

**AMENDED AND RESTATED
MASTER
INTERGOVERNMENTAL AGREEMENT**

**TOWN OF CASTLE ROCK
AND
CRYSTAL VALLEY
METROPOLITAN DISTRICT
NOS. 1 AND 2**

 , 2022

**TOWN OF CASTLE ROCK/CRYSTAL VALLEY
METROPOLITAN DISTRICT NOS. 1 & 2
MASTER INTERGOVERNMENTAL AGREEMENT**

DATE: _____, 2022

PARTIES: **TOWN OF CASTLE ROCK** (“Town”), a home rule municipal corporation, 100 Wilcox Street, Castle Rock, Colorado 80104.

CRYSTAL VALLEY METROPOLITAN DISTRICT NOS. 1 AND 2, (“Districts”) quasi-municipal corporations and political subdivisions of the State of Colorado c/o White Bear Ankele Tanaka & Waldron, 2154 East Commons Ave., Suite 2000, Centennial, Colorado 80122.

RECITALS:

A. The Districts were organized by order and decree of the Douglas County District Court for the purpose of developing infrastructure to support the extension of urban services to the property now known as the Crystal Valley Ranch PD (“CVR”). Town and Districts entered into Intergovernmental Agreements dated March 3, 1987 (collectively, “Prior IGA”) for the purpose of defining the respective obligations of Town and Districts for infrastructure development and the provision of services to CVR. CVR is located within the collective boundaries of the Districts, which lie entirely within the corporate limits of the Town.

B. As part of the organization of the Districts, the Districts submitted and the Town approved separate Service Plans for each District (“Original Service Plans”). Contrary to the projections in the Original Service Plans, no development within the Districts has taken place and therefore the Districts have not constructed development infrastructure. The CVR development plan approved by the Town on March 22, 2001 is a significant modification to the previous zoning, resulting in a reduction in densities and other changes to the development plan.

C. As required by the Special District Act and Chapter 11.02 of the Castle Rock Municipal Code, the Districts have submitted an Amended Consolidated Service Plan which was approved by Resolution No. 2001-152 of the Castle Rock Town Council on December 13, 2001 (“Amended Service Plan”). On May 6, 2014, the Town Council approved the First Amendment to Amended Consolidated Service Plan (“First Amendment”), and on June 10, 2020, the Town Council approved the Second Amendment to the Amended Consolidated Service Plan (“Second Amendment”) (the Amended Service Plan, the First Amendment, and the Second Amendment are hereafter collectively referred to as the “Service Plan”). The Service Plan reflects current capital development and financial projections for the Districts on a consolidated basis. The Council's approval of the Service Plan was conditioned on the Districts entering into this Master Intergovernmental Agreement, which sets forth, among other things, the parameters of the Districts' authority to finance and construct public improvements.

D. The constitution and laws of the State of Colorado permit and encourage cooperative efforts by local governmental entities to make the most efficient and effective use of

their powers, responsibilities and resources. Due to the fact that the Districts' boundaries are entirely located within the Town limits, and the Town provides municipal services within the Districts' boundaries, the limitations and restrictions on the exercise by the Districts of the powers and duties granted it under the Special District Act are appropriate and necessary to protect the health, safety and welfare of the residents and citizens of the Town, including the current and future residents of the CVR.

COVENANTS

THEREFORE, in consideration of these mutual promises, the parties agree and covenant as follows:

ARTICLE I DEFINITIONS

1.01 Defined Terms. Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

Agreement: this Master Intergovernmental Agreement and any amendments and supplements to this Agreement.

Authority: the Plum Creek Wastewater Authority.

Availability of Service or Facilities Charges: those charges permitted to be assessed by the Districts pursuant to §32-1-1006(1)(h), C.R.S., as amended from time to time.

Bonds: bonds, refunding bonds, notes, certificates, debentures, contracts or other evidence of indebtedness or borrowing issued or incurred by the Districts pursuant to law.

Charter: the Home Rule Charter of the Town, as amended.

Code: the Castle Rock Municipal Code, as amended.

C.R.S.: the Colorado Revised Statutes, as amended.

CVR: the real property zoned as the Crystal Valley Ranch Planned Development (“CVPD”).

Development Agreements: the Crystal Valley Ranch Development Agreement dated March 22, 2001 between the Town and landowner, recorded on December 12, 2001 at Reception No. 01120401 of the public records of Douglas County, Colorado (“Crystal Valley Ranch Development Agreement”), and the Ridge Estates Annexation and Development Agreement, dated June 16, 2020 between the Town and landowner, recorded June 29, 2020 at Reception No. 2020056847 of the public records of Douglas County, Colorado (“Ridge Estates Development Agreement” and collectively with the Crystal Valley Ranch Development Agreement, the “Development Agreements”).

Development Exactions: the fees and charges imposed by Town under the Town Regulations on development, including per unit charges for capital plant investment, such as System Development Fees.

Districts: the Crystal Valley Metropolitan District Nos. 1 & 2, the legal boundaries of which are described in the attached Exhibit 1.

Facilities: the infrastructure prescribed by Town Regulations necessary to furnish Municipal Services to CVR, as further identified in the Service Plan.

Facilities Development Fees: those fees to be imposed and collected by the Districts for connection to Facilities constructed by the Districts, and for the right to use other Facilities of the Districts.

Financial Plan: the financing plan designated as Exhibit G to the Service Plan.

CVR: the real property zoned as the Crystal Valley Ranch Planned Development (PD).

Municipal Services: police and fire protection, water and wastewater, stormwater drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

Phasing Plan: the Phasing Plan under Exhibit 3 to the Crystal Valley Ranch Development Agreement and the matrix and notes on the Ridge Estates Planned Development Plan and Zoning Regulations.

Plans: the plans, documents, drawings and specifications prepared by or for the Districts for construction, installation or acquisition of any of the Facilities.

Prior IGA: Intergovernmental Agreements between Town and Districts dated March 3, 1987.

Regional Plant: the Lower East Plum Creek Regional Wastewater Treatment Facility owned and operated by the Authority.

REPD: the real property zoned as the Ridge Estates Planned Development.

SDO: the Special District Oversight ordinance codified in Chapter 11.02 of the Code.

Service Charges: the periodic charges imposed by the Town pursuant to Town Regulations, and billed to ultimate consumers of service provided by the Town to cover the costs of providing such services.

Service Plan: the Amended Consolidated Service Plan for Districts 1 and 2, respectively

dated November 21, 2001, approved by Town Council Resolution No. 2001-152 on December 13, 2001, and as amended by the First Amendment, dated May 6, 2014, and the Second Amendment, dated June 10, 2020 .

Special District Act: Article 1, Title 32, C.R.S.

System Development Fees: the charges imposed by Town under Town Regulations as a condition to the right to connect to the municipal water or wastewater system, for the purpose of recovering Town's pro rata capital cost of water or wastewater facilities dedicated to allow such connection, including the component charges currently imposed under 13.12.080 of the Code. A charge or fee imposed under the Town Regulations exclusively for the purpose of the acquisition or development of renewable water resources or a cash payment in lieu of water rights dedication is not considered a System Development Fee under this Agreement.

Town: the Town of Castle Rock, a home rule municipal corporation.

Town Regulations: the Charter, ordinances, resolutions, rules and regulations of the Town, including the Code and the provisions of all zoning, subdivision, public works and building codes, as the same may be amended from time to time, applied on a Town-wide basis. Reference to Town Regulations shall mean the Town Regulations in effect at the time of application.

Water and Wastewater Facilities: the facilities required to: (i) withdraw, treat and distribute potable water; (ii) store and reuse irrigation water; and (iii) collect and treat wastewater.

Certain other terms are defined in the text of the Agreement and shall have the meaning indicated.

1.02 Cross-Reference. Any reference to a section or article number, with or without further description, shall mean such section or article in this Agreement.

ARTICLE II FACILITIES DEVELOPMENT AND MAINTENANCE

2.01 Construction of Facilities. Districts have the authority to construct the Facilities for which the development obligation is assigned the developer under the Phasing Plan. The Districts have the authority to finance any of the Facilities, consistent with the Development Agreements and Service Plan. The Districts shall not have the authority to provide other infrastructure without the prior written consent of the Town. The Facilities shall be constructed pursuant to the standards and procedures set forth in the Service Plan, Development Agreements, and the Town Regulations.

2.02 Ownership and Maintenance. Except as provided in the Service Plan or as otherwise allowed by the Town, the Districts shall convey the Facilities to the Town upon completion in accordance with the Development Agreements.

2.03 Wastewater Treatment. Wastewater treatment facilities for the CVR and REPD will be provided by the Authority at the Regional Plant. The Town, as a member of the Authority, will use its best efforts to insure that the Authority will maintain sufficient capacities at the Regional Plant or other suitable locations for service to developers and homebuilders within the Districts who have paid or will pay the wastewater System Development Fee.

2.04 Maintenance. Upon acceptance of the Facilities, Town shall operate maintain, repair and/or replace the Facilities, in order to provide Municipal Services to the CVR and REPD. However, this Agreement shall not restrict or impair the Town from conveying Facilities to a regional authority or other governmental or quasi-governmental agency or authority, provided an equivalent level of maintenance and operation of such Facilities at an equivalent cost is guaranteed by Town, and the Town obtains an opinion of a bond attorney with a nationally-recognized expertise in the area of municipal bonds indicating that the conveyance will not adversely affect the tax-exempt status of any outstanding Bonds of the Districts.

2.05 Surety. In recognition of the quasi-municipal nature of the Districts and their financial and taxing powers, Districts may satisfy the requirements under the Town Regulations for posting of financial guarantees to assure the construction and warranty obligations for Facilities by establishing a cash escrow (the "Escrow") in accordance with the following:

- (a) the Escrow shall be established with a title insurance company or financial institution;
- (b) the construction Escrow deposit shall be in the amount prescribed by the Town Regulations;
- (c) District may make progress payments to its contractors from the Escrow construction deposit, provided Town approves the draw request, which approval shall not be' unreasonably withheld;
- (d) the construction Escrow deposit may not be drawn down below the amount required for the warranty surety under the Town Regulations;
- (e) the Escrow agreement shall authorize the Town to access the Escrow deposit in the event of a default by Districts for the purpose of undertaking completion or remediation work on the Facilities as more specifically provided under the applicable SIA; and
- (f) the Escrow deposit remaining after expiration of the warranty period and application to remedy unmet warranty obligations, if any, shall be returned to Districts.

In the event that alternative surety arrangements are authorized in the Town Regulations, such provisions shall be available to Districts, notwithstanding the above requirements.

ARTICLE III DEVELOPMENT FEES

3.01 Town Fees. Town will impose and collect Development Exactions within the Districts in accordance with the Town Regulations, subject to the further provisions of the

Development Agreements, including the right of the Districts to recover the Fee Credit, on such terms and conditions as are specified in the Development Agreements.

3.02 Charges by Districts. Districts shall have the right to impose Availability of Service or Facility Charges and Facilities Development Fees (collectively, the "District Fees"), provided that the imposition of such fees shall not in any manner impair or limit the imposition or collection by Town of any Development Exactions, including System Development Fees, within the CVR and REPD. Districts shall collect District Fees directly from the builder or developer. Districts shall have no right or ability to impose any other Development Exactions, other than District Fees, unless otherwise provided in a subsequent agreement between Town and Districts. Districts shall have no right to impose any Service Charges within the CVR and REPD. Nothing in this section shall preclude or impair the Districts' ability to collect ad valorem property taxes, or to collect and impose any other rate, fee, tax, penalty or charge or other source of revenue, which is identified for utilization and application in the Financial Plan.

ARTICLE IV BOND ISSUANCE

4.01 Bonds. Districts shall not issue Bonds, except upon compliance with the following conditions:

- (a) the Bonds are issued in accordance with the applicable provisions and restrictions of the Service Plan, the Special District Act, and other applicable provisions of the laws of the State of Colorado; and
- (b) the Districts are not then required to obtain a Service Plan amendment under either the Special District Act or the SDO (i.e., as of the date of issuance there has not been a material modification to the Service Plan, as amended).

ARTICLE V SERVICE PLAN COMPLIANCE

5.01 Generally. The Service Plan contains certain responsibilities, restrictions and limitations on the Districts which may not be separately set forth in this Agreement. Performance of the Service Plan by the Districts is an implied covenant of this Agreement, for which the default and remedies of section 8.05 shall be applicable in the same manner as if expressly set forth in this Agreement.

5.02 Service Plan Amendment. The authorization to the Districts under the terms of the Service Plan and this Agreement is given by Town on reliance upon certain development and financial assumptions and projections in the Service Plan. Although these projections and assumptions are based upon the best information available at this time, such assumptions and projections may prove to be materially inaccurate. Accordingly, a Service Plan amendment shall be submitted by Districts to Town for Town review and approval when required under the SDO and Special District Act.

5.03 Town Review. Annually, not later than the date Districts are required to submit the annual report under the SDO, the Districts shall furnish to Town an accounting of all actual revenues and expenses, and accumulated reserves for the preceding calendar year, in substantially the same format as the Financial Plan, such that Town can compare the experience of the Districts with the projections in the Financial Plan. Town shall have access to Districts' financial statements, accounting records and other supporting documentation, upon written demand, and at such reasonable times, for the purpose of auditing the financial reports submitted by Districts.

5.04 Statutory Review. The review of the Service Plan and the approval of this Agreement shall constitute the first quinquennial review of the Districts' reasonable diligence. The second statutory review of Districts' applications for the quinquennial finding of reasonable diligence under the Special District Act shall take place in 2006, to be completed not later than July 1, 2006.

ARTICLE VI SERVICE PLAN COMPLIANCE

6.01 Restrictions on Expansion of Districts' Powers. The parties acknowledge that the Districts were permitted by the Town to be organized solely for the purpose of providing, acquiring, constructing, installing and completing the Facilities and providing or causing to be provided the services authorized pursuant to this Agreement and described in the Service Plan, and for no other purpose. The Districts shall not engage in any activity, purpose, service or function except as stated in this Agreement and in the Service Plan or as reasonably required for the Districts to accomplish such purposes, responsibilities and obligations. Town shall not interfere with the exercise by Districts of any of their lawful powers except as the exercise thereof is specifically limited by this Agreement and the Service Plan.

6.02 Extraterritorial Authority. Districts will not engage in any service or activity outside its boundaries (as the same may be modified, from time to time, in accordance with the Service Plan), except as such Facility, service or activity is described in the Service Plan or is necessary to the provision of Facilities or services within its boundaries, or where the Districts have obtained the Town's prior approval.

6.03 Change of District Boundaries. The Districts shall neither cause any additional territory outside the boundaries of the CVR and REPD to be included within one or more of the Districts' boundaries, nor permit any territory now included in the CVR and REPD to be excluded from the Districts, without first obtaining Town approval, or unless authorized in the Service.

ARTICLE VII TOWN RESERVED POWERS

7.01 Generally. As a general purpose municipal corporation, the Town adopts and administers policies, rules and regulations, principally through the Town Regulations ("Town Policies"). The approval of the Service Plan or this Agreement shall in no manner restrict the Town Council from applying Town Policies within the CVR and REPD (even though Town Policy may

have an effect of limiting development or making development more costly to the landowner and/or Districts), provided the Town Policy is:

- (a) a lawful exercise of the Town's legislative, quasi-legislative, administrative and/or police powers; and
- (b) not in contravention of express covenants of the Development Agreements, the Service Plan or this Agreement.

7.02 No Claims. The Districts shall have no legal or equitable claim against Town as a result of the Town taking or imposing any of the following actions if otherwise a lawful exercise of the Town's powers:

- (a) imposing new Development Exactions or increasing (or decreasing) the levels of existing Development Exactions;
- (b) exercise of its right of eminent domain to acquire private properties in the Districts for public purposes upon the payment of just compensation therefore; and
- (c) acquisition of properties zoned for development in the Districts for park, recreation, open space or other public purpose, pursuant to agreement with the grantor.

ARTICLE VIII GENERAL PROVISIONS

8.01 Dissolution of Districts. At such time as all Facilities contemplated under this Agreement and the Service Plan have been acquired, constructed, installed and completed, and upon payment of all Bonds of the Districts, or provision having been made for such payment, the Districts shall, subject to applicable statutory provisions, be dissolved. At the time of such dissolution, all Facilities not previously conveyed to Town shall be so conveyed. Nothing contained in this section shall be deemed to specify an exclusive method for accomplishing dissolution.

8.02 Additional Warranties. The parties warrant that each has the full right, power and authority to enter into, perform, and observe this Agreement. Districts disavow as obligor or obligee, any provision or term of any contract or indenture between the Districts and any other special district, which is in contravention of the provision of this Agreement, and Districts stipulate that any such intergovernmental agreement shall be subordinate and subject to the provisions of this Agreement.

8.03 Instruments of Further Assurance. The Town and the Districts covenant that they will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such acts, instruments and transfers as may reasonably be required for the performance of their obligations hereunder.

8.04 Merger. This Agreement supersedes the Prior IGA in their entirety.

8.05 Default and Remedies. In the event either party alleges that the other is in default of this Agreement, the non-defaulting party shall first notify the defaulting party in writing of such default and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder; provided that:

- (a) such default is capable of being cured;
- (b) the defaulting party has commenced such cure within said 20-day period; and
- (c) the defaulting party diligently prosecutes such cure to completion.

If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued. In addition to specific remedies provided elsewhere in the Agreement, upon default, the non-defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce the performance and observation of any obligation, agreement or covenant of the defaulting party under this Agreement, or to collect the monies then due and thereafter to become due. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

8.06 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Town: Town of Castle Rock
 Attn: Town Attorney
 100 Wilcox Street
 Castle Rock, CO 80104

If to Districts: Crystal Valley Metropolitan District Nos. 1 & 2
 c/o White Bear Ankele Tanaka & Waldron
 2154 East Commons Avenue, Suite 2000
 Centennial, CO 80122

8.07 No Liability of Town. Town shall have no obligation whatsoever to repay any debt or liability of the Districts, including the Bonds.

8.08 Notice of Meetings. The Districts shall submit a copy of a written notice of every regular or special meeting of the Districts to the Town Clerk at least three days prior to such meeting.

8.09 Assignment. No transfer or assignment of this Agreement or of any rights hereunder shall be made by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.10 Amendments. This Agreement may be amended only in writing upon consent of the parties. Amendments shall be approved by resolution of the Town Council of the Town and the resolution of the Board of Directors of the Districts.

8.11 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8.12 No Waiver. The waiver or delay of enforcement of one or more terms of this Agreement shall not constitute a waiver of the remaining terms. The waiver or delay in enforcement regarding any breach of this Agreement shall not constitute a waiver of any terms of the Agreement.

8.13 Entire Agreement. This Agreement contains the entire agreement of the parties concerning the subject matter and supersedes all prior conversations, proposals, negotiations, understandings, and agreements, whether written or oral.

8.14 No Third Party Beneficiary. This Agreement is made solely for the benefit of the parties and no other parties or persons are intended beneficiaries.

[Signature Pages Follow.]

Officer of the Districts

General Counsel for the Districts

STATE OF COLORADO)
)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, as the _____ of the Districts.

Witness my hand and official seal.

My commission expires: _____

Notary Public