

**SECOND AMENDMENT TO PARTICIPATION AGREEMENT
FOR DESIGN OF STREAM RECLAMATION IMPROVEMENTS
FOR
McMURDO GULCH**

THIS SECOND AMENDMENT TO PARTICIPATION AGREEMENT FOR DESIGN OF STREAM RECLAMATION IMPROVEMENTS FOR MCMURDO GULCH (“Second Amendment”) is entered into this ____ day of _____, 2022 by and between the **CHERRY CREEK BASIN WATER QUALITY AUTHORITY** (“Authority”) and the **TOWN OF CASTLE ROCK**, a Colorado municipal corporation (“Town”). The Authority and the Town are hereinafter sometimes collectively referred to as the “Parties” and singularly as a “Party.”

RECITALS

WHEREAS, pursuant to a Participation Agreement for Design of Stream Reclamation Improvements for McMurdo Gulch dated October 20, 2020, the Authority participated with the Town in the design of that portion of the Town’s 2020/21/22 McMurdo Gulch Stream Reclamation Project (“Project”) identified in a 2016 Muller Engineering Report as Project Priority 2; and

WHEREAS, pursuant to the October 20, 2020 Participation Agreement, and a First Amendment dated December 7, 2021 (collectively the “2020 Participation Agreement”), the Authority contributed \$75,000 towards the design of the Project and \$540,000 towards construction of the Project which funds were allocated to the Project Priority 2 portion of the Project; and

WHEREAS, the Town would like to commence design of that portion of the Project identified in the Muller Report as Project Priority 3; and

WHEREAS, Project Priority 3 consists of the design of approximately 5,400 linear feet of stream stabilization improvements within that portion of McMurdo Gulch as more particularly identified on **Exhibit A**, as attached hereto, and incorporated herein by this reference; and

WHEREAS, the Town preliminarily estimates the cost of completing the design of the Project Priority 3 improvements to be \$549,783; however, because circumstances may require a more extensive design effort, a contingency of \$130,700 is being funded, for total funding pursuant to this Second Amendment of \$680,483 with the understanding that any unused funds may be applied towards future construction costs for Project Priority 3; and

WHEREAS, the Town will fund \$510,362 of the \$680,483 and has requested that the Authority fund the balance of \$170,129.

NOW THEREFORE, the Authority and Town agree as follows:

1. **Anticipated Cost to Complete Design.** The Town preliminarily estimates that it will cost \$549,783 to complete the design of the Project Priority 3 improvements. Each Party's share of the cost for completing the final design of said improvements is estimated as follows:

<u>PARTY</u>	<u>DOLLAR AMOUNT</u>	<u>% OF TOTAL DESIGN COSTS</u>
Town	\$412,337	75%
Authority	\$137,446	25%
TOTAL	\$549,783	100%

2. **Funding for Contingency.** To ensure that adequate funds are available to complete the final design of the Project Priority 3 improvements and to cover any additional design costs that may occur because of unanticipated circumstances, the Parties agree to fund a Project Priority 3 contingency of \$130,700. Each Party's share of the contingency is follows:

<u>PARTY</u>	<u>DOLLAR AMOUNT</u>	<u>% OF TOTAL DESIGN COSTS</u>
Town	\$98,025	75%
Authority	\$32,675	25%
TOTAL	\$130,700	100%

3. **Unused Funds.** If the funds contributed by either Party pursuant to this Second Amendment remain unused after the final design is completed, each Party's funds not used to complete the final design of the Project Priority 3 improvements may be utilized and applied towards the construction of the Project with the understanding that the Authority's funding for the Total Project Cost under no circumstances shall exceed 25% of said Cost.

4. **Miscellaneous.**

4.1 **Governing Law.** The Parties agree this Second Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

4.2 **Successors and Assigns.** This Second Amendment shall be binding upon and inure to the benefit of the Parties and their successors, assigns, and legal representatives.

4.3 ThirdPartyBeneficiary. It is specifically agreed between the Parties executing this Second Amendment that it is not intended by any of the provisions of any part of this Second Amendment to create a third-party beneficiary hereunder, or to authorize anyone not a party to this Second Amendment to maintain any claim under this Second Amendment. The duties, obligations, and responsibilities of the Parties to this Second Amendment with respect to third parties shall remain as imposed by law.

4.4 Electronic Signatures and Electronic Records. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, Section 24-71.3-101, et seq., C.R.S. This Second Amendment and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Second Amendment, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Second Amendment in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

4.5 EntireAgreement/Amendments. The 2020 Participation Agreement, as amended by this Second Amendment, contains the entire understanding of the Parties with respect to this subject matter hereof. The 2020 Participation Agreement, as amended by this Second Amendment may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

4.6 NoticeandCommunications. Any notice pursuant to the terms and provisions of the 2020 Participation Agreement, as amended by this Second Amendment shall be in writing and delivered personally, or sent by certified mail, return receipt requested, or sent by a recognized overnight mail or courier services, with delivery receipt requested, to the following addresses (or to such other address as may from time to time be specified in writing by the Parties):

If to the Authority: Manager
Cherry Creek Basin Water Quality Authority
PO Box 3166
Centennial, Colorado 80161

With a Copy to: Richard G. Borchardt, PE, CFM
R2R Engineers
5975 South Quebec Street, Suite 225
Centennial, Colorado 80111

And with a copy to: Timothy J. Flynn, Esq.
Collins Cole Flynn Winn & Ulmer, PLLC
165 South Union Boulevard, Suite 785
Lakewood, CO 80228

If to Town: David Van Dellen
Town of Castle Rock
175 Kellogg Court
Castle Rock, CO 80109

¶ With a copy to: Michael Hyman, Esq.
Town Attorney
Town of Castle Rock
100 Wilcox Street
Castle Rock, CO 80104

4.7 Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute the agreement of the Parties.

IN WITNESS WHEREOF the Parties have executed this Second Amendment as of the day and year first above written.

**CHERRY CREEK BASIN WATER
QUALITY AUTHORITY**, a quasi-municipal
corporation and political subdivision of the
State of Colorado

By: _____
Joshua Rivera, Chair

Attest:

John McCarty, Secretary/Treasurer

TOWN OF CASTLE ROCK, a Colorado
municipal corporation

By: _____
Jason Gray, Mayor

Attest:

Lisa Anderson, Town Clerk

Approved as to Form:

Mike Hyman, Town Attorney