

**TOWN OF CASTLE ROCK
SERVICES AGREEMENT**

DATE: _____, 2016.

PARTIES: **CASTLE ROCK WATER¹**, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“CRW”).

RACHIO, INC., a Delaware corporation, 2040 Larimer Street, Denver, Colorado 80205 (“Contractor”).

RECITALS:

- A. Contractor has a unique and proprietary hardware and software product more specifically described in the attached *Exhibit 1* (the “Product”), which can provide remote access to real time information on water usage at a particular service address. After a successful field-testing of the Product enabled by this Pilot Agreement, the Product may be suitable for general placement with the CRW customer base. In that event, CRW anticipates that the Product will foster a reduction in water usage.
- B. CRW and Contractor desire to test the Product in a selected and discrete sampling of CRW customers to determine reliability and functionality of the Product.
- C. CRW desires to engage Contractor to provide the Product and services more fully described in this Agreement to enable CRW to install and test the Product in the user environment.

NOW, THEREFORE, the parties mutually agree and covenant as follows:

TERMS:

Section 1. Scope of Pilot Test. The Product will be tested in two phases, initially approximately 7 units (“Phase 1”), followed by a second phase placement of up to 93 additional units (“Phase 2”). CRW customers (“Customers”) who will be testing the Product shall be selected jointly by CRW and Contractor. Upon the completion of Phase 1, the parties will review and analyze Customer feedback, and information and reports of the Product performance and make any necessary modifications of the program useful for Phase 2. The evaluation methodology and criteria for functionality of the Product is addressed in the attached *Exhibit 2*. If there is no concurrence on proceeding from Phase 1 to Phase 2, this Agreement will conclude with completion of Phase 1.

¹ CRW is the Town of Castle Rock Water Enterprise.

Section 2. Contractor Services. Contractor shall furnish and install for CRW sufficient quantities of the Product to support Phase 1 and Phase 2 testing at Customer locations mutually selected by CRW and Customer. Customers selected must execute the Castle Rock Water Device Testing Agreement (Beta Version), attached as *Exhibit 3* (“Customer Agreement”). CRW shall make diligent efforts to assure that Customers comply with the terms and restrictions of the Customer Agreement. Contractor shall provide both CRW and Customers technical advice and support, including trouble-shooting and/or repair or replacement of malfunctioning Product. Contractor shall provide and install the Product and provide Product support (collectively, the “Services”) without charge to CRW or Customers. Contractor shall perform the Services under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement. Contractor shall devote adequate resources to assure timely completion of the Services. Contractor may utilize subcontractors to assist with specialized works as necessary to complete the Services.

Section 3. Term. CRW and Contractor shall endeavor to fully implement Phase 1 by October 30, 2015 and conclude Phase 1 by May 1, 2016. Phase 2 implementation shall commence as soon as practicable after completion and analysis of Phase 1 and shall have a duration of approximately 6 months. If not earlier concluded with completion of Phase 2, this Agreement shall terminate on December 31, 2016.

Section 4. Contractor Reservation. CRW acknowledges that Contractor retains all right, title, and ownership to the Product (including any images, icons, graphics, animations, video, audio, music, and text incorporated into the Product), all associated software, and the Product. Accordingly, CRW, as a water utility, is granted an exclusive, but limited license to test and evaluate the Product for the term of this Agreement and the Customer Agreement. With expiration of this Agreement, all Product shall be returned to Contractor or disabled in place, and this license to test the Product with the Customer base shall expire, unless the parties proceed to a system-wide implementation pursuant to a separate agreement.

Section 5. Exclusivity. It is the intention of the parties that testing of the Product under this Agreement be the first and exclusive testing of the Product in the United States. Consequently, neither CRW nor Contractor shall enter into similar agreement with any water utility prior to the termination of this Agreement

Section 6. Access to Customer Database. CRW will share with Contractor the billing records of Customers to enable the joint evaluation of the performance of the Product.

Section 7. Protection of Confidential Proprietary Data. CRW acknowledges that the Product and the attributes of the Product, (including but not limited to their design, functionalities, performance characteristics and Customer’s characteristics and evaluation of the Product) and any other verbal or written information that may be supplied by Contractor to CRW during the term of this Agreement, or obtained through CRW’s evaluation of the Product, are collectively Product Information that is the confidential and proprietary property of Contractor. CRW shall maintain the confidentiality of Product and Product Information

during the term of this Agreement and thereafter, in the same manner that it maintains its own confidential information (but with no less than a reasonable degree of care), and specifically shall:

(a) Not disclose Product or Product Information or the existence or terms of this Agreement to any third party without the prior written consent of Contractor;

(b) Not copy, modify, adapt, merge, reverse engineer, reverse compile, disassemble, sell, rent or lease, loan or sublicense the Product or Product Information in whole or in part.

The protection on dissemination of confidential information imposed by this Agreement shall not apply to the CRW's good faith determination that disclosure is compelled under the Colorado open records statutes, or such disclosure is made in compliance with the direction of a judicial determination that the confidential information is a public record.

Section 8. Assignment. This Agreement shall not be assigned by CRW or Contractor.

Section 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 on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 10. Prohibition Against Employing Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively. Contractor is prohibited from using the E-verify program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement for services knowingly employs or contracts with an illegal alien, Contractor shall:

A. Notify the subcontractor and CRW within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three days of receiving notice required pursuant to this paragraph if the subcontractor does not stop employment or contracting with the illegal alien; except that the Contractor shall not

terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. §8-17.5-102(5).

If Contractor violates a provision of this Agreement required pursuant to C.R.S. §8-17.5-102, CRW may terminate the Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to CRW.

Section 11. Insurance. Contractor shall maintain Commercial Liability Insurance covering the obligations to CRW under this Agreement with liability limits and coverages indicated on the attached *Exhibit 4*. Contractor and any subcontractor of Contractor shall also maintain worker's compensation in at least the statutory amounts. Such insurance shall name CRW as an additional insured, and a Certificate of Insurance evidencing such coverage shall be provided to CRW prior to commencement of the Services.

The parties understand and agree that CRW is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to CRW, its officers, or its employees.

Section 12. Indemnification. Contractor shall indemnify and hold harmless CRW or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against CRW, CRW will give notice within ten (10) days thereof to Contractor.

Section 13. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 14. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 15. Default and Remedies. In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured

for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

Section 16. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 17. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

Section 18. Independent Contractor. Contractor and CRW hereby represent that Contractor is an independent contractor for all purposes hereunder. As such, Contractor is not covered by any worker's compensation insurance or any other insurance maintained by CRW except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of the CRW.

Section 19. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to CRW and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than CRW or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare, Town Clerk

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

CONTRACTOR:

RACHIO, INC., a Delaware corporation.

By: _____

Its: _____