

**DAWSON TRAILS BOULEVARD  
MANAGEMENT AGREEMENT**

**DATE:** \_\_\_\_\_, 2024.

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

**DAWSON TRAILS METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado, 405 Urban Street, Suite 310, Lakewood, Colorado 80228 (the “**District**”).

**RECITALS:**

A. The District is organized and existing as a metropolitan district under the constitution and laws of the State of Colorado, including particularly Title 32, Article 1, C.R.S., for the purpose of providing, financing, operating and maintaining certain public improvements to and for the benefit of the properties within and without the boundaries of the District, together with all necessary, incidental, and appurtenant facilities, equipment, land and easements or other interests in property, for itself, its taxpayers, its residents and users within the District’s service area.

B. Pursuant to the Amended and Restated Service Plan for the Dawson Ridge Metropolitan District No. 1, Dawson Ridge Metropolitan District No. 2, Dawson Ridge Metropolitan District No. 3, Dawson Ridge Metropolitan District No. 4, Dawson Ridge Metropolitan District No. 5, Westfield Metropolitan District No. 1 and the Westfield Metropolitan District No. 2, Town of Castle Rock, Colorado, approved by the Town September 6, 2022 (the “**Service Plan**”), the District is authorized to finance and provide public improvements needed for the Dawson Trails development project.

C. The Districts (hereinafter defined) entered into that certain District Maintenance and Administrative Services Agreement, dated November 28, 2022, which provides that the District may act on behalf of each of the Districts in regard to the provision of improvements and services authorized under the Service Plan.

D. The Town, ACM Dawson Trails VIII JV LLC, a Delaware limited liability company (being the developer of the Project, defined below (the “**Developer**”)), the District (formerly known as Dawson Ridge Metropolitan District No. 1), Dawson Ridge Metropolitan District No. 2, Dawson Ridge Metropolitan District No. 3, Dawson Ridge Metropolitan District No. 4, Dawson Ridge Metropolitan District No. 5, Westfield Metropolitan District No. 1 and the Westfield Metropolitan District No. 2 (all as renamed to Dawson Trails Metropolitan District Nos. 2-7, respectively, and together with the District, the “**Districts**”) entered into the Dawson Trails Development Agreement (the “**Development Agreement**”), as approved by the Town Council

September 6, 2022, which established the terms and conditions for the overall development of the Dawson Trails project (the “**Project**”).

E. In connection with the development of the Project, Section 8.04 of the Development Agreement contemplates the design, acquisition, construction, management and installation of a new interchange known as the Crystal Valley Interchange (the “**Crystal Valley Interchange**” or “**CVI**”), which generally consists of, among other things, a bridge over Interstate 25 (I-25), a northbound on-ramp, a northbound off-ramp, a southbound on-ramp, a southbound off-ramp, a bridge over the BNSF railroad tracks, relocation of West Frontage Road from Tomah Road to the CVI, relocation of a segment of the East Frontage Road and a connection to the relocated West Frontage Road, and the construction of a portion of Dawson Trails Boulevard to the south of the CVI, together with associated grading, draining, utility and other development work related thereto (collectively, and as more particularly set forth in the Approved Plans (hereinafter defined), the “**CVI Project**”).

F. In order to share in the costs of the CVI Project, the Development Agreement requires a contribution of Fifty Million Dollars (\$50,000,000) from or on behalf of the Developer (the “**CVI Contribution**”).

G. The Town and District entered into that certain CVI Contribution Funding Agreement dated October 9, 2023 (the “**CVI Agreement**”), which addresses the funding and disbursement of the CVI Contribution.

H. Pursuant to the CVI Agreement, the District, on behalf of the Town, is undertaking the District Work (as defined in the CVI Agreement) under separate contracts from the remainder of the CVI Project (referred to in this Agreement as the District Construction Contracts).

I. The Parties desire to enter into this Agreement to set forth the parameters of how the District Work will be completed by the District.

**THEREFORE**, in reliance on the matters set forth above and in consideration of the mutual promises contained in this Agreement, the Parties agree and covenant as follows:

## **ARTICLE I DEFINITIONS**

**1.01 Defined Terms.** The following words when capitalized in the text shall have the meanings indicated below.

**Agreement:** Dawson Trails Boulevard Management Agreement.

**Code:** the Castle Rock Municipal Code, as amended.

**Force Majeure:** delays caused by war, riots, strikes, lockouts, acts of God, enemy action, civil commotion, fire, terrorist action, pandemic, epidemic, public utility failure, floods or other casualty, moratorium or similar laws prohibiting performance, unforeseeable and abnormal weather conditions which delays or precludes construction, or any other similar matter which is beyond the reasonable control of such Party. Notwithstanding the foregoing, any delay caused by a Party's failure to pay amounts required to be paid under this Agreement shall not constitute Force Majeure. To claim a Force Majeure delay, a Party shall give written notice of the same to the other Party within ten (10) days after the discovery of the occurrence of any event that would constitute Force Majeure hereunder. If the Party claiming Force Majeure fails to timely provide notice of such event that would constitute Force Majeure, such event shall not constitute Force Majeure under this Agreement. Except as provided herein, if the performance of an obligation by a Party hereunder, other than the payment of money, is delayed due to Force Majeure, then the date when performance is required under this Agreement shall be extended for a period of time equal to the duration of the Force Majeure.

**Party or Parties:** one or all of the parties to this Agreement.

**Project:** The portion of the CVI Project that consists of the District Work.

**Project Property or Property:** the Town Property and ROW Parcels collectively which are the site of the Project, as more particularly described in the attached *Exhibit 1*.

**ROW Parcels:** the parcels that are depicted and described in the attached *Exhibit 2*, which will constitute a part of the Project Property.

**Town Property:** the property owned by the Town, inclusive of the Town-owned portion of the ROW Parcels upon which a portion of the Project will be constructed, as further described on the attached *Exhibit 3*.

**Town Regulations:** the Town Charter, ordinances, resolutions, rules and regulations of the Town, including the Code, and other provisions of all zoning, subdivision and building codes, as the same may be amended from time to time.

Certain other terms are defined in the text of the Agreement.

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

## ARTICLE II DEVELOPMENT OF THE PROJECT-GENERALLY

## **2.01 Overall Project Responsibility.**

A. The District shall be responsible for all aspects of Project permitting, Project bidding and contracting, Project development, construction, and construction management through Project completion. Notwithstanding the foregoing, the Town shall be exclusively responsible for financing the construction of the Project, and shall bear all attendant development and financial risks of completing the Project. Subject to the foregoing, the District will exercise its rights and perform its obligations under the various contracts with third parties necessary to complete the District Work with usual and customary industry practices. This Agreement does not create a partnership, joint venture or other legal entity between the District and Town. Rather the Town and the District each has a limited and discrete role with respect to the Project as outlined in this Agreement.

B. Subject to availability of funds in the Interchange Project Fund (as defined in the CVI Agreement, the District shall promptly pay for all District Work with funds from the Interchange Project Fund in accordance with the CVI Agreement such that no liens or encumbrances attach to the Property. In addition, to the extent permitted by law, the District shall indemnify the Town from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any person, firm, partnership or corporation, to the extent caused by the negligent acts, errors or omissions of the District or any of its employees, agents or contractors in performing the District Work on the Project. In the event that any such suit or action is brought against the Town, the Town shall give notice to the District within ten (10) days of receipt of notice of such action.

## **2.02 District Work.**

A. The District Work shall be completed by the District as provided in this section 2.02, but the cost of the District Work shall be borne entirely by the Town. The District work shall be performed in accordance with those certain construction plans approved by the Town listed in *Exhibit 4* attached hereto (the "**Approved Plans**"), consistent with the specifications of *Exhibit 5*.

B. The Town will waive any permit fees under the Town Regulations for the performance and completion of the District Work.

C. The District shall undertake a competitive bidding process for the completion of the District Work and the lowest, best and responsive, responsible bidder shall be selected. Determination of the lowest, best and responsive, responsible bidder shall require the concurrence of the Town.

D. In consideration of the District performing its obligations under this Agreement, the District shall be paid an amount that does not exceed three and one-half percent (3.5%) of the initial contract price for the District Work under this Agreement (the "**Management Fee**"), which

Management Fee shall be charged as a separate line item on each District Disbursement Request (as defined in the DVI Agreement).

**2.03 Town Regulations.** Town Regulations shall apply to the construction of the Project, except as otherwise expressly provided in this Agreement.

### **ARTICLE III CONSTRUCTION**

**3.01 Construction Contracts.** Subject to the Town’s concurrence, the District shall select and contract with the consultants, engineers, construction subcontractors and manager/general contractor necessary to complete the District Work (collectively, the “**District Construction Contracts**”). If Town does not approve any of the District Construction Contracts, which approval shall not be unreasonably withheld, conditioned or delayed, then a No-Fault Termination shall result. The Town will not be a party to the District Construction Contracts but will be designated as a beneficiary and shall have the right to assume the District Construction Contracts in the event the District should fail to progress in construction of the District Work as required under this Agreement. The District Construction Contracts shall provide for a two-year period on all District Work. As a designated beneficiary, the Town shall have the right to enforce all such warranties. The District Construction Contracts shall encompass only the District Work. The balance of the CVI Project design and construction will be undertaken by the Town under separate contracts independent of the District Construction Contracts.

**3.02 Progression of Construction.** Subject to Force Majeure and any notice and cure provisions under this Agreement, the District shall commence and complete the District Work in accordance with the following benchmarks:

Commencement of District Work	30 days after notice to proceed is issued by the Town, which is expected to occur on May 15, 2024
Completion of District Work	June 30, 2025, or the date upon which the CVI Project is substantially completed, whichever first occurs; provided that such date shall be automatically extended for each day after May 15, 2024, that the Town does not issue a notice to proceed

Failure to meet the benchmarks set forth in this section 4.02, as extended by Force Majeure and/or the Town (if applicable) and subject to any notice and cure provisions in this Agreement, shall constitute a default under this Agreement by the District.

**3.03 Third Party Review.** Town, at its sole expense, may procure the services of a third-party construction management firm to assist in the review of the plans, specifications, the

District Construction Contracts, and inspections of the District Work (“**Town Construction Manager**”). The District shall allow the Town Construction Manager reasonable access to the District Work and District Construction Contracts.

**3.04 Construction Suspension.** In the event that the District Work should cease for a duration of 60 consecutive days or more for any reason other than Force Majeure, or should the District be subject to a voluntary or involuntary bankruptcy proceeding, such event, subject to any notice and cure provisions in this Agreement, shall constitute a default under this Agreement. Subject to obtaining any required judicial approval, Town shall have the right to assume the District Construction Contracts and complete the District Work with the CVI Contribution Funds or other funds of the Town. These remedies afforded Town shall be in addition to the remedies provided elsewhere in this Agreement.

#### **ARTICLE IV OWNERSHIP AND MAINTENANCE**

**4.01 Ownership.** The Town shall have exclusive ownership of the District Work.

**4.02 Maintenance.** The District Work shall be maintained by the Town, at its sole cost and expense.

#### **ARTICLE V OTHER PROVISIONS**

**5.01 Representations and Warranties.**

A. Representations and Warranties by District. The District represents and warrants as follows:

1. The District is a quasi-municipal corporation and political subdivision of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

2. The District knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the District or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

3. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the District or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the District is a party or by which it may be bound or affected, or (iii) permit any party to

terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the District.

4. This Agreement constitutes a valid and binding obligation of the District, enforceable according to its terms.

B. Representations and Warranties by the Town. The Town represents and warrants as follows:

1. The Town is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

2. The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

3. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (i) conflict with or contravene any law, order, rule or regulation applicable to the Town or to its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

4. This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms.

**5.02 Commencement, Term.** The term of this Agreement shall commence upon the mutual execution of this Agreement.

**5.03 No-Fault Termination.** Where this Agreement provides for the occurrence of a No-Fault Termination, the Parties thereafter shall have no further rights or responsibilities under this Agreement as to any prospective provision of the Agreement. No Party shall be deemed in default of this Agreement solely as a result of causing the No-Fault Termination. Provided further, the occurrence of a No-Fault Termination shall not relieve a Party from (i) an obligation in force or effect as of the No-Fault Termination, or (ii) an uncured default occurring prior to the No-Fault Termination.

**5.04 Event of Default.** Subject to any notice and cure provisions in this Agreement, failure of any Party to perform any covenant, agreement, obligation or provision of this Agreement (other than a No-Fault Termination) shall constitute an event of default under this Agreement.

**5.05 Default Notice.** In the event a Party alleges that the other is in default, 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 thirty (30) days from receipt of such notice within which to cure such default before the non-defaulting Party may exercise any of its remedies; or if the default is of a nature to require more than thirty (30) days to remedy, the defaulting Party will have the time reasonably necessary to cure, but in any event such cure period shall not extend beyond ninety (90) days.

**5.06 Remedies.** Upon default of this Agreement and failure to timely cure, the non-defaulting Party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce performance and compliance with this Agreement, or to collect the monies then due and thereafter to become due; provided, however, that no Party will be entitled to lost profits, economic damages, incidental, consequential, punitive or exemplary damages in the event of a default.

**5.07 Governing Law.** This Agreement shall be governed and construed in accordance with Colorado law and Douglas County shall be the proper venue for the commencement of any claims in state court.

**5.08 Amendment.** Any and all changes to this Agreement, in order to be mutually effective and binding upon the Parties and their successors, must be in writing.

**5.09 Notice.** The addresses of the Parties to this Agreement are listed below. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when delivered to the other Parties or three (3) days following the date the same is deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to the other Parties at the addresses noted; or such address as is subsequently endorsed in writing, or in the event of transfer of the Property to the address of such grantee as indicated in the recorded instrument whereby such grantee acquired an interest in the Property.

**Town:** Town Attorney  
Town of Castle Rock  
100 N. Wilcox Street  
Castle Rock, CO 80104

**District:** Dawson Trails Metropolitan District No. 1  
405 Urban Street, Suite 310  
Lakewood, Colorado 80228  
Attn: AJ Beckman, Manager

With copy to: White Bear Ankele Tanaka & Waldron  
Attorney at Law  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122

Attention: Jennifer Gruber Tanaka, Esq.

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

**5.11 Additional Documents.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested by lenders, that is necessary to carry out this agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

**5.12 TABOR Compliance.** It is not the intention of the Parties and this Agreement is not be construed to create a multiple fiscal year obligation of the Town under Article X, Section 20 of the Colorado Constitution (“**TABOR**”) which obligation has not been previously voter approved. Consequently, any financial obligation of the Town which is not supported by a TABOR reserve is conditioned on the subsequent appropriation by the Town Council of sufficient funds to discharge such obligation.

**5.13 Section Captions.** The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

**5.14 Waiver of Breach.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

**5.15 Binding Effect, Entire Agreement.** This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors and assigns. This Agreement represents the entire agreement among the Parties and supersedes any prior written or oral agreements or understandings with regard to the Property or Project not specifically set forth in this Agreement.

**5.16 Minor Changes.** This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing this Agreement are authorized to make and may have made, minor changes to this Agreement and the attached exhibits as they have considered necessary. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of this Agreement will constitute the approval of such changes by the respective Parties.

**5.17 Consent to Extensions.** Any notice of or consent to an extension of time by the Town under this Agreement may be effected by the Town Manager or his designee; provided that no such extension may be effected if it would result in the District Work being completed after the completion of the CVI Project.

**5.18 Days.** If the day for any performance or event provided for is a Saturday, a Sunday, a day on which national banks are not open for regular transaction of business, or a legal holiday pursuant to §24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.

**5.19 No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

**5.20 Parties Not Partners.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.

*(Signature pages to follow)*





## **EXHIBIT LIST**

<b>Exhibit 1</b>	<b>Project Property</b>
<b>Exhibit 2</b>	<b>ROW Parcels</b>
<b>Exhibit 3</b>	<b>Town Property</b>
<b>Exhibit 4</b>	<b>Approved Plans</b>
<b>Exhibit 5</b>	<b>Specifications</b>