

**TOWN OF CASTLE ROCK AND PARKER WATER AND SANITATION DISTRICT**  
**INTERGOVERNMENTAL WATER INFRASTRUCTURE DESIGN, CONSTRUCTION**  
**COST SHARING AND CAPACITY ALLOCATION AGREEMENT**

THIS INTERGOVERNMENTAL WATER INFRASTRUCTURE DESIGN, CONSTRUCTION COST SHARING AND CAPACITY ALLOCATION AGREEMENT ("the Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2017 (the "Effective Date"), by and between the PARKER WATER AND SANITATION DISTRICT, a quasi-municipal special district organized and existing pursuant to the provisions of Title 32 of the Colorado Revised Statutes, ("PWSD") and the TOWN OF CASTLE ROCK, a Colorado home rule municipality ("Castle Rock") (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, PWSD plans to construct the water delivery infrastructure described in **Exhibit A** (the "Infrastructure") as part of its participation in the regional Water Infrastructure and Supply Efficiency ("WISE") Project;

WHEREAS, the Infrastructure will be used, in part, to convey WISE Project water or other water supplies to Castle Rock ("Castle Rock Water"), for PWSD to provide water service to other property within the District's boundaries, and for other participants in the WISE Project to convey WISE Project water or other water supplies to their customers;

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, Castle Rock desires to pay its proportionate share of the costs of the design, construction, and installation of the Infrastructure necessary to convey Castle Rock Water from its receipt by PWSD into PWSD's water system to its point of delivery to Castle Rock into Castle Rock's water system as shown on the map included in **Exhibit A**, attached hereto, including existing pipelines and infrastructure;

WHEREAS, upon completion of the Infrastructure, PWSD will wholly own, operate, and maintain the Infrastructure and Castle Rock will have a perpetual license to use capacity in the Infrastructure for the conveyance of Castle Rock Water;

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

WHEREAS, the Parties are entering into a separate agreement setting forth the terms pursuant to which PWSD will deliver (or "wheel") Castle Rock Water through the Infrastructure

and other PWSD facilities, including how the costs for operating, maintaining, repairing, and replacing the Infrastructure will be allocated and assessed.

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:

**1. PROJECT IMPROVEMENTS.** PWSD shall design and construct the Infrastructure, and acquire all required easements for the Infrastructure (collectively, the “Project”) as generally described in **Exhibit A**, which is attached hereto and incorporated by this reference. PWSD shall competitively bid the construction of the Project in accordance with applicable law and its internal procedures and policies. PWSD shall pay all such Project costs, subject to contribution by Castle Rock as set forth in Section 2, below. Attached as **Exhibit B** is a timetable for completion of the Project indicating that the Parties shall seek to have the Canyon’s Pipeline Infrastructure operational prior to the end of 2017 and the Canyons Pump Station operational by June of 2018. PWSD 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 Castle Rock reasonably informed regarding the progress of the Infrastructure construction, but no less frequently than once per quarter.

**2. ALLOCATION OF DESIGN, CONSTRUCTION, AND INSTALLATION COSTS.**

A. The estimated costs of designing, constructing and installing the Infrastructure (the “Infrastructure Costs”), including Castle Rock’s proportional share of the Infrastructure Costs (“CR 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 costs of PWSD staff time spent administering the work set forth herein and the costs of the owner’s agent that will be providing construction and contract management. PWSD staff time shall not be tracked. Instead, the costs of PWSD staff time shall be set at one percent (1%) of the Infrastructure Costs.

B. The actual Project costs may vary from the Estimated Costs. Upon completion of the Infrastructure, PWSD shall prepare an amended **Exhibit C** (“Amended Exhibit C”) showing the actual final costs incurred (“Final Infrastructure Costs”) and Castle Rock’s adjusted proportional share of the Final Infrastructure Costs (“CR Final Cost”), and the Amended Exhibit C shall be substituted for the original Exhibit C as a part of this Agreement. PWSD shall provide a copy of the Amended Exhibit C to Castle Rock upon completion of the Infrastructure. At Castle Rock’s request, PWSD shall provide records relating to the design and construction of the Infrastructure, including copies of each draw request from PWSD’s general contractor, together with paid invoices or such other documentation as may be available and reasonably requested for Castle Rock to verify the Final Infrastructure Costs. The Parties shall cooperate to resolve any disputes concerning either the Final Infrastructure Costs or the CR 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. Within ten (10) days of the Effective Date, Castle Rock shall deposit the CR Estimated Costs (the “CR Funds”) with PWSD. PWSD shall separately account for and use the CR Funds solely for payment for Project costs. As a condition to deposit to the CR Funds, PWSD shall certify to Castle Rock that PWSD has appropriated PWSD funds in an amount such that when the PWSD funds are aggregated with the CR Funds, the Project funds are sufficient to meet the Estimated Costs. Project payments (engineering and design) shall be made proportionately from the CR Funds and the PWSD funds. On an on-going basis PWSD shall provide Castle Rock with copies of approved pay requests and disbursements from Project funds.

D. Upon completion of the Project, Castle Rock’s proportional share of the Final Infrastructure Costs shall be finally adjusted as set forth in the **Amended Exhibit C**. Any overpayment shall be refunded to Castle Rock by PWSD, and any underpayment shall be satisfied by Castle Rock.

E. 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 PWSD. PWSD shall administer the Project in substantially the same manner and with the same care as other PWSD projects of a similar scope and nature. PWSD 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, PWSD shall give written notice to Castle Rock. Castle Rock shall, within thirty (30) days after receipt of said written notice, deposit new funds with PWSD necessary to pay its proportional share of the increased Estimated Costs as updated. Similarly PWSD shall deposit into the Project fund its share of the increased Estimated Costs.

### **3. INFRASTRUCTURE OWNERSHIP, CAPACITY ALLOCATION, AND INSURANCE.**

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

B. Capacity Reservation and Allocation. PWSD hereby grants to Castle Rock a perpetual, non-exclusive license for capacity in the Infrastructure (“License”), upon its completion, as further set forth herein.

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

D. License Capacity. The total capacity of the Infrastructure is set forth in **Exhibit A**. The License to Castle Rock is limited to the capacities set forth in **Exhibit A**, which may be sold or assigned by Castle Rock 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. If the

total capacity of the Infrastructure is in excess of the amounts set forth in **Exhibit A** (due to operation of the Infrastructure at a higher flow rate than currently anticipated or for any other reason), as determined by PWSD in its sole discretion, the excess capacity shall be allocated to the Parties based on their pro rata share of the total capacity set forth in **Exhibit A**.

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

F. Conveyance and Delivery of Non-WISE Project Water. Castle Rock 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 PWSD in the event of a default by Castle Rock and Castle Rock's failure to cure such default in accordance with the provisions of Section 6, below.

H. Limitations. The allocation of costs set forth herein between Castle Rock and PWSD 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 Castle Rock Water through the Infrastructure. Such costs and other related terms and conditions, including without limitation, metering, delivery scheduling, volume restrictions, and other related matters are the subject of a separate agreement by and between Castle Rock and PWSD, which the Parties contemplate executing at a later date.

I. Warranty. PWSD shall be the sole owner of the Infrastructure, subject to the rights of Castle Rock as further set forth herein. PWSD represents and warrants to Castle Rock that PWSD 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. PWSD does covenant and agree that it shall warrant and forever defend Castle Rock 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 PWSD or any portion thereof, PWSD shall, to the extent permitted by law, take all necessary actions to acquire the requisite interest needed to satisfy its obligations hereunder; provided that Castle Rock may be required by PWSD to pay its proportional share of the costs related to actions taken by PWSD if the need for such actions was not due to the negligence of PWSD. The representations and warranties of this Section are for the sole benefit of Castle Rock and shall not be deemed to be given to any third party.

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

#### **4. DEFAULT / REMEDIES.**

A. In the event a Party deems the other Party to be in default, it shall provide written notice indicating the event of default. The defaulting party shall have thirty (30) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within thirty (30) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed thirty (30) days for monetary defaults, or sixty (60) days for non-monetary defaults, except by written consent of the non-defaulting party. In the event the defaulting party has failed to cure in accordance with this Section, the non-defaulting party may pursue all available remedies at law or equity. In addition, PWSD shall have the right to terminate the License provided for in this Agreement upon a default by Castle Rock and Castle Rock's failure to cure the default as set forth herein. PWSD may terminate the License by providing Castle Rock with written notice of License termination, whereupon the License shall terminate 30 days after the date of the termination notice, unless Castle Rock timely cures the default. In no event shall PWSD have the right to terminate the License for a violation of the water quality standards set forth in Exhibit D.

#### **5. MISCELLANEOUS.**

A. 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.

B. 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.

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

D. 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.

E. 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.

F. Assignability. This Agreement and the License granted herein may be assigned, pledged or transferred, in whole or in part, by a Party pursuant to the terms and requirements of the

Organizational Agreement procedure relating to the assignment, pledge or transfer of the Member's Pro Rata Share.

G. 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.

H. 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.

I. 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 PWSD: Parker Water and Sanitation District  
Attn: Ron R. Redd  
18100 E. Woodman Drive  
Parker, CO 80134

With a copy to: Jefferson Parker, Esq.  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 Sixteenth Street, Suite 610  
Denver, CO 80202

To Castle Rock: Town of Castle Rock  
Utilities Department  
Attn: Mark Marlowe  
175 Kellogg Court  
Castle Rock, CO 80109

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

J. 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.

K. 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.

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

M. 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.

N. 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.

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

P. 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).

Q. 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.

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

PARKER WATER AND SANITATION  
DISTRICT

By: \_\_\_\_\_  
Ron R. Redd, Manager

Attest:

\_\_\_\_\_

TOWN OF CASTLE ROCK

By: \_\_\_\_\_  
Jennifer Green, Mayor

Attest:

\_\_\_\_\_  
Lisa Anderson, Acting Town Clerk

Approved as to form:

\_\_\_\_\_  
Robert J. Slentz, Town Attorney



## **EXHIBIT A**

### **[DESCRIPTION OF INFRASTRUCTURE]**

#### **1. 36-Inch Canyon's Waterline from PWSD Distribution System to Castle Rock Connection at Outer Marker Road.**

A water delivery pipeline, of which the portion serving the Canyons Development and Castle Rock consists of approximately 18,055 linear feet of 36-inch welded steel or ductile iron pipe, 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, and all easements, licenses, and related property rights necessary to construct, operate and maintain the pipeline, including the investigation and remediation, if necessary, of significant historical artifacts in the alignment of the pipeline.

#### **2. WISE Transmission (Canyons) Pump Station**

A water delivery pump station, of which the portion serving Castle Rock consists of approximately 7.0 million gallons per day (MGD) of capacity, 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 pump station, and all easements, licenses, and related property rights necessary to construct, operate and maintain the pipeline, including the investigation and remediation, if necessary, of significant historical artifacts in the alignment of the pump station.

The proposed cost sharing between PWSD and Castle Rock shall be based upon the final buildout capacity of the Canyon's Pump Station which is designed at 17 MGD. Castle Rock ultimately requires 12 MGD of capacity and PWSD requires 5 MGD of capacity resulting in capacity percentages of 70% for Castle Rock and 30% for PWSD. Therefore the construction costs shall be shared proportionately based upon this capacity split. Castle Rock shall pay 70% of costs for this initial 7 MGD pump station, including an administrative fee to PWSD of one percent (1%) of the proportionate share costs of the expansion for PWSD managing and administering the expansion.

Upon written notice by Castle Rock to PWSD that Castle Rock desires PWSD to expand the capacity of the pump station, PWSD shall commence all work necessary for the expansion. PWSD shall use commercially reasonable efforts to complete the construction of the expansion within one year of receipt of written notice from Castle Rock. PWSD shall competitively bid all work required for the expansion, unless otherwise agreed in writing by the Parties. Castle Rock shall pay 70% of costs for expansion, including an administrative fee to PWSD of one percent (1%) of the proportionate share costs of the expansion for PWSD managing and administering the expansion.

## **EXHIBIT B**

### **[CONSTRUCTION SCHEDULE FOR INFRASTRUCTURE]**

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

**Request for Proposals/Bids:** 04/24/2017

**Bid Award:** 5/12/2017

**Notice to Proceed:** 05/12/2017

**Commencement of Construction:** 5/12/2017

**Substantial Completion Canyon's Pipeline:** 12/20/2017

**Substantial Completion Canyon's Pump Station:** 06/01/2018

## EXHIBIT C

### [ESTIMATED COSTS AND CASTLE ROCK'S PROPORTIONAL SHARE FOR EACH INFRASTRUCTURE ELEMENT]

#### 1. 36-Inch Canyon's Waterline

As set forth below, the estimated total cost of the Water Pipeline as described in **Exhibit A** (for both the "PWSD Portion" and the "Castle Rock Portion") is \$9.768 million, of which 71% of its capacity shall serve Castle Rock and 29% of its capacity shall serve the PWSD.

Castle Rock's estimated proportionate share of the total cost of the Water Pipeline, therefore, shall be 71% of \$9.768 million, which is \$6.935 million. Castle Rock shall also pay an administrative fee of 1% or \$69,000. Additionally, Castle Rock shall pay for rock excavation if necessary. Currently the rock excavation estimate for Castle Rock is \$501,000. This will only be necessary if rock is encountered during construction.

Item	Cost
Full Project Estimate	\$9.768 M
Castle Rock Capacity	\$6.935M
PWSD Capacity	\$2.833M

Capacity Share	Capacity Required	% of Capacity Required
Total Capacity	18.3 MGD	100%
PWSD	5.3 MGD	29%
Town of Castle Rock	13.0 MGD	71%

Castle Rock shall pay a total of \$7.004M for the Canyon's pipeline. In addition, Castle Rock shall maintain a contingency of \$501,000 for rock excavation.

#### 2. WISE Transmission (Canyons) Pump Station

As set forth below, the estimated total cost of the WISE Transmission (Canyons) Pump Station as described in **Exhibit A** is \$6.509 million. Castle Rock shall be responsible for 70 percent (70%) of the pump station project costs based upon the full buildout capacity of the pump station.

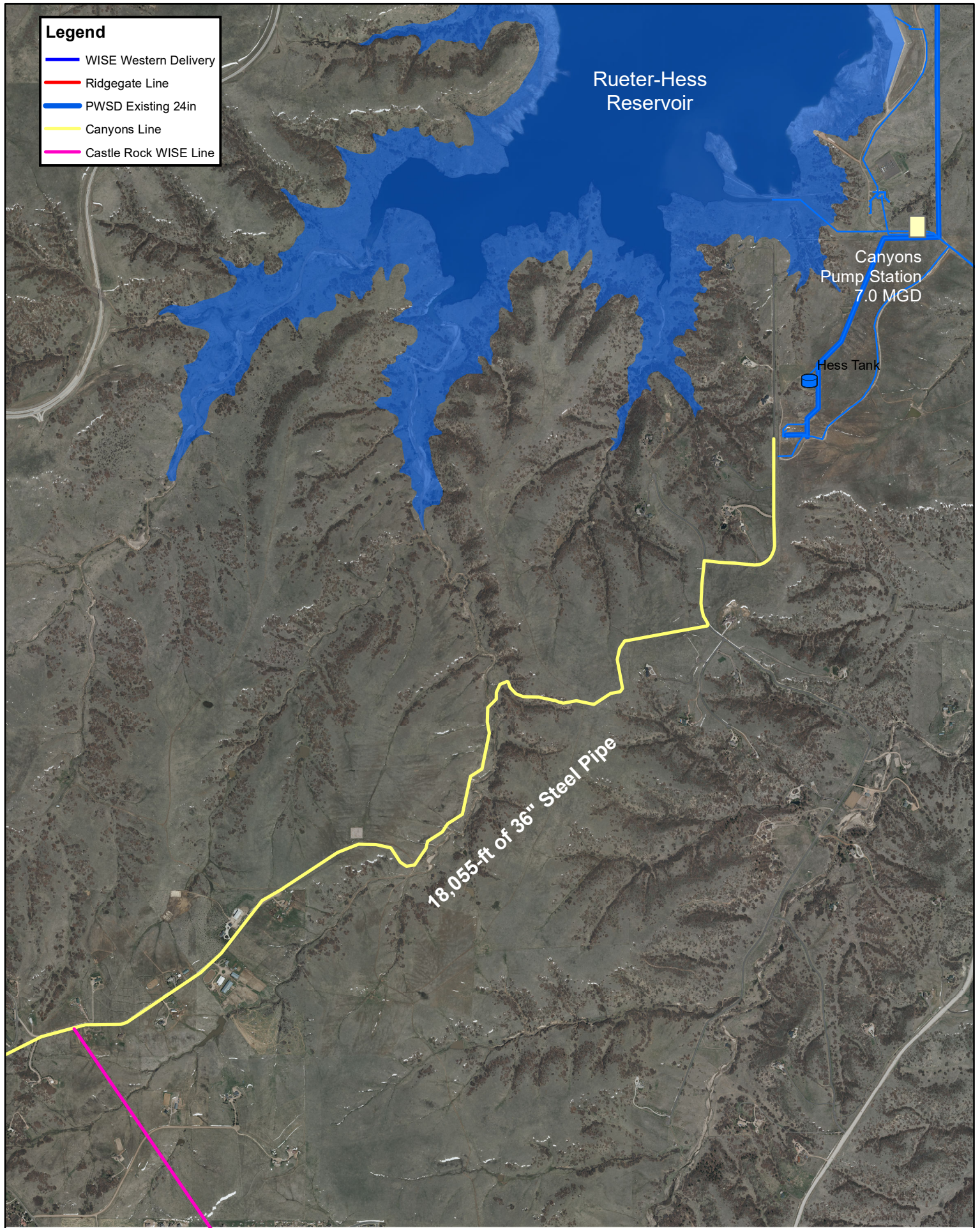
The estimated cost of the WISE Transmission (Canyons) Pump Station is \$6.509 million, of which Castle Rock shall be responsible for \$4.556 million, or seventy percent (70%) of the total costs. Castle Rock shall also pay an administrative fee of 1% or \$45,000 and \$25,000 for cultural monitoring on the pump station site. Castle Rock shall pay a total cost of \$4.626M for the Canyon's Pump Station.

## **EXHIBIT D**

1. Compliance with Drinking Water Standards and TDS Limit. All water introduced by a Castle Rock 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 PWSD agrees otherwise, Castle Rock shall not introduce water that exceeds the secondary standard of 500 mg/l. All water introduced by Castle Rock shall be disinfected with Chloramines, unless PWSD agrees otherwise.

2. Rejection of Water. Castle Rock 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 PWSD. PWSD 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 PWSD to require that deliveries by Castle Rock cease until Castle Rock cures the cause of such violation and provides reasonable evidence of the cure supported by testing documentation.





**Exhibit A-1**  
**Canyons Line and Pump Station**

