

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) dated as of \_\_\_\_\_, 2022 (the “Agreement Date”) is between ROXBOROUGH WATER AND SANITATION DISTRICT, a Colorado special district and political subdivision (the “Seller”), and the TOWN OF CASTLE ROCK, a Colorado home rule municipality, acting by and through the CASTLE ROCK WATER ENTERPRISE (the “Buyer”).

### RECITALS

WHEREAS, Seller owns, or will own prior to closing of the specified purchase and sale, certain real property interests, infrastructure, water rights and contractual rights that are more fully described and defined in this Agreement as the “Property.”

WHEREAS, Buyer desires to acquire additional water and water rights and additional infrastructure and real property interests to construct additional infrastructure for its municipal water and utility systems and to this end, Buyer seeks to acquire the Property.

WHEREAS, Seller is willing to sell the Property to Buyer and Buyer is willing to purchase the Property on and subject to the terms and conditions in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

### AGREEMENT

1. Property Defined. As used in this Agreement, the term “Property” means the following described property in Douglas County, Colorado:

(a) Roxborough Tracts. The real property described in Exhibit A, in fee simple, together with Seller’s interest in all reversions, remainders, easements, rights-of-way, appurtenances, hereditaments appertaining to or otherwise benefiting or used in connection with the fee simple real property (the “Roxborough Tracts”).

(b) Roxborough Easements. The permanent easements described in Exhibit B (together, the “Roxborough Easements”), together with Seller’s interest in all reversions, remainders, easements, rights-of-way, appurtenances, hereditaments appertaining to or otherwise benefiting or used in connection with the Roxborough Easements.

(c) Roxborough Water Rights. The water rights described in Exhibit C (the “Roxborough Water Rights”), which water rights include an interest in the Meadow Ditch Water Rights and storage capacity in Castle Rock Reservoir No. 1, as well as certain of the rights in and to the Denver Basin ground water underlying the Bell Mountain Ranch Subdivision described in Exhibit D (the “Roxborough Ground Water Rights”).

(d) Roxborough Infrastructure. All buildings, structures, improvements, and appurtenances located on the Roxborough Tracts and Roxborough Easements and any interest therein, including the Plum Creek diversion, storage and delivery system, the Ravenna pipeline and pump station and the Bell Mountain Ranch well infrastructure (the “Roxborough Infrastructure”). The principal components of the Roxborough Infrastructure are further depicted on Exhibit E.

(e) Roxborough Miscellaneous Property. All of Seller's right, title and interest in and to personal property (tangible or intangible), contracts, leases, rights of way, licenses, utility rights and/or capacity, approvals, decrees, permits, well permits, (including any federal, state or local permits or approvals) and agreements and other rights owned or used by Seller in connection with or appurtenant to the Roxborough Tracts, Roxborough Easements, Roxborough Water Rights Roxborough Ground Water Rights and Roxborough Infrastructure (the “Roxborough Miscellaneous Property”), it being the intention of the parties that Buyer succeed to any rights and obligations of the Seller pertaining in any way to the Roxborough Tracts, Roxborough Easements, Roxborough Water Rights Roxborough Ground Water Rights and Roxborough Infrastructure. The principal components of the Roxborough Miscellaneous Property are further described in Exhibit E.

2. Agreement to Purchase. Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer the Property on and subject to the terms and conditions provided herein.

3. Purchase Price; Additional Consideration.

(a) Purchase Price. The purchase price (the “Purchase Price”) for the Property will be \$2,273,000.

(b) Service Agreement. As additional consideration for the purchase of the Property, Buyer agrees to deliver an amount not to exceed 220 acre-feet (AF) of raw water (the “Ravenna Water”) between the period of October 1 through and including September 30 in any future calendar years (the “Water Year”) to Seller for the sole purpose of irrigation at The Club at Ravenna Golf Course (the “Golf Course”). Buyer reserves the right to use any of its available raw water supply for this purpose, including, without limitation, the Plum Creek Diversion and/or water stored in Chatfield Reservoir. Buyer shall maintain ownership of any and all irrigation return flows that accrue from the use of the Ravenna Water on the Golf Course.

Seller shall be charged for the use of the Ravenna Water at a rate to be determined by Buyer using Buyer’s cost-of-service model (“Buyer’s Rate Model”). The initial rate shall be based on the Buyer’s 2022 operation, maintenance and capital replacement costs. Such rate shall be updated annually using Buyer’s Rate Model. Buyer shall notify Seller of any rate adjustment in accordance with Section 16(d) by no later than thirty (30) days prior to the start of any Water Year.

The Ravenna Water shall be delivered to the Golf Course at such times and in such amounts as requested by Seller; provided that the maximum rate of delivery shall not exceed one million (1,000,000) gallons per day consistent with the then current pumping capacity of the existing pump station. Billing for the Ravenna Water shall be made on a monthly basis, with payment in full due from Seller by no later than twenty (20) days following the date of such bill.

Any portion of the Ravenna Water that is not delivered in any single Water Year cannot be carried over to the next ensuing or any future Water Year. Actual water usage shall be metered at the Golf Course through a meter owned by Buyer. Seller shall ensure that the Golf Course will provide reasonable access to Buyer to read the meter as necessary and subject to Buyer's policies and processes applicable to reading such meter, a copy of which shall be provided to Seller and the Golf Course.

The delivery of Ravenna Water shall, at all times, be subject to the management of Buyer's total water supply through Buyer's Drought Management Plan, which Plan is available for review on Buyer's "crgov.com" website. Buyer expressly reserves the right to temporarily halt deliveries of Ravenna Water in the event that Buyer has declared an "Emergency" or "Critical/Crisis" drought response stage and has discontinued all outdoor irrigation within its boundaries and the boundaries of its extraterritorial service area.

4. Payment of Purchase Price; Earnest Money Deposit. The Purchase Price will be paid by Buyer to Seller in full, adjusted for the Closing Adjustments as set forth in this Agreement, in cash or by wire transfer or other immediately available funds at Closing. Within ten (10) business days after the Agreement Date, Buyer shall tender the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to \_\_\_\_\_ (the "Title Company") as escrow holder, for deposit into an interest-bearing account. This deposit, together with any interest earned thereon, is collectively referred to as the "Earnest Money." Title Company's receipt of the Earnest Money shall be acknowledged by its execution of this Agreement or a separate escrow Agreement with Seller and Buyer. At Closing, the Earnest Money will be paid to Seller as a part of the Purchase Price.

5. Title Insurance.

(a) Title Commitment. Within ten (10) business days after the Agreement Date, Seller shall furnish to Buyer, at Seller's expense, a commitment for title insurance issued by the Title Company, attached as **Exhibit G**, committing to insure Buyer's title in the Roxborough Tracts and Roxborough Easements (the "Title Commitment"). The Property insured under the Title Commitment shall be referred to as the "Insured Property."

(b) Changes to Title. Buyer shall have ten (10) business days after Buyer's receipt of the Title Commitment or any amendment thereto to notify Seller of any objections to items identified in the Title Commitment or such amendment (the "Title Objection Notice"). Any exceptions noted in Schedule B-2 of the Title Commitment or such amendment that are not objected to within the ten (10)-business day period will be deemed approved by Buyer (the "Permitted Exceptions").

(c) Seller's Rights. Seller shall have until ten (10) business days after receipt of Buyer's Title Objection Notice (the "Seller's Title Cure Period") to elect, at its sole option and discretion, to (i) cure any or all items to which Buyer has objected, (ii) cause such items to be modified in a manner which is satisfactory to Buyer, or (iii) not to cure any or all such items.

(d) Buyer's Rights. If, during Seller's Title Cure Period, Seller fails to cure to the satisfaction of Buyer any objection in the Title Objection Notice, or elects not to cure, then

Buyer may elect, as its exclusive remedy with respect to the objections in the Title Objection Notice, either to (i) waive the objections by written notice to Seller and proceed to Closing, or (b) terminate this Agreement by giving written notice to Seller within three (3) business days after Seller's Title Cure Period, in which case the Earnest Money will be returned to Buyer, and thereafter the parties will have no further rights and will be released from all obligations hereunder other than those rights and obligations that expressly survive termination of this Agreement. If Buyer fails to give timely notice of termination or if Buyer proceeds to Closing, Buyer will be deemed to have elected to waive all objections to, and accepted all of the Permitted Exceptions. The Closing Date established in Section 10 below shall be extended on a day-for-day basis to accommodate the notice and cure time periods outlined in this Section 5.

(e) Title Policy. Seller will cause the Title Company to deliver to Buyer, promptly after the Closing, an owner's title insurance policy issued by the Title Company insuring Buyer's title to the Insured Property consistent with the Title Commitment (the "Title Policy"), subject only to the Permitted Exceptions identified in the Title Commitment. Seller will pay 100% of the premium for the Title Policy at Closing. Buyer, at its discretion and at its sole expense, may obtain an additional endorsement to the Title Commitment and establish a greater amount of the insurance on the Insured Property, the additional cost of which shall be paid entirely by Buyer at Closing.

6. Water Rights Opinion.

(a) Issuance of Opinion. Within ten (10) business days after the Agreement Date, Seller shall furnish to Buyer, at Seller's expense, a water rights opinion from a water rights attorney acceptable to Buyer (the "Water Rights Opinion"). The Water Rights Opinion shall state that Seller has marketable title to the Roxborough Water Rights and Roxborough Ground Water Rights free of all liens and encumbrances and Seller shall provide electronic copies of all information reviewed by the attorney.

(b) Changes to Opinion. Buyer shall have ten (10) business days after Buyer's receipt of the Water Rights Opinion or any amendment thereto to notify Seller of any objections to any items impacting marketable title to the Roxborough Water Rights or Roxborough Ground Water Rights (the "Water Title Objection Notice"). Any items impacting marketable title to the Roxborough Water Rights or Roxborough Ground Water Rights that are not objected to within the ten (10)-business day period will be deemed approved by Buyer.

(c) Seller's Rights. Seller shall have until ten (10) business days after receipt of Buyer's Water Title Objection Notice (the "Seller's Water Title Cure Period") to elect, at its sole option and discretion, to (i) cure any or all items to which Buyer has objected, (ii) cause such items to be modified in a manner which is satisfactory to Buyer, or (iii) not to cure any or all such items.

(d) Buyer's Rights. If, during Seller's Water Title Cure Period, Seller fails to cure to the satisfaction of Buyer any objection in the Water Title Objection Notice, or elects not to cure, then Buyer may elect, as its exclusive remedy with respect to the objections in the Water Title Objection Notice, either to (i) waive the objections by written notice to Seller and proceed to Closing, or (ii) terminate this Agreement by giving written notice to Seller within three (3) business

days after Seller's Water Title Cure Period, in which case the Earnest Money will be returned to Buyer, and thereafter the parties will have no further rights and will be released from all obligations hereunder other than those rights and obligations that expressly survive termination of this Agreement. If Buyer fails to give timely notice of termination or if Buyer proceeds to Closing, Buyer will be deemed to have elected to waive all objections to, and accepted all of the items in the Water Rights Opinion. The Closing Date established in Section 10 below shall be extended on a day-for-day basis to accommodate the notice and cure time periods outlined in this Section 6.

7. Environmental Site Assessment.

(a) Phase 1 ESA. Within thirty (30) business days after the Agreement Date, Seller shall furnish to Buyer, at Seller's expense, a phase 1 environmental site assessment of the Roxborough Tracts (the "Phase 1 ESA").

(b) Further Action. Buyer shall have ten (10) business days after Buyer's receipt of the Phase 1 ESA to notify Seller of any recognized environmental conditions identified on the Roxborough Tracts that need to be further investigated and/or remediated ("Environmental Condition Notice"). Any recognized environmental conditions noted in the Phase 1 ESA that are not objected to within the ten (10)-business day period will be deemed accepted by Buyer.

(c) Seller's Rights. Seller shall have until ten (10) business days after receipt of Buyer's Environmental Condition Notice (the "Seller's Environmental Remediation Period") to elect, at its sole option and discretion, to (i) if Buyer requests that a further investigation be conducted, engage a contractor acceptable to Buyer to perform a phase 2 environmental site assessment (the "Phase 2 ESA"), (ii) if Buyer determines that the remediation of any or all recognized environmental conditions for which Buyer has given notice is necessary, escrow sufficient funds to allow Buyer to undertake such remediation, or (iii) not to undertake a further investigation and/or fund the remediation of any such recognized environmental conditions.

(d) Buyer's Rights. If, during Seller's Environmental Remediation Period, Seller fails to escrow sufficient funds to undertake remediation to the satisfaction of Buyer of any recognized environmental condition in the Environmental Condition Notice, or elects not to undertake such remediation, then Buyer may elect, as its exclusive remedy with respect to the objections in the Environmental Condition Notice, either to (a) waive remediation by written notice to Seller and proceed to Closing, or (b) terminate this Agreement by giving written notice to Seller within three (3) business days after Seller's Environmental Remediation Period, in which case the Earnest Money will be returned to Buyer, and thereafter the parties will have no further rights and will be released from all obligations hereunder other than those rights and obligations that expressly survive termination of this Agreement. If Buyer fails to give timely notice of termination or if Buyer proceeds to Closing, Buyer will be deemed to have elected to waive remediation and accepted all of the recognized environmental conditions.

(e) Further Investigation. The Closing Date established in Section 10 below shall be extended on a day-for-day basis to accommodate Seller's election of the option to conduct further investigations as outlined in Section 7(c). In such event, Seller shall have thirty (30) business days from the date of such election within which to furnish a Phase 2 ESA to Buyer. The

furnishing of such Phase 2 ESA shall restart the review and notification process set forth in this Section 7.

8. Review of Property.

(a) Inspection Period. Buyer shall have a period of sixty (60) days from the Agreement Date in which Buyer and Buyer's agents, contractors, employees and permittees (collectively, the "Buyer Permittees") shall verify and ascertain the suitability of the Property for Buyer's intended use, in Buyer's sole and absolute discretion (the "Inspection Period"). Buyer may, at any time during the Inspection Period, enter upon the Insured Property for the purpose of inspecting the Insured Property, including making surveys, reports and investigations, conducting soils, water availability and other tests, and undertaking such other investigation of the Insured Property and other portions of the Property as Buyer shall deem necessary for its intended uses of the Property.

(b) Property Documents. Within ten (10) business days after the Agreement Date, Seller shall make available to Buyer and its consultants and representatives, copies of its files and records related to the Property including the following documents in the possession or control of the Seller the following: all documents relating to the Roxborough Water Rights and Roxborough Ground Water Rights (including, but not limited to, documents related to title to and liens or encumbrances on the Roxborough Water Rights, Roxborough Ground Water Rights and/or related facilities; previous title opinions; water decrees and well permits; water rights engineering reports, technical reports and correspondence, including those related to the use and historical consumptive use of the Roxborough Water Rights for irrigation; diversion records and accounting; reports, invoices, and estimates regarding infrastructure condition and improvements; maps, aerial photos and as-built drawings; and any correspondence with federal, local or state agencies, including the Division of Water Resources and Colorado Department of Health and the Environment, concerning water rights, water supply or water quality issues), soils reports, mineral studies, oil, gas and mineral leases, environmental reports and studies, environmental notices received by Seller, plats, permits (including 404 and 402 permits from the Army Corps of Engineers), development agreements, topographical and other maps, engineering plans and reports, easement agreements, and all other information and documentation pertaining to the Property in the possession of or known to Seller or Seller's agents (collectively, the "Property Documents"). Except as described in Section 6(a), Buyer acknowledges and agrees that all Property Documents delivered or made available by Seller to Buyer are for Buyer's information and use only, and Seller makes no representation or warranty as to the accuracy or completeness of any such Property Documents or Buyer's ability to use any of such Property Documents. Buyer acknowledges that it shall be solely responsible for verifying all information contained in the Property Documents, including the completeness, accuracy and applicability of the Property Documents.

(c) Inspection Risk. Buyer will not make any permanent modifications to the Insured Property and will leave the Insured Property in substantially the same condition as existed at the time of entry upon the Property by Buyer or Buyer Permittees. Any entry on the Insured Property by Buyer or Buyer Permittees shall be at the sole risk, cost and expense of Buyer. Buyer shall pay when due all costs and expenses incurred in the performance of any such inspection or

conducting such tests and investigations and, to the extent it lawfully may, shall reimburse and hold harmless Seller from any loss from mechanic's liens, claims for nonpayment of such charges or for damages or injuries arising out of the negligent acts, willful misconduct or omissions hereunder by Buyer or Buyer Permittees relating to their entry onto the Insured Property, including those persons performing such inspections or conducting such tests and investigations. Notwithstanding any other provision of this Agreement, the obligations of Buyer under this Section 8(c) will survive the Closing or the termination of this Agreement by Buyer or Seller for any reason.

(d) Termination. If Buyer fails to provide Seller with written notice that it will terminate this Agreement (the "Termination Notice") on or before the expiration of the Inspection Period in the manner set forth in the Notice provision in Section 14.4, Buyer shall be deemed to have elected to accept the conditions of the Property discovered in the Inspection Period. In the event Buyer provides Seller with the Termination Notice on or before the expiration of the Inspection Period, the Earnest Money shall be refunded to the Buyer, none of the Parties shall be further bound hereby, and this Agreement shall be of no further force or effect (subject to the provisions of this Agreement which expressly survive such termination). Seller shall have no right to cure if Buyer elects to terminate the Agreement pursuant to this Section 8.

9. Other Agreements and Covenants.

(a) No Statements of Opposition. Seller agrees that, following Closing, it will not file a statement of opposition or otherwise participate as a party in certain water court applications that Buyer may file. The terms of such agreement shall be as set forth in the form of agreement attached hereto as Exhibit H ("No Statement of Opposition Agreement").

(b) Post-Closing Assistance Agreement. Following Closing, Seller will provide Buyer with reasonable assistance in the transition of the administration and the operation of the Property in Douglas County, Colorado, and the application for a change of water right for the Roxborough Water Rights, including, if necessary, testimony about the use and historical consumptive use of the Roxborough Water Rights. The terms and conditions of such assistance shall be as set forth in the form of agreement attached hereto as Exhibit I (the "Post-Closing Assistance Agreement"). At Closing, Seller and Buyer will execute the Post-Closing Assistance Agreement.

10. Closing. The closing of the purchase and sale (the "Closing") of the Property shall occur on such date as mutually agreed upon by Buyer and Seller, but in no event later than sixty (60) days after the close of the Inspection Period (the "Closing Date"). The Closing will be held at the offices of the Title Company, or at such other location as mutually agreed upon by Buyer and Seller or, if the parties so agree, through an escrow-type closing with the Title Company acting as the closing agent.

11. Actions at Closing. The following will occur at Closing in a sequence prescribed in mutually agreeable Closing instructions all of which shall be mutually and concurrently dependent:

(a) Seller shall execute and deliver to Buyer one or more special warranty deed(s) for the Roxborough Tracts in the form attached hereto as **Exhibit J**, conveying the Roxborough Tracts free and clear of all liens and encumbrances, except for the Permitted Exceptions.

(b) Seller shall execute and deliver to Buyer one or more assignment(s) of easements in the form attached hereto as **Exhibit K**, conveying the Roxborough Easements free and clear of all liens and encumbrances, except for the Permitted Exceptions.

(c) Seller shall execute and deliver to Buyer one or more special warranty deed(s) for the Roxborough Water Rights and the Roxborough Ground Water Rights in the form attached hereto as **Exhibit L** free and clear of all liens and encumbrances.

(d) Seller and Buyer shall execute and deliver one or more bill(s) of sale, assignment(s) and assumption agreement(s) in the form attached hereto as **Exhibit M** conveying the Roxborough Infrastructure and the Roxborough Miscellaneous Property to Buyer, and all rights and obligations thereunder, to the extent assignable, free and clear of all liens and encumbrances.

(e) Seller shall fill out, execute and deliver and Historical Use Affidavit in the form attached hereto as **Exhibit N** detailing the use of the Roxborough Water Rights.

(f) Seller and the Affiliated Entities shall execute and deliver the Affiliated Entities Affirmation Agreement.

(g) Seller, Buyer and the Affiliated Entities shall execute the No Statement of Opposition Agreement.

(h) Seller and Buyer shall execute the Post-Closing Assistance Agreement.

(i) Buyer shall deliver to the Title Company as the closing agent the Purchase Price, less the Earnest Money, in cash or by wire transfer or other immediately available funds.

(j) The Purchase Price proceeds delivered by Buyer to the Title Company shall be delivered to Seller.

(k) Seller and Buyer will execute and deliver to the Title Company the appropriate parties' Settlement Statements.

(l) Each party will deliver to the other party and the Title Company such agreements, assignments, conveyances, instruments, documents, typical affidavits required by the Title Company, certificates and the like as may be reasonably required by either party or the Title Company to consummate the purchase and sale of the Property in accordance with the terms of this Agreement and the Title Commitments.

(m) The following adjustments ("Closing Adjustments") will be made as of the Closing to the Purchase Price:

(i) If applicable, real property taxes for the year of the Closing will be apportioned to the date of Closing based upon the most recent levy and assessment. Such apportionment will be a final settlement between the parties. Any special assessments against the Property as of the date of Closing will be paid by Seller at Closing. Seller shall also pay 100% of the premium for the Title Policy.

(ii) Buyer will pay the recording fee for the deeds conveying the Roxborough Tracts, Roxborough Water Rights, and Roxborough Ground Water Rights and any other recorded documents and all of the cost of any endorsements and additional coverage to the Title Policy that Buyer desires. Seller will pay one-half of the premium for the Title Policies. The parties will share closing fees of the Title Company and all documentary fees equally. Each party will be responsible for payment of its own attorneys' fees. All other costs of Closing will be prorated between the parties as is customary in commercial closings in this State.

12. Representations and Warranties of Seller. Seller represents and warrants to Buyer that each of the following statements is true and correct as of the Agreement Date and will be true and correct as of the Closing Date:

(a) Seller is a governmental entity duly formed and validly existing in the State of Colorado.

(b) To the best of Seller's knowledge, there is no litigation, condemnation or eminent domain action, or administrative, governmental or other proceeding, pending or threatened, against Seller and/or affecting the ownership or use of the Property which, if decided or determined adversely, would have a material adverse effect on the ability of Seller to sell the Property pursuant to this Agreement.

(c) Seller has full right, power and authority to enter into this Agreement and to perform the obligations hereunder, and this Agreement and all other documentation required by Buyer hereunder, when duly executed and delivered, shall constitute the valid and binding obligation of Seller, enforceable in accordance with such terms. The individual executing this Agreement on behalf of Seller is authorized to do so.

(d) Seller has not retained any broker, agent or finder or agreed to pay any commissions or finders' fees in connection with this Agreement or the transfer of the Property. To the extent permitted and provided by law, Seller shall indemnify and hold harmless Buyer from liability for any fees or commissions owing pursuant to this transaction caused by breach of this representation.

(e) To the best of Seller's knowledge, no other person has any legal or equitable right to use the Property except as described in the Roxborough Easements or the Permitted Exceptions.

(f) Seller, to the best of its knowledge, is unaware of any material Property Document in its possession that Seller has not produced or made available to Buyer.

(g) To the best of Seller's knowledge, all of the Roxborough Water Rights, Roxborough Ground Water Rights, and any decrees therefor are in full force and effect and no portion of the Roxborough Water Rights have been abandoned.

(h) To the best of Seller's knowledge, (i) there has been no placement, generation, transportation, storage, release, treatment or disposal at the Property of any "Hazardous Substances," as defined herein; and (ii) Seller has not received from or given to any governmental authority or other person or entity any notice or other communication or agreement relating in any way to the presence, generation, transportation, storage, release, treatment or disposal by Seller of any Hazardous Substances on the Property. In addition, to the best of Seller's knowledge, there is no pending, threatened litigation, proceedings or investigations before any administrative agency in which the reference, release, threat of release, placement, generation, transportation, storage, treatment or disposal in, on or under the Property, of any Hazardous Substances has been alleged. For purposes of this Agreement,

(i) "Environmental Laws" means all federal, State and local laws, whether common laws, court or administrative decisions, statutes, rules, regulations, ordinances, court orders and decrees, and administrative orders and all administrative policies and guidelines concerning action levels of a governmental authority (federal, State or local) now or hereafter in effect relating to the environment, public health, occupational safety, industrial hygiene, any Hazardous Substance (including, without limitation, the disposal, generation, manufacture, presence, processing, production, release, storage, transportation, treatment or use thereof), or the environmental conditions on, under or about the Property, as amended and as in effect from time to time (including, without limitation, the following statutes and all regulations thereunder as amended and in effect from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. §§ 11001 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300(f) *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*; and any successor statutes and regulations to the foregoing; and

(ii) "Hazardous Substances" means (a) all chemicals, materials and substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (b) all other chemicals, materials and substances, exposure to which is prohibited, limited or regulated by any governmental authority, including, without limitation, asbestos and asbestos-containing

materials in any form, lead-based paint, radioactive materials, polychlorinated biphenyls (“PCBs”), and substances and compounds containing PCBs.

13. Buyer’s Representations and Warranties. Buyer represents and warrants to Seller that each of the following statements is true and correct as of the Agreement Date and will be true and correct as of the Closing Date:

(a) Buyer is a governmental entity duly formed and validly existing in the State of Colorado.

(b) Buyer has all requisite power, corporate and otherwise, to execute, deliver and perform its obligations pursuant to this Agreement, that the execution, delivery and performance of this Agreement and the documents to be executed and delivered pursuant to this Agreement have been duly authorized by it, and that upon execution and delivery, this Agreement and all documents to be executed and delivered pursuant to this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with their terms.

(c) The individual executing this Agreement on behalf of Buyer is authorized to do so.

(d) Buyer has not retained any broker, agent or finder or agreed to pay any commissions or finders’ fees in connection with this Agreement or the transfer of the Property. To the extent permitted and provided by law, Buyer shall indemnify and hold harmless Seller from liability for any fees or commissions owing pursuant to this transaction caused by Buyer’s breach of this representation.

(e) If prior to Closing, Buyer obtains knowledge that any of the covenants, representations or warranties of Seller in this Agreement are not true or correct, and Buyer deems such inaccuracy to be material to Buyer, then Buyer shall promptly notify Seller in writing of the same in order to afford the Seller a reasonable opportunity to cure the same prior to Closing.

14. No Other Warranties. Buyer has made, and will make, its own independent inspection and investigation of the Property and the Property Documents, and, in entering into this Agreement and purchasing the Property, Buyer is relying upon and will rely solely on such inspection and investigation of the Property and the Property Documents. Except for the representations and warranties expressly set forth in (i) this Agreement, (ii) the Water Rights Opinion described in Section 6(a), and (iii) the documents executed by Seller at Closing, Buyer acknowledges and agrees that neither Seller nor anyone acting on behalf of Seller has not made, does not make and specifically negates and disclaims any representations or warranties whatsoever, whether expressed or implied, oral or written, past, present or future concerning the Property. Except as otherwise provided herein, **BUYER ACKNOWLEDGES THAT TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE SALE OF THE PROPERTY WILL BE MADE IN AN “AS IS” CONDITION, WITH ALL FAULTS.** Buyer acknowledges that the Purchase Price is based in part on the fact that there are no other representations and warranties and that if Seller were required to give any additional representations and warranties the Purchase Price would be materially higher.

15. Default, Remedy and Termination.

(a) Buyer Default. It is hereby agreed that Seller's damages may be difficult to ascertain. The Earnest Money constitutes a reasonable liquidation of Seller's damages and is intended not as a penalty, but as liquidated damages. If the transaction contemplated herein is not consummated on or before the Closing Date solely as a result of the default by Buyer of its obligations hereunder, as Seller's sole and exclusive remedy, the Title Company shall pay the Earnest Money to Seller as liquidated damages and in full settlement of any claims for damages. Whereupon, Buyer shall have no further liability or obligation hereunder to Seller and no other remedy shall be available for Buyer's breach of this Agreement; provided, however, that Seller shall also be entitled to enforce Buyer's obligations that expressly survive the termination of this Agreement.

(b) Seller's Default. If the transaction contemplated herein is not consummated on or before the Closing Date solely as a result of a default by Seller of its obligations hereunder, Buyer shall be entitled to one of the following remedies as its sole and exclusive remedy: (i) the right to cancel this Agreement, in which event this Agreement shall terminate and be of no further force or effect and the Title Company will refund to Buyer the Earnest Money; or (ii) seek specific performance of this Agreement; provided however, that unless Buyer has provided written notice to Seller and the Title Company no later than ninety (90) days from the Closing Date that Buyer has elected to commence an action for specific performance, Buyer shall be deemed to have irrevocably chosen the foregoing option (i). In the event of any such termination, Seller shall be entitled to enforce Buyer's obligations that expressly survive the termination of this Agreement.

16. Miscellaneous Provisions.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and applicable federal law.

(b) Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

(c) Further Assurance. Each of the parties hereto, at any time and from time to time, will execute and deliver such further instruments and take such further action as may reasonably be requested by the other party hereto, in order to cure any defects in the execution and delivery of, or to comply with or accomplish the covenants and agreements contained in this Agreement and/or any other agreements or documents related thereto.

(d) Notices. If under the terms of this Agreement, notice is to be provided to any party, said notice shall be deemed provided upon (i) personal delivery, (ii) three (3) business days after the mailing of the same by registered or certified mail, return receipt requested, (iii) when delivered (and signed for) by an overnight delivery service, or (iv) when delivered by email transmission for which automatic confirmation or written acknowledgement has been received, addressed in each case as follows:

If to Seller:                   Roxborough Water and Sanitation District.  
  Attn: Barbara Biggs, General Manager

6222 N. Roxborough Park Road  
Littleton, CO 80125

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Buyer: Town of Castle Rock  
Attn: Director of Castle Rock Water  
175 Kellogg Court  
Castle Rock, CO 80109  
[mmarlowe@crgov.com](mailto:mmarlowe@crgov.com)

with a copy to: Town of Castle Rock  
Attn: Town Attorney  
100 N. Wilcox Street  
Castle Rock, CO 80104  
[mhyman@crgov.com](mailto:mhyman@crgov.com)

with a copy to: Lyons Gaddis. PC  
Attn: Madoline Wallace-Gross  
515 Kimbark Street, 2<sup>nd</sup> Floor  
Longmont, CO 80501  
[mwg@lyonsgaddis.com](mailto:mwg@lyonsgaddis.com)

*(As to Roxborough Water Rights and Roxborough Ground Water Rights only)*

Any party may change the address to which notices should be sent by giving the other parties written notice of the new address in the manner set forth in this paragraph. A party may give any notice, instruction or communication in connection with this Agreement using any other means (including facsimile or first class mail), but no such notice, instruction or communication shall be deemed to have been delivered unless and until it is actually received by the party to whom it was sent and such party acknowledges such receipt.

(e) No Consideration of Drafter. This Agreement has been negotiated by all parties hereto and their counsel. It shall be given a fair and reasonable interpretation in accordance with its terms, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

(f) Attorneys' Fees. In the event of any litigation or arbitration proceedings between the parties hereto concerning the subject matter of this Agreement, the prevailing party in such litigation or proceeding shall be awarded, in addition to the amount of any judgment or other award entered therein, the costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the litigation or proceeding.

(g) Amendment. This Agreement may be amended, altered or revoked only by written instrument executed by all of the parties to this Agreement.

(h) Survival. All representations and warranties of title to the Property in this Agreement shall merge into the representations and warranties of title in the deeds and other instruments of conveyance of the Property made in connection with the Closing. All other representations and warranties in this Agreement of Seller and Buyer shall survive the Closing for a period of two (2) years following Closing, provided any claim asserted by a party for breach of such warranties or representations within such two-year period may proceed to resolution, irrespective of the expiration of such two-year period.

(i) Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

(j) Expenses. Each party shall pay its own costs and expenses in connection with the operation under and administration of this Agreement.

(k) Waivers and Consents. All waivers and consents given hereunder shall be in writing. No waiver by any party hereto of any breach or anticipated breach of any provision hereof by any other party shall be deemed a waiver of any other contemporaneous, preceding or succeeding breach or anticipated breach, whether or not similar, on the part of the same or any other party.

(l) Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. 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.

(m) Rights of Third Parties. All conditions of the obligations of the parties hereto, warranties and representations, and all undertakings herein, except as otherwise provided by a written consent, are solely and exclusively for the benefit of the parties hereto, their successors and assigns and their successors-in-interest. No other person or entity shall have standing to require satisfaction of such conditions or to enforce such undertakings in accordance with their terms or be entitled to assume that any party hereto will refuse to complete the transaction contemplated hereby in the absence of strict compliance with such conditions and undertakings. No other person or, entity shall, under any circumstances, be deemed a beneficiary of such conditions or undertakings, any or all of which may be freely waived in whole or in part, by mutual consent of the parties hereto at any time, if in their sole discretion they deem it desirable to do so.

(n) Construction. Throughout this Agreement, the headings for paragraphs, section and articles used in this Agreement are included for purposes of convenience of reference only, and shall not affect the construction or interpretation of any of its terms; the singular shall include the plural and the plural shall include the singular; all genders shall be deemed to include other genders, wherever the context so requires; and the terms “including,” “include” or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean “including, but not limited to,” or “including, by way of example and not limitation.”

(o) Exhibits. All schedules, exhibits and addenda attached to this Agreement and referred to herein shall for all purposes be deemed to be incorporated in this Agreement by this reference and made a part of this Agreement.

(p) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(q) Recordation. Neither this Agreement or any memorandum or extract hereof shall be recorded. Any recording by or on behalf of Buyer without the written consent of Seller will be a breach by Buyer for which there is no right to cure and for which Seller may terminate this Agreement.

[Signature pages to follow]

DRAFT



**TOWN:**

**TOWN OF CASTLE ROCK,**  
acting by and through the Town of Castle Rock  
Water Enterprise

**ATTEST:**

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

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Mark Marlowe, Director of Castle Rock Water

DRAFT