

**TOWN OF CASTLE ROCK
AND PARKER WATER AND SANITATION DISTRICT
INTERGOVERNMENTAL AGREEMENT FOR SHARED USE OF
NEWLIN GLUCH AQUEDUCT NO. 2 (aka PWSD DIVERSION STRUCTURE)**

THIS INTERGOVERNMENTAL AGREEMENT FOR SHARED USE OF THE NEWLIN GULCH AQUEDUCT NO. 2 (also known as the Parker Water and Sanitation District Diversion Structure) ("Agreement") effective as of the 9 day of December, 2014 is entered into by and between the TOWN OF CASTLE ROCK BY AND THROUGH THE TOWN OF CASTLE ROCK WATER ENTERPRISE ("Town") and PARKER WATER AND SANITATION DISTRICT ("PWSD"), the former, a home-rule municipality, and the later, a quasi-municipal governmental entity and political subdivisions of the State of Colorado, combined (the "Parties").

WHEREAS the Parties, being a home-rule municipality and a quasi-municipal governmental entity, respectively, desire to enter into this Intergovernmental Agreement pursuant to the provisions of Part 2 of Title 29, Article 1, C.R.S. to provide for the terms and conditions of an agreement to share the use of the PWSD Diversion Structure (the "Agreement") between the parties; and

WHEREAS the Town and the PWSD have discussed and performed preliminary analysis of the amount and timing of Town water availability along Cherry Creek; and

WHEREAS the Parties agree that the PWSD Diversion Structure could be used to deliver Town-owned water, when available, into Rueter-Hess Reservoir; and

WHEREAS the Parties have reached agreement with PWSD regarding the costs associated with PWSD handling the volume of Town-owned water through the PWSD Diversion Structure.

NOW THEREFORE, the Parties, in and for the consideration of the performance of the mutual promises set forth herein, the receipt and adequacy of which is hereby acknowledged, for themselves and their successors, do hereby agree as follows:

1. Agreement Term. This Agreement will become effective upon execution of this Agreement and shall expire 20 years thereafter unless terminated earlier as allowed herein or extended by mutual written agreement of the Parties.

2. Pinery. Town and the Denver Southeast Suburban Water and Sanitation District d/b/a Pinery Water and Wastewater District ("Pinery") are parties to an intergovernmental agreement by which the Pinery treats a portion of the Town's wastewater flows. The Town's raw sewage is measured by a Parshall flume, separately from the other wastewater influent into the Pinery's treatment plant and the effluent is measured on a continuous basis. The Town's portion of the effluent is calculated on a pro-rata basis ("Town Effluent").

3. Description of Water Sources.

A. The Town's fully consumable sewer return flows treated at the Pinery Wastewater Treatment Plant and released into the mainstem of Cherry Creek, more particularly described as follows:

1. The Town provides potable water to the Liberty Village/Cobblestone Ranch ("Liberty Village") development and may also provide water to the future Canyons South development. Under an agreement with the Pinery, the wastewater produced from these developments, projected to potentially increase to approximately 600 acre-feet per year, will be treated at the Pinery's wastewater treatment plant with the effluent released into the mainstem of Cherry Creek (at a point in the northwest quarter of Section 10, Township 7 South, Range 66 West). The wastewater plant discharge point is located approximately 1.15 miles upstream of the PWSD Diversion Structure.

4. Operation of the PWSD Diversion Structure.

A. PWSD operates the PWSD Diversion Structure, more formally known as the Newlin Gulch Aqueduct No. 2. The PWSD Diversion Structure is located on Cherry Creek at a location approximately 2,000 feet upstream of Stroh Road. The diversion structure is of concrete construction, approximately 6 feet high and 300 feet wide, with overflow gates and flood protection dikes on either side. A 12 foot wide, 500 foot long sluiceway channel exists on the west side of Cherry Creek to facilitate flushing of sediment prior to flows reaching the pump station. The pump station is located on the west side of the diversion structure and operates with a minimum pumping capacity of 6 cubic feet per second (cfs) and a maximum of 78 cfs. The maximum capacity may be increased in the future by adding pumping units.

B. PWSD is required to continuously bypass the lesser of 1 cfs of native flow or the actual native flow during times when the diversion structure is diverting native flow to Rueter-Hess."

C. PWSD operates the diversion structure under March 20, 1985 and June 1, 1993 priorities decreed in 85CW448(A) and 85CW448(B), and a December 31, 2004 priority decreed in 04CW348, can pump alluvial water rights to Rueter-Hess pursuant to Case No. 01CW160, and can divert its reusable return flows pursuant to its augmentation plan in Case No. 83CW348(A)."

D. The actual daily amounts of Town Effluent available to divert to Rueter-Hess Reservoir would be determined based on daily accounting of Town Effluent and would be limited by the available streamflow in Cherry Creek after diversions by PWSD under its own water rights.

E. PWSD shall be responsible for the continued maintenance of the diversion structure at its sole expense.

5. Delivery Operation. The Agreement will be coordinated and undertaken as nearly as possible according to the following terms.

A. The Town will deliver the Town Effluent to the PWSD Diversion Structure on Cherry Creek. PWSD will divert this water at the PWSD Diversion Structure and pump the water into storage in Rueter-Hess, provided PWSD is not using the full capacity of the PWSD Diversion Structure and pump station to divert water under the Rueter-Hess Reservoir and Lake Gulch Reservoir priorities decreed in Case Nos. 85CW448A, 85CW448B, and 04CW348, as well as diverting water to Rueter-Hess associated with the alluvial aquifer well and reusable effluent delivery lines, pursuant to 01CW60 and 83CW348(A), respectively. The maximum amount of Town Effluent PWSD diverts to the PWSD Diversion Structure and pumps into storage in Rueter-Hess will be the lesser of actual native flow at the PWSD Diversion Structure or the amount that the Water Commissioner determines to be available after assessing transit losses and is ultimately subject to Water Commissioner approval.

1. The Town will pay PWSD the actual net cost to PWSD to divert the Town's water through the PWSD Diversion Structure and pump the water into Rueter-Hess. The method of calculating the net cost shall be provided to the Town and subject to adjustment based on actual Project operations as mutually agreed by the Parties as described in the attached *Exhibit 1*. *Exhibit 1* provides the 2014 rate to divert water to be paid by the Town and summarizes the methodology used to calculate this rate. This rate will be recalculated on an annual basis, and shall not relieve Castle Rock from any payment obligations set forth in the PWSD 2008 Rueter-Hess Reservoir Operations Plan, including without limitation the obligation to pay for maintenance of the Cherry Creek diversion structure pursuant to Section V.C.3 of the PWSD 2008 Rueter-Hess Reservoir Operations Plan.

2. PWSD shall invoice the Town on a monthly basis in accordance with *Exhibit 1*. Town shall pay such invoices within 30 days from the date of receipt of such invoice. Any dispute of the calculations or charges shall be sent, in writing, to PWSD, no less than 15 days from the receipt of such invoice and shall be resolved, in writing, prior to release of payment.

3. Should the Town desire that all, or a portion of, the Town Effluent bypass the diversions structure, the Town must provide written notice (hard copy, electronic mail, or facsimile) to PWSD at least 24 hours in advance. This notice must indicate the duration and quantity of said bypass.

B. The Town will receive daily reporting from the Pinery indicating Town owned reusable sewer influent and total wastewater plant effluent, as well as the transit losses on this daily volume imposed by the Water Commissioner. This information will be shared on a daily basis with PWSD and the daily capture of the Town Effluent will be

based on such reporting of the net reusable effluent available for diversion pursuant to Section II. B. of the Rueter-Hess Reservoir IGA and Operations Plan.

C. The terms and conditions in PWSD decrees in Case Nos. 85CW448A, 85CW448B, 04CW270, and 04CW348 do not limit or apply to diversions of the Town to storage in Rueter-Hess Reservoir using the PWSD Division Structure.

D. The Town will bear actual transit losses in delivering water to the PWSD Diversion Structure point of diversion and evaporation and seepage losses for its water stored in Rueter-Hess on a pro-rata basis to the total water stored. Transit losses are typically assessed by the Water Commissioner at 0.5 percent per mile along the mainstem of Cherry Creek upstream of the PWSD Diversion Structure. Given the fact that the Pinery treatment plant outfall is 1.15 miles from the PWSD Diversion Structure, the total transit losses are estimated to be approximately 0.57 percent.

6. General Provisions.

A. The Agreement may be extended, modified, or amended only in writing signed by both Parties.

B. Any notes, bonds or other financial instruments or obligations issued individually by either of the Parties shall not be the debts, liabilities, or obligations of the other Party. Nothing herein shall be construed as creating a debt or multi-fiscal year obligation of either of the Parties.

C. Nothing contained herein shall preclude or constrain either Party from exercising any lawful authority such Party may possess while acting either for the benefit of its constituents or on behalf of the Party, nor shall its status as a Party hereto deprive either Party of the authority or power to enter into any other contracts by such Party.

D. This Agreement is entered into exclusively for the benefit of the Parties and no benefit to any third party is intended or is to be construed.

E. Assignment. This Agreement shall not be assigned without the written consent of the other Party, which shall not be unreasonably withheld.

F. Default and Termination. If any obligation hereunder is not performed as herein provided, there shall be the following remedies:

1. For Cause. If any obligation hereunder is not performed as herein provided, the Party claiming a default shall provide written notice of the alleged default and shall provide ten (10) days for the other Party to cure the default to the reasonable standards established in the Agreement. If the default remains after ten (10) days, the claiming Party may terminate this Agreement. If terminated, all things of value, information, water credits, or property shall be returned to the respective Parties within thirty (30) days or upon mutual agreement of the Parties.

2. For Convenience. Either Party may terminate this Agreement for convenience upon thirty (30) days' written notice. If terminated, all things of value, information, water credits, or property shall be returned to the respective Parties within thirty (30) days or upon mutual agreement of the Parties.

G. Governmental Immunity. The Parties, their officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to the District and its officers, attorneys or employees.

H. Rights and Remedies. The rights and remedies of the Parties under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit either Party's legal or equitable remedies, or the period in which such remedies may be asserted.

I. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

J. Failure to perform due to Force Majeure. No Party shall be liable or responsible hereunder by reason of any failure or delay in the performance of its duties or obligations hereunder (except for the payment of money) on account of strikes or labor unrest, shortages in labor, material or equipment, riots, insurrection, fire, flood, storm, extreme and unusual weather conditions, explosions, Acts of God, war, governmental action, earthquakes, or any other cause which is beyond the reasonable control of such Party.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date set forth herein as evidenced by signature of each of the Parties.

PARKER WATER AND SANITATION DISTRICT
A Colorado special district and political subdivision

ATTEST:

By:


Ron R. Redd, District Manager

By:



Approved as to form:

By:


Jefferson H. Parker, PWSD General Counsel

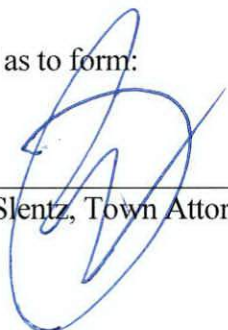
ATTEST:


Sally A. Misare, Town Clerk

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


Mark Stevens, Town Manager
Date: 12/29/14

Approved as to form:


Robert J. Slentz, Town Attorney

Approved as to content:


Mark Marlowe, Utilities Director

EXHIBIT 1

2014 RATE METHODOLOGY SUMMARY

	Staff Cost	% Diverted	Fee
Annual Base Fee	\$50,000	1%	\$500

Cost to Divert at Structure:					
	Book Value 1/1/14	Depreciation	Max Annual Capacity (AF)	USED by CR	% of Capacity Used
Diversion Structure	\$ 13,005,418	\$ 682,434	56,007	600	1.07%
Pipeline to RH	\$ 6,392,439	\$ 133,176	56,007	600	1.07%
Asset Recovery Charge					
Allocated Depreciation	Amount per AF	Amount per 1kg			
\$ 7,310.86	\$ 12.18	\$ 0.037			
\$ 1,426.70	\$ 2.38	\$ 0.007			
ROI (@5%)			Variable Cost 1kg		Total Cost Per 1kg
Allocated Amount	Amount per AF	Amount per 1kg			
\$ 6,966.29	\$ 11.61	\$ 0.036	\$ 0.1621		\$ 0.235
\$ 3,424.08	\$ 5.71	\$ 0.018	\$ -		\$ 0.025
Cost per Thousand Gallons					\$ 0.2599
Cost per Acre Foot					\$ 84.69