduct from the Prepayment Option Price.

Section 6.2 No Obligation to Repair or Replace the Licensed Capacity. Town assumes no obligation to replace the Licensed Capacity should one of the events enumerated in Section 6.1 occurs.

ARTICLE VII DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 7.1 Disclaimer of Warranty and Obligation. THE TOWN DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LICENSED CAPACITY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LICENSED CAPACITY. DOMINION HEREBY ACKNOWLEDGES AND DECLARES THAT DOMINION IS SOLELY RESPONSIBLE FOR ITS PORTION OF MAINTENANCE AND OPERATION EXPENSE FOR THE LICENSED CAPACITY AND THAT THE TOWN DOES NOT HAVE ANY RESPONSIBILITY THEREFOR.

Section 7.2 Access to the Licensed Capacity; Rights to Inspect Books. Dominion agrees that the Town shall have the right at all reasonable times to examine and inspect the Licensed Capacity and all of Dominion's books and records with respect thereto. Dominion further agrees that the Town shall have such rights of access to the Licensed Capacity as may be reasonably necessary to cause the proper maintenance of the Licensed Capacity in the event of failure by Dominion to perform its obligations under this Agreement.

ARTICLE VIII PURCHASE OPTION

Section 8.1 Prepayment Option. Dominion shall have the option to prepay the Base License Fee for the Licensed Capacity at the then current License Value, during the License Term on or after the Effective Date, but only if neither an Event of Default nor an Event of Nonappropriation has occurred and is continuing. Dominion may not prepay less than the entirety of the Licensed Capacity. Dominion shall give Town notice of its intention to exercise its option to prepay not less than 60 days prior to the date of exercise and shall deposit with the Town the Prepayment Option Price, together with any other accrued obligations under this Agreement not later than the selected date for closing.

If Dominion gives notice to the Town of its intention to prepay the License Value for the Licensed Capacity, but does not deposit the amounts with the Town on the date specified in such notice, Dominion shall continue to pay Base License Fees, which have been specifically appropriated by Dominion for such purpose, as if no such notice had been given.

Section 8.2 Conditions for Prepayment Option. Town shall assign to Dominion the License to the Licensed Capacity as authorized under this Agreement in the manner provided in Section 8.3 of this License; provided however, prior to such assignment Dominion shall have paid to Town the Prepayment Price plus all then current and applicable Base and Additional License Fees required to be paid through the date of closing of the Prepayment Option.

Section 8.3 Manner of Conveyance. At the closing of the prepayment of the Licensed Capacity the Town shall execute and deliver to Dominion all necessary documents assigning to Dominion the Licensed Capacity as authorized under the this Agreement, subject only to the following:

- (a) Permitted Encumbrances, other than this License;
- (b) terms, conditions and restrictions of this Agreement, the Outter Marker Road Operations Agreement and any other agreement then in effect applicable to participants in the Outter Marker Pipeline.

Section 8.4 Effective Assignment. After assignment of the Licensed Capacity to Dominion pursuant to this Article VIII, Dominion shall pay all pro rata fees and financial obligations pursuant to this Agreement (other than Base License Fees and License Option Payments) and the Castle Rock/Dominion Infrastructure Operations Agreement.

ARTICLE IX ASSIGNMENT AND SUBLEASING

Section 9.1 Assignment by the Town. This Agreement may not be assigned by the Town for any reason other than to a successor by operation of law or with the prior written consent of Dominion, which consent shall not be unreasonably withheld. The Town will notify Dominion of any assignment to a successor by operation of law.

Section 9.2 Assignment and Subleasing by Dominion. Dominion may not assign this Agreement or otherwise permit a third party to use the Licensed Capacity for any reason other than to a successor by operation of law, or with prior written consent of the Town, which consent shall not be unreasonably withheld.

ARTICLE X USE OF LICENSED CAPACITY BY TOWN

Section 10.1 Town Option. Until Dominion has the ability to withdraw water from the Outter Marker Road Pipeline and input water into its proprietary system, Town may utilize the Licensed Capacity subject to the terms and conditions of this Article X.

Section 10.2 Notice and Duration. In the event Town elects to utilize any portion of the Licensed Capacity (“Town Use Rights”), it shall give notice of such election to Dominion (the “Election Notice”). Unless, within 30 days of delivery of the Election Notice, (i) Dominion disputes that the exercise of the Town Use Rights is not authorized under 10.1, or (ii) Town is in default of this Agreement, the Town may utilize all or any portion of the Licensed Capacity on the first Business Day occurring after expiration of such 30-day Notice period. The Town Use Right shall expire upon the first to occur of any of the following events:

(a) 30-days’ notice from Dominion that Dominion has the ability to utilize the Licensed Capacity and intends to do so, or

(b) upon Dominion’s exercise of the Prepayment Option, or

(c) upon 30-days’ notice from Town that Town intends to terminate the Town Use Rights.

Section 10.3 Payment. During the period of time the Town is exercising the Town Use Rights, Town shall assume the financial obligation for the Variable Operations Costs attributable to such Town usage. Dominion shall continue to pay Base and Additional License Fees which are not abated by exercise of the Town Use Rights.

Section 10.4 Reciprocal Covenant. Town shall assume the obligations of Dominion under Section 5.2 when exercising the Town Use Rights.

ARTICLE XI EVENTS OF DEFAULT AND REMEDIES

Section 11.1 Events of Default Defined. Any one of the following shall be Events of Default under this Agreement:

(a) failure by Dominion to pay any License Option Payments, Base License Fees and Additional License Fees, which have been specifically appropriated by Dominion for such purpose, during the Initial Term or any Renewal Term, on the date on which either or both are due and such failure continues for a period of ten (10) days following written notice thereof from the Town to Dominion; or

(b) failure by Dominion to vacate or surrender possession of the Licensed Capacity by March 1 of any Renewal Term when an Event of Nonappropriation has occurred; or

(c) failure by Dominion to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in (a) or (b), for a period of 45 days after written notice, specifying such failure and requesting that it be remedied shall be received by Dominion, unless Town shall agree in writing to an extension of such time prior to its expiration; provided that if the failure stated in the notice cannot be corrected within the applicable period, the Town shall not withhold their consent to an extension

of such time if, in Town's reasonable judgment, corrective action can be instituted by Dominion within the applicable period and diligently pursued until the default is corrected within 120 days after such written notice is received.

The foregoing provisions of this Section 11.1 are subject to the following limitations:

(i) Dominion shall be obligated to pay the License Option Payments, Base License Fees and Additional License Fees, which have been specifically appropriated by Dominion for such purpose, only during the License Term, except as otherwise expressly provided in this Agreement; and

(ii) if, by reason of *Force Majeure*, Dominion or the Town shall be unable in whole or in part to carry out any agreement on their respective parts herein contained other than Dominion's agreement to pay the License Option Payments, Base License Fees and Additional License Fees due hereunder, Dominion or the Town, as the case may be, shall not be deemed in default during the continuance of such inability. Dominion and the Town each agree, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing Dominion or the Town, as the case may be, from carrying out their respective agreements; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of Dominion.

Section 11.2 Remedies on Default. Whenever any Event of Default shall have happened or be continuing beyond any applicable cure period, the Town may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) terminate the License and give notice to Dominion to vacate and surrender possession of the Licensed Capacity which vacation and surrender Dominion agrees to complete within sixty days from the date of such notice; or

(b) License or sublease the Licensed Capacity or sell and assign any interest the Town has in the Licensed Capacity; or

(c) recover from Dominion:

(i) the portion of the Base License Fees and Additional License Fees, for which a specific Appropriation or Supplemental Appropriation has been effected by Dominion for such purpose, which would otherwise have been payable hereunder, during any period in which Dominion continues to occupy, use or possess the Licensed Capacity; and

(ii) Base License Fees and Additional License Fees, for which a specific Appropriation has been affected by Dominion for such purpose, which otherwise have been payable by Dominion hereunder during the remainder, after Dominion vacates and surrenders possession of the Licensed Capacity, of the Fiscal Year in which such Event of Default occurs; or

(d) take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Licensed Capacity under this Agreement.

Section 11.3 Town Default. If the Town fails to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, the same shall be an Event of Default if such failure continues for a period of 45 days after written notice from Dominion to the Town specifying such failure and requesting that it be remedied, unless Dominion shall agree in writing to an extension of such time prior to the expiration of such 45 days; provided that if the failure stated in the notice cannot be corrected within the applicable period, Dominion shall not withhold its consent to an extension of such time if, in Dominion's reasonable judgment, corrective action can be instituted by the Town within the applicable period and diligently pursued until the default is corrected within 120 days after such written notice is received.

Section 11.4 Dominion's Remedies. In the Event of Default shall have happened or be continuing beyond any applicable notice or cure period, Dominion may, without any further demand or notice take one or more of the following steps:

(a) terminate this License and thereafter Dominion shall be relieved of any further liability or obligation hereunder;

(b) exercise self-help to cure such Event of Default and deduct the actual and reasonable amount expended in curing such Event of Default from any future Base License Fees due hereunder; or

(c) pursue an action at law or in equity as necessary or desirable to enforce its rights under this Agreement.

Section 11.5 Limitations on Remedies. The remedies in connection with an Event of Default shall be limited as set forth in this section. A judgment requiring a payment of money may be entered against Dominion by reason of an Event of Default only as to Dominion's liabilities described in paragraph (c) of Section 11.2. A judgment requiring a payment of money may be entered against Dominion by reason of an Event of Nonappropriation only to the extent that Dominion fails to vacate and surrender possession of the Licensed Capacity and only as to the liabilities described in paragraph (c) (i) of Section 11.2.

Section 11.6 No Remedy Exclusive. Subject to 11.5, no remedy conferred upon or reserved to the Town is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Town to exercise any remedy reserved in this Article 11, it shall not be necessary to give any notice, other than such notice as may be required in this Article 11.

Section 11.7 Waivers. The Town and Dominion may each waive any Event of Default under this License and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. Payment of Base License Fees or Additional License Fees by Dominion shall not constitute a waiver of any breach or default by the Town hereunder.

ARTICLE XII MISCELLANEOUS

Section 12.1 Governing Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for Douglas County, State of Colorado.

Section 12.2 Sovereign Powers. Nothing in this License shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of Dominion or the Town. Nothing in this License shall be construed to require Dominion to occupy and operate the Licensed Capacity other than as lessee, or to require Dominion to exercise its right to purchase the Licensed Capacity.

Section 12.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof, and there are no prior or contemporaneous agreements, either oral or written, relating to the subject matter hereof except as expressly set forth herein.

Section 12.4 Agreement Modification. The Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

Section 12.5 Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto.

Section 12.6 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 the Parties or their officials, employees, contractors, or agents, or any other person acting on behalf of the Parties and, in particular, governmental immunity that may be afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

Section 12.7 No Public Dedication/No Third Party Beneficiary. Nothing contained herein shall be deemed to be a grant or dedication of any rights or use to the public in general, and no third party beneficiary interests are created nor intended to be created by this Agreement.

Section 12.8 Headings for Convenience. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

Section 12.9 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.

To Town: Town of Castle Rock

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

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

To Dominion: Dominion Water and Sanitation District
Attn: Chuck Reid
8390 E. Crescent Parkway, Suite 500
Greenwood Village, CO 80111

Section 12.10 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

Section 12.11 Recordation. The Parties agree that this Agreement may be recorded in the records of the Clerk and Recorder for county in which a Party has its principal place of business.

Section 12.12 Binding Agreement. The benefits and burdens of this Agreement shall inure to and be binding upon on the successors, and assigns of the Parties.

Section 12.13 Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time. Any capitalized term not defined herein shall have the meaning set forth in the definitions of the Organizational Agreement.

Section 12.14 Survival of Representations. Each and every covenant, promise, and payment contained in this Agreement shall survive each and be binding and obligatory upon each of the Parties and shall not merge into any deed, assignment, covenant, escrow agreement, easement, lease or any other document.

Section 12.15 Non-Severability. Each Section of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.

Section 12.16 Effect of Invalidity. 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, the Parties will immediately negotiate valid alternative portion(s) that as near as possible give effect to any stricken portion(s).

Section 12.17 Force Majeure. Each Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; action of the government (except the parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

Section 12.18 Conditions. Dominion acknowledges that the utilization of the Infrastructure is dependent on (i) the construction of additional infrastructure by Parker Water and Sanitation District, which is or will be the subject of a separate agreement(s), and (ii) the acquisition of carriage rights through the Parker Water and Sanitation District system, pursuant to separate agreement(s).

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

ATTEST:

**TOWN OF CASTLE ROCK ACTING BY AND
THROUGH THE TOWN OF CASTLE ROCK
WATER ENTERPRISE**

Lisa Anderson, Acting Town Clerk

Jennifer Green, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water

**DOMINION WATER AND SANITATION
DISTRICT**, acting by and through its Sterling
Ranch Water Activity Enterprise

By: Alfred S. Kibb, President

ATTEST:

By: [Signature]

EXHIBIT A

[DESCRIPTION OF INFRASTRUCTURE]

1. 36-Inch Waterline from Canyons Tank to Ray Waterman Regional Water Treatment Center

A water delivery pipeline consisting of approximately 27,800 linear feet of 36-inch pipe, 1,200 feet of 24-inch pipe, approximately 1,100 feet of 48-inch trenchless steel casing, 2,750 feet of 36-inch horizontal directional drilled pipe, valves, vaults, appurtenances, cathodic protection systems, water sampling and chemical feed, and all incidental items required for a completely functioning system which shall be the subject of the License set forth in the Agreement, and all necessary appurtenances to control and monitor the flow and operate the pipeline

EXHIBIT B

[CONSTRUCTION SCHEDULE FOR INFRASTRUCTURE]

The Design-Build construction schedule shall be approximately as follows:

Request for Proposals/Bids: 09/16/2016

Bid Award: 11/01/2016

Substantial Completion: 08/31/2017

EXHIBIT C

[ESTIMATED COSTS AND DOMINION'S PROPORTIONAL SHARE FOR EACH INFRASTRUCTURE ELEMENT]

1. 36-Inch Waterline

As set forth below, the estimated total design and construction cost of the Water Pipeline as described in **Exhibit A** (for both the “Town Portion” and the “Dominion Portion”) is \$14,395,447 (\$14.4M). The design phase costs are shared 50/50 while the construction costs are shared based on pipeline capacity and user capacity. The following table provides a cost breakdown of each item.

Capacity Share	Capacity Required	% of Capacity Required
Total Capacity	14.3 MGD ¹	100%
Dominion	4.2 MGD	29.37%
Town of Castle Rock	10.1 MGD	70.63%

Notes:

1. 14.3 MGD is the calculated capacity of the pipeline under gravity flow from Outter Marker Road to the Ray Waterman Regional Water Treatment Center.

EXHIBIT D

1. Compliance with Drinking Water Standards and TDS Limit. All water introduced by Dominion into the Infrastructure shall meet all state and federal safe drinking water regulatory requirements as such may exist now or in the future, including without limitation the Safe Drinking Water Act and Colorado Primary Drinking Regulations (5CCR 1002-1), as they may be amended. Primary drinking water standards have not been established for TDS at the time of execution of this Agreement; provided that the current secondary standard is 500 mg/l. Unless the Town agrees otherwise, Dominion shall not introduce water that exceeds the secondary standard of 500 mg/l. All water introduced by Dominion shall be disinfected with Chloramines, unless Town agrees otherwise.

2. Rejection of Water. Dominion shall be solely responsible for making any water it introduces into the Infrastructure compatible with the standards set forth in Section 1 of this Exhibit D. Violation of such standards shall be immediately reported to the Town. Town may reject any deliveries that violate these standards. In addition, violations of such standards for a period of 24 continuous hours or more than three times within any three-month period shall permit Town to require that deliveries by Dominion cease until Dominion cures the cause of such violation and provides reasonable evidence of the cure supported by testing documentation.

EXHIBIT E

Amortization Schedule for Dominion Water & Sanitation District for the Lease-Purchase Agreement with Town of Castle Rock for Outter Marker Road Infrastructure

Date	Purchase Option	Interest	Total	Remaining Principal
11/1/2016-6/30/2017	\$ 581,764	\$97,196	\$678,960	\$3,645,403
9/30/2017	\$187,672	\$32,353	\$220,025	\$3,457,731
12/31/2017	\$189,338	\$30,687	\$220,025	\$3,268,394
3/31/2018	\$191,018	\$29,007	\$220,025	\$3,077,376
6/30/2018	\$192,713	\$27,312	\$220,025	\$2,884,663
9/30/2018	\$194,424	\$25,601	\$220,025	\$2,690,239
12/31/2018	\$196,149	\$23,876	\$220,025	\$2,494,090
3/31/2019	\$197,890	\$22,135	\$220,025	\$2,296,200
6/30/2019	\$199,646	\$20,379	\$220,025	\$2,096,554
9/30/2019	\$201,418	\$18,607	\$220,025	\$1,895,136
12/31/2019	\$203,206	\$16,819	\$220,025	\$1,691,931
3/31/2020	\$205,009	\$15,016	\$220,025	\$1,486,922
6/30/2020	\$206,828	\$13,196	\$220,025	\$1,280,093
9/30/2020	\$208,664	\$11,361	\$220,025	\$1,071,429
12/31/2020	\$210,516	\$9,509	\$220,025	\$860,913
3/31/2021	\$212,384	\$7,641	\$220,025	\$648,529
6/30/2021	\$214,269	\$5,756	\$220,025	\$434,260
9/30/2021	\$216,171	\$3,854	\$220,025	\$218,089
12/31/2021	\$218,089	\$1,936	\$220,025	\$(0)