



TOWN OF CASTLE ROCK

Office of the Town Attorney

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MEMORANDUM

JAN 25 1990

TO: Gary R. Higbee, Finance Director
FROM: Robert J. Slentz, Town Attorney
DATE: January 24, 1990
RE: Plum Creek Wastewater Authority Establishing Agreement.

Attached is the fully executed Establishing Agreement for keeping in your office. Please record the Agreement with the Douglas County Clerk and Recorder, and make a copy of the document after recording for my records. Thank you.

/jlh

Enclosures

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PLUM CREEK WASTEWATER AUTHORITY
ESTABLISHING AGREEMENT

Town of Castle Rock
Castle Pines Metropolitan District
Castle Pines North Metropolitan District

January, 1990

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**ESTABLISHING AGREEMENT
FOR THE
PLUM CREEK WASTEWATER AUTHORITY**

AGREEMENT, made and entered into as of December 14, 1989, by and among the **TOWN OF CASTLE ROCK**, a home rule municipal corporation ("**Town**"), **CASTLE PINES METROPOLITAN DISTRICT ("CP METRO")**, and **CASTLE PINES NORTH METROPOLITAN DISTRICT ("CP NORTH")**, quasi-municipal corporations and political subdivisions of the State of Colorado (collectively "**the Members**").

RECITALS

WHEREAS, the Members comprise territory situated generally in the vicinity of Castle Rock, Colorado and the Members each have responsibility to provide wastewater treatment service within their respective service areas;

WHEREAS, pursuant to existing intergovernmental agreements, the parties currently own certain treatment capacity in the Lower East Plum Creek Regional Wastewater Treatment Plant, which is owned and operated by CP Metro;

WHEREAS, the Members have concluded that they can more effectively and efficiently provide wastewater service to persons in their respective service areas by consolidating ownership, operation and management of their present facilities in a single entity;

WHEREAS, the Constitution and laws of the State of Colorado permit and encourage local governmental entities to cooperate with each other in order to make the most efficient and effective use of their powers and in order to more effectively perform their responsibilities;

WHEREAS, pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and (b), and Section 29-1-203, Colorado Revised Statutes, governmental entities may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each, including the joint exercise of the function, service or facility by joint contract, and the establishment of a separate legal entity to do so;

WHEREAS, this Agreement and the establishment of the Authority shall not affect ownership of existing wastewater treatment capacities nor their Members' contractual rights and obligations to one another, or to third parties under existing intergovernmental or other agreements to provide wastewater treatment or reuse water for irrigation purposes;

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises, and covenants contained herein, and other good and valuable consideration, the Members agree and covenant as follows:

I. GENERAL

1.01 Interpretation. In this Agreement, unless the context otherwise requires:

1. The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar term, refer to this Agreement as a whole and not to any particular article, section, or subdivision hereof; the term "heretofore" means before the date of execution of the Agreement, the term "now" means at the date of execution of this Agreement, and the term "hereafter" means after the date of execution of this Agreement.

2. All definitions, terms, and words shall include both the singular and the plural, and all capitalized words or terms shall have the definitions set forth in Section 1.02 hereof.

3. Words of the masculine gender include correlative words of the feminine and neuter genders, and words importing the singular number include the plural number and vice versa.

4. The captions or headings of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Agreement.

5. All schedules, exhibits, and addenda referred to herein are incorporated herein by this reference.

1.02 Definitions. As used herein, the context expressly indicated otherwise, the words defined below and capitalized throughout the text of this Agreement shall have the respective meanings set forth below:

Agreement: This Establishing Agreement for the Plum Creek Wastewater Authority and any amendment thereto.

Authority: The Plum Creek Wastewater Authority.

Board: The Board of Directors of the Authority.

Castle Pines Plant: The physical facilities owned and operated, prior to the execution of this Agreement, by CP Metro as described in the attached **Exhibit 1** for the treatment of wastewater.

Castle Rock Plant: The physical facilities owned and operated, prior to the execution of this Agreement, by the Town and described in the attached **Exhibit 2** for the treatment of wastewater.

CP Metro: The Castle Pines Metropolitan District, including any duly authorized representative, officer, director, employee, agent, engineer or attorney thereof, if applicable.

CP North: The Castle Pines North Metropolitan District, including any duly authorized representative, officer, director, employee, agent, engineer or attorney thereof, if applicable.

Director: A duly appointed director of the Board of Directors of the Authority.

Facilities: The Castle Pines Plant and the Castle Rock Plant.

Members: CP Metro, CP North and the Town.

Officer: The President, Vice-President or Secretary/Treasurer of the Authority.

Person: Any individual, corporation, joint venture, estate, trust, partnership, association, or other legal entity other than the Members.

Services: The Services to be provided by the Authority shall mean wastewater treatment and all related services to all classes of users on a nondiscriminatory basis, including the operation and maintenance of the Castle Pines Plant, the Castle Rock Plant and any other facility or improvement used by the Authority to provide Service under this Agreement; provided however that Services shall not include collection of wastewater from the service areas of each Member prior to its delivery to the Facilities.

Town: The Town of Castle Rock, Douglas County, Colorado, including any duly authorized representative, employee, agent, engineer or attorney thereof, if applicable.

II. ESTABLISHMENT OF AUTHORITY

2.01 Creation. There is hereby created and established a separate legal entity pursuant to Section 29-1-203 C.R.S., which shall be a political subdivision and a public corporation of the State of Colorado, to be named the Plum Creek Wastewater Authority.

2.02 General Powers. To the extent permitted by Colorado law, the Authority shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.

2.03 General Purpose. The Authority shall be deemed established generally for the purposes of owning, leasing, acquiring, constructing, expanding, operating, managing and maintaining wastewater treatment facilities for the benefit of the Members,

including without limitation the Castle Pines Plant and the Castle Rock Plant.

III. SPECIFIC POWERS

3.01 Statutory Powers. The Authority shall have all the power and authority that may be granted to an entity created pursuant to the provisions of Section 29-1-203 C.R.S., as amended from time to time.

3.02 Specific Powers. The Authority shall be empowered to:

1. Acquire, construct, expand, manage, lease (as lessor or lessee) maintain or operate wastewater systems, facilities, works or improvements or any interest therein and acquire, hold, lease (as lessor or lessee), sell or otherwise dispose of real or personal property, in the name of the Plum Creek Wastewater Authority, and upon such terms and conditions as may be approved by the Authority, including without limitation interceptors, lift stations, treatment plants, reuse facilities, water resources and facilities therefor as these Facilities are defined from time to time by the Authority. Specifically, but not by way of limitation, to carry out one or more of the purposes for which the Authority is established the Authority may enter into one or more leases (as lessor or lessee) or other contracts with one or more of the Members or other entities, and participate in the issuance of certificates of participation in such leases or other contracts, or other securities representing a proportionate interest in rights to receive revenues under such leases or other contracts.

2. Enter into contracts for goods, services, construction, expansion, operation and maintenance of the Facilities in the name of the Authority.

3. Provide Services on a non-discriminatory basis to all Members of the Authority, but pursuant to and in compliance with the Prior Agreements as more particularly described below.

4. Adopt, maintain and revise uniform, consistent and non-discriminatory fees, rates and charges to provide Services to the Members and to operate and maintain the Facilities in accordance with Article V, below.

5. Plan for, modify or expand the Facilities, and keep and maintain discharge permits in order to provide uninterrupted Services to the Members in accordance with the terms hereof.

6. Sue and be sued in its own name as a separate legal entity.

7. Employ agents and employees and such professional or other consultants as it may deem necessary or advisable from time to time.

8. Have and use a corporate seal.

9. Condemn property in the manner authorized by law for any of the Members including rights-of-ways or easements necessary or required in order to provide Services and modify or expand the Facilities, or otherwise carry-out the Authority's purposes.

10. Carry out one or more of the purposes for which the Authority is established, the Authority is authorized to issue its bonds, notes, or other obligations, upon such terms and conditions, containing such covenants, and pledging to the payment thereof such security or revenues, all as may be determined by the Authority.

11. Adopt, by unanimous resolution of the Board, regulations respecting the exercise of its powers and carrying out of its purpose.

12. Receive or reject contributions, gifts, bequests or other grants of cash, equipment or services from the Members or other entities, individuals, or political subdivisions.

13. In general, exercise all powers which are necessary, incidental, convenient or conducive to the attainment of its purposes and provision of its functions, Services and operation of the Facilities.

14. Do and perform any acts and things authorized herein through, or by means of an agent or by contracts with any person, firm, or corporation.

IV. GOVERNING BODY

4.01 Composition and Voting. The Authority shall be governed and directed by a three (3) person Board of Directors, which shall

be composed of one Director to be appointed by each of the Members. Each Director shall serve on the Board, at the pleasure of the appointing Member. All decision-making powers of the Authority shall be vested in the Board of Directors. Each Director, or alternate, shall have one vote on all matters to come before the Board; subject however to the provisions of Section 7.04, below. The Board shall elect from its membership a President, Vice President and Secretary/Treasurer whose terms in office shall be for one (1) year from the date of their election; provided, however the office of President shall be rotated annually such that each Member's Board representative serves as President every third year. The names of the initial Board are set forth in the attached **Exhibit 3**. Vacancies among the Officers shall be filled by the Board in the same manner as the Officers are elected. Except as otherwise provided in Section 4.02, below, upon the affirmative vote of a majority of the Directors eligible to vote, the Board may exercise all the powers necessary and proper for the general management and operation of the Authority. Each Member may designate an alternate Director who may exercise all powers and authority as more particularly set forth above; provided, however, that for all actions of the Board only one Director shall sit on the Board or act on behalf of a Member pursuant to this Agreement. An alternate Director shall not be deemed an Officer for any purpose. Such designation must be made in writing signed by the designating Member and shall be effective only upon delivery of such written designation to the Secretary of the Board. The designation of an alternate director may be revoked at any time, but only by delivery of a written notice of revocation signed by the revoking Member to the Secretary of the Board; and such notice shall also designate a new alternate Director.

4.02 Consensus Action. In addition to other actions specifically referred to herein, the following actions of the Board shall require the unanimous vote of all three Directors ("Consensus Action"):

1. Change in the fees for Services currently charged to the Members, additions of new line items or deletion of existing line items in the budget, as set forth in **Exhibit 4**, hereto, and referenced in Section 5.01, below;
2. Establishment of the Capacity Fee as provided in Section 7.07, below and any subsequent modifications thereto;
3. **Approval of a contract for Services to a Person;**
4. Adoption or amendment of regulations, pursuant to Section 3.02, above;
5. Any action which, directly or in effect, constitutes an amendment, waiver or modification of or to the terms of this Agreement;
6. Adoption of an operations budget providing for an increase in the prior year's spending authorization of five and one half (5 1/2) percent or more, or an increase in the spending authorization of an adopted budget which together with all prior increases during the fiscal year, exceeds five and one half (5 1/2) percent of the spending authorized in the initial operation budget;
7. Any capital expenditure, other than an expenditure associated with an expansion of the Facilities, in excess of \$25,000;
8. Disposition of Facilities or disposition of assets of the Authority in excess of value of \$25,000;
9. Appointment or removal of the Authority Manager as provided in Section 5.04, below;
10. **Admission of a new Member to the Authority; or**
11. Amendment or modification to the Conveyance Agreement, as referenced in Article VI, below, or election to terminate the obligations of the Town or CP Metro to convey the plants thereunder.

In order to encourage the attendance of all three Directors at any Board meeting at which a Consensus Action is scheduled on the Board agenda, a written notice of the proposed Consensus Action shall be given by the Secretary of the Board to each Member and the

individual Directors not less than ten (10) days prior to the Board meeting. In the event any Director, or alternate, fails to attend such specially noticed Board meeting, the absent Director, and alternate, shall lose the right to vote on the Consensus Action(s) and such Consensus Action(s) may be approved by an affirmative vote of the other two Directors, unless such absence is excused by the Board for good cause, in which event the Consensus Action(s) shall be considered at the next regular Board meeting without additional notice.

If a matter that requires Consensus Action fails to obtain approval of the Board at a meeting properly noticed as provided above, such matter may be submitted to binding arbitration on the following terms:

1. Written request for arbitration must be made by two Directors to the Board at a regular or special Board meeting;
2. Upon receipt of the request for arbitration, the Board shall forthwith submit the question of whether the Consensus Action should be approved to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the "Association"); provided, however that the specific terms hereof shall supercede any conflicting provisions of such rules and procedures;
3. There shall be a three person arbitration panel with each Member selecting one arbitrator from the list of eligible arbitrators furnished by the Association within ten (10) days of receipt of such list. If a Member fails to make a timely designation of its arbitrator, such arbitrator shall be designated by the other Members;
4. The arbitrators shall base their decision on whether the interests of the Authority are best served by approval of the Consensus Action;
5. The arbitration decision shall be final and binding upon the Board, the Authority and the Members; and
6. The cost of the arbitration, as well as attorney's fees incurred by the Members shall be awarded by the arbitration panel at its discretion.

4.03 Duties of the Board of Directors. The duties of the Board of Directors shall be:

1. To govern the business and affairs of the Authority;
2. To exercise all powers of the Authority;
3. To comply with the provisions of Parts 1, 5, and 6 of Article I, Title 29 of C.R.S., as amended, and all applicable laws and regulations;
4. To adopt a fiscal resolution which complies with statutory and other restrictions imposed by law on the affairs of the Authority;
5. To govern the financial transactions of the Authority, including the receipt, custody and disbursement of its funds, securities and other assets;
6. To provide for the services of a firm of independent certified public accountants to examine, at least annually, the financial records and accounts of the Authority, and to report thereupon to the Board;
7. To keep records of the Authority's proceedings;
8. To adopt bylaws and rules; and
9. To elect Officers.

4.04 Compensation. Directors shall not receive compensation for their services. The Board may provide for reimbursement of a Director for reasonable and necessary expenses incurred on behalf of, and authorized by the Authority.

4.05 Duties of the Officers. Other than duties specifically delegated to an Officer by resolution of the Board, the duties of the Officers shall be limited to the following:

1. **President:** The President shall preside at all meetings of the Board of Directors and, except as otherwise directed by the Board of Directors or provided herein, shall execute and deliver on behalf of the Authority all legal instruments of the Authority.

2. **Vice-President:** The Vice-President shall, in the absence of the President, or in the event of his inability or refusal to act, perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all restrictions upon, the President.

3. **Secretary/Treasurer:** The Secretary/Treasurer shall in the absence of the President and Vice-President, or in the event of their inability or refusal to act, perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all restrictions upon, the President. The Secretary/Treasurer shall maintain the official records of the Authority, including this Agreement, bylaws, rules and regulations established by the Board, and a register of the names and addresses of the Directors and Officers, and shall issue notice of meetings, attest and affix the corporate seal to all documents of the Authority, and perform such other acts and duties as may be required by law. The Secretary/Treasurer shall serve as financial officer of the Authority, and pursuant to fiscal resolutions adopted by the Board governing the financial transactions of the Authority and the restrictions imposed by law, be responsible for the receipt, custody, investment and disbursement of the Authority's funds and securities, and for duties incident to the office of Treasurer.

4.06 Bonds of Officers. The Secretary/Treasurer and any other Officer or agent of the Authority charged with the responsibility for the custody of any of its funds or property shall give a bond in such sum and with such surety as the Board, in its discretion, may determine. The Board may also require any other Officer, agent or employee of the Authority to give a bond in such amount and with such surety as the Board shall determine. The cost of such bond shall be an expense payable by the Authority.

4.07 Indemnification of Officers, Directors and Employees. Officers, directors and employees of the Authority shall be indemnified pursuant to the provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended, and pursuant to the provisions of a resolution of the Board to be

adopted at its organizational meeting, substantially in the form as the attached **Exhibit 5**.

4.08 Insurance. The Authority shall at all times maintain insurance in sufficient amounts to cover, as determined by the Board, the liability of its officers, directors and employees and the Authority under such Act and applicable resolutions of the Board.

4.09 Meetings.

1. **Regular Meetings:** The Board, may provide, by resolution, for the time and place of holding regular meetings without additional notice to the Directors.

2. **Special Meetings:** Special meetings of the Board may be called by any Director, and it shall thereupon be the duty of such Director to cause notice of such meetings to be given as hereinafter provided. Special meetings of the Board shall be held at such time and place as shall be fixed in the Notice.

3. **Notices:** Notice of time and place designated for all regular meetings shall be posted in the offices of the County Clerk and Recorder of Douglas County, Colorado. Regular meeting notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed. Special meetings may be called by any Director as above provided. The Directors calling such meeting shall inform the other Directors of the date, time, and place of such special meeting, and the purpose for which it is called, by mailing written notice thereof to each Director postage prepaid at least seven (7) days prior to the special meeting and by posting notice as provided in this section at least three days prior to the meeting. All meeting notices shall be posted at the same location customarily utilized by the Members for the Member's respective meeting notices. All official business of the Board shall be conducted only during such regular or special meetings at which a quorum is present, and shall be conducted in accordance with the Colorado Open Meetings Law, Section 24-6-

401 et seq., C.R.S. Whenever any notice is required to be given to any Director under the provision of law or this Agreement, a waiver thereof in writing signed by such Director, whether before or after the time of such meeting, shall be equivalent to the giving of such notice. Attendance of a Director at any meeting of the Board of directors shall constitute a waiver by such Director of notice of such meeting, except when such Director attends such meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened.

4. **Quorum.** Two-thirds of the Directors then in office shall constitute a quorum for the transaction of business; provided that, if less than a quorum is present, the Director(s) present may adjourn the meeting, provided, further, that the Secretary shall notify the absent Directors of such adjourned meeting. Proxies are not permitted. Attendance is required in order to vote on any issue.

5. **Continuation.** Regular or special meetings may be continued to a date, time and place certain by the Board.

4.10 Additional Members. Other governmental entities may be invited to participate as Members in the Authority only upon resolution unanimously approved by the Board and upon such terms and conditions as the Board deems appropriate.

4.11 Execution of Contracts. Except as otherwise provided herein, the Board may authorize any Officer or Officers, agent or agents, employee or employees, to enter into any contract, or execute and deliver any instrument in the name and on behalf of the Authority; provided further, however, that the execution of any contract or instrument creating a financial obligation of the Authority which obligation is not provided for in the Authority's current budget, shall require the consent of all three Directors.

4.12 Negotiable Instruments. All checks, drafts or other orders for payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority,

shall be signed by such Officer or Officers, agent or agents, employee or employees of the Authority, and in such manner as, from time to time, shall be determined by resolution of the Board.

V. **OPERATIONAL MATTERS.**

5.01 Service Charges. The Authority shall assess fees for Services at a rate sufficient to operate and maintain the Facilities, including a reasonable reserve for repair and replacement. The Authority shall impose similar rates for similar types of service. Attached as **Exhibit 4** is the form of budget to be implemented by the Authority. The budget structure shall not be modified in any manner except upon unanimous agreement of the Members. The Board shall adopt a five year operations plan in 1990, which shall be updated annually thereafter not later than September 30 of each year, and shall include projected, but non-binding, rates for Services for the five year period, as well as consideration of expansions of Facilities and other capital outlays.

5.02 Existing Capacities. Each Member owns proprietary capacity in the Castle Pines Plant, as set forth in the attached **Exhibit 6**, and the Town owns all capacity in the Castle Rock Plant. The Authority shall have no right to utilize, in any manner, such proprietary capacity without the written consent and agreement of the Member who owns such capacity. Other than fees for Services as more particularly described above, the Authority shall not assess to the Members any fees as a condition to utilization of such existing proprietary capacity of the Members. Capacity Fees, as defined in Section 7.07, below, may be imposed by the Authority, in connection with expansion of the Facilities as provided in Article VII of this Agreement.

5.03 Billing for Services. The Members shall be billed by the Authority for Services on a bulk basis. The Authority shall

have no obligation to bill or collect fees from any Person receiving Services by or through a Member. Nothing in this Agreement shall preclude a Member from assessing fees for Services to Persons in its respective service area which are in addition to the fees for Services assessed by the Authority. Similarly, nothing in this Agreement shall preclude a Member from assessing, in an amount determined at its sole discretion, a tap fee to Persons in its respective service area.

5.04 Management and Supervision. Under the direction of the Board and the Authority Manager, as provided immediately hereinafter, the plant superintendent shall cooperate, manage, direct and control the operations of the Facilities and do all other acts reasonably necessary to maintain the Facilities and its related assets. **In fiscal 1990, CP Metro shall serve as the Manager of Authority and shall appoint a plant superintendent.** The Authority shall not be obligated to compensate CP Metro or its officers or agents for such managerial service other than such compensation or reimbursement which is currently absorbed into the assessments for service as administered and billed by CP Metro as the Castle Pines Plant operator. **In subsequent years, the Authority Manager shall be designated upon unanimous consent of the Board.** The Authority Manager shall have the following responsibilities:

1. Implement the decisions of the Board, make all expenditures necessary to carry out the directions of the Board and promptly advise the Board if the Authority lacks sufficient funds to implement any such direction or program adopted by it;
2. Purchase or otherwise acquire all material, supplies, equipment, utility and transportation services required for operation of the Facilities;
3. Use his best efforts to keep the Facilities and related assets free and clear of all liens and encumbrances, except for those existing at the time of, or created concurrent with, the acquisition of such assets, mechanic's or materialmen's liens, which shall be released or

discharged in a diligent manner, or liens and encumbrances specifically approved by the Board;

4. Make or arrange for all payments required by permits, contracts and other agreements related to operation of the Facilities and pay all taxes, assessments and like charges affecting operations of the Facilities.

5. Apply for all necessary permits, licenses and approvals; comply with applicable federal, state and local laws and regulations, including without limitation such laws and regulations related to wastewater treatment, health and safety; promptly notify the Board of any allegations of substantial violation thereof; and prepare and file all reports or notices required for operation of the Facilities;

6. Keep and maintain all required, accounting and financial records necessary or incident to operation of the Facilities in accordance with customary procedures in the field of wastewater treatment;

7. Keep the Board apprised of all matters related to the operation of the Facilities by, at the minimum, submitting to the Board monthly reports which include statements of expenditures and comparisons of such expenditures to the budget adopted by the Board, a summary of operation of the Facilities which include amounts of wastewater treated, the source thereof and discharge of treated effluent and such other reports as the Board may reasonably request;

8. Undertake all other activities reasonably necessary to fulfill the foregoing.

5.05 Quarterly Reports. Quarterly, the Board shall cause to be distributed to the Members, a summary of the operations of the Authority's operations and maintenance, as well as a detailed summary of the revenues and expenditures of the Authority for that quarter.

5.06 Deposits and Investments. All funds of the Authority shall be deposited, from time to time, to the credit of the Authority, pursuant to Section 11-10.5-101 C.R.S., in such institutions permitted by law as the Board may select. All investments of Authority funds shall comply with Section 24-75-601

C.R.S., **et seq.** and shall be made only upon unanimous vote of the Board.

5.07 Earnings. The earnings of the Authority shall inure only to the benefit of the Authority.

5.08 Interim Operations. The Board shall meet regularly after execution of this Agreement, and prior to transfer of the Facilities on June 29, 1990. During this interim period, the Board shall develop a financial plan, retain consultants as may be necessary, and seek to resolve with CP Metro and Town such matters as are associated with transfer of the Facilities to the Authority.

5.09 Discharge Permits. After transfer of the Castle Pines Plant and Castle Rock Plant to the Authority, the Authority shall at all times thereafter keep the discharge permits active for such plants.

VI. PROPERTY TRANSFERS.

6.01 Conveyance of Facilities. CP Metro and the Town shall convey to the Authority on or before June 29, 1990 the Castle Pines Plant and the Castle Rock Plant, respectively, on such terms and conditions as are set forth in the Conveyance Agreement, attached as **Exhibit 7**. The remedies under such conveyance agreement shall be limited to specific performance of the agreements.

Prior to the conveyance of the Plants, CP Metro and Town shall retain the right to independently operate the Plants, and the Authority shall have no legal or financial liability arising from operation of the Plants by CP Metro and Town. Accounts receivable of the Members arising prior to the transfer of the Facilities shall remain the proprietary interest of each of them respectively and shall not inure to the benefit of the Authority.

6.02 Plant Interceptor. The Authority may hereafter acquire and operate the interceptor between the Plants upon such terms and conditions as are unanimously approved by the Board. Such acquisition may be considered in the Board's five-year operations plan.

VII. PLANT EXPANSIONS.

7.01 Planning. The five year operations plan required by Section 5.01, above, shall include provisions intended to facilitate the orderly expansion of the Facilities. For purposes of this Agreement, and, in particular, for this Article VII, the term "Expansion" shall refer to and include improvement, upgrade, modification or expansion of the Facilities as are necessary to provide Services to the Members or any individual Member on an uninterrupted basis and in compliance with all applicable laws, regulations or requirements imposed by the Colorado Department of Health.

7.02 Scope of Expansions. Expansions shall be sized to balance the need to achieve economies of scale in capital investment with the Members' desire to minimize the carrying cost of unused capacity over an extended period of time. The Authority shall integrate into its planning process the Castle Rock Plant and the needs of the service area of the Castle Rock Plant. The alternative of Expansion of the Castle Rock Plant shall be studied and considered by the Board, as part of its planning regarding the Services capability of the Authority.

7.03 Self-Funding of Expansions. The Authority may fund at its expense and at such time as it has accumulated sufficient reserves from fees assessed for Services, all or part of an Expansion of the Facilities. Notwithstanding the foregoing, unless and until the rate structure for Services is modified by the Board to include a fee for capital reserves, and sufficient capital

reserves are in fact accumulated, Expansions shall be funded through the procedure outlined in the following provisions of this Article VII.

7.04 Participation in Expansions. Expansion of the Facilities may be initiated either by resolution of the Board or by notice from a Member or Members to the Board. Such resolution or notice shall include, at a minimum, a calculation (by a professional engineer selected by the Board) of the increase in secondary and advanced wastewater treatment capacity resulting from the proposed Expansion, and the estimated cost of such Expansion. Within sixty (60) days of receipt of such notice, each Member shall give notice to the Board of its intention to participate in the expansion. As soon as practicable, but in no event more than thirty (30) days after the time provided herein to give notice of a Members election to participate, the Member or Members who elect to participate in the expansion (the "Participating Members") shall enter into a written agreement with the Authority (the "Expansion Agreement"). The Expansion Agreement shall set forth, at the minimum, the scope of the Expansion, the cost thereof, including the proposed design and construction cost, and the pro rata amount of the Participating Members' respective financial participation.

All costs incurred in connection with the Expansion shall be borne and promptly paid by the Participating Members in accordance with the Expansion Agreement and the Authority shall have no responsibility for payment of any such cost. A Member who is not a Participating Member, or a Member who is a Participating Member but is in material breach of the Expansion Agreement, shall have neither a vote on the Board's consideration of matters related to the Expansion nor the right to acquire through the Authority any use or benefit of the wastewater treatment capacity developed through the Expansion. A Member who elects not to participate in a particular Expansion shall not be precluded from participating in subsequent Expansions of the Facilities.

7.05 Financing Expansions. Except to the extent an expansion of the Facilities is financed through issuance of Authority Bonds as provided below, each Participating Member shall, at the time required by the Expansion Agreement, contribute its share of the costs of Expansion in cash to the Authority, provided however, that the full amount of such contribution shall be required not later than the date the Authority enters into any contract obligating it to pay for any Expansion costs. The funds so contributed shall be held by the Authority in an interest-bearing escrow account which shall be separate from all other funds and accounts of the Authority and which shall not be utilized for any purpose, other than payment of the costs of Expansion.

7.06 Authority Bonds. In addition to the other powers granted herein, and upon such terms and conditions as are approved by the Board, the Authority may issue or participate in the issuance of bonds, notes or other obligations, (the "Authority Bonds") to finance Expansion of the Facilities; provided, however that a Participating Member shall always have the right to separately fund its share of the Expansion as provided in Section 7.05, above. The proceedings concerning the issuance of Authority Bonds, shall address the credit enhancements, if any, of the Authority Bonds required from the Member(s) not cash-funding the Expansion, and the conditions under which such credit enhancements may be called by the Board to support repayment of the Authority Bonds.

7.07 Establishing Capacity Fees. The Board shall establish in the Expansion Agreement a fee, expressed in gallonage of capacity, reflecting the capital cost, together with interested and related charges, incurred in developing capacity in the Expansion by the Authority and/or the Member(s) funding the Expansion (the "Capacity Fee"). The Capacity Fee established by the Authority will be uniformly charged to each Member subject to the imposition

of a surcharge, all as provided in Section 7.09, below; provided however, if there are any components of the Expansion which are of unique or peculiar benefit to one or more of the Members, the Authority's capital cost shall be recovered by imposition of a surcharge on the tap or connection fees to be charged to the Member or Members receiving the special benefit. Such surcharge shall be set forth in the Expansion Agreement.

7.08 Allocated Capacity. Except in the event of an expansion wholly funded by the Authority as contemplated in Section 7.03, above, each Participating Member shall have allocated capacity in any expansion of the Facilities, as set forth in the Expansion Agreement and a Participating Member shall not be required to pay a Capacity Fee for use of capacity which such Participating Member financed. A Participating Member not in breach of the Expansion Agreement shall have the right to purchase, pursuant to written notice describing the amount of capacity sought and proposed terms of said purchase, the allocated capacity of another Participating Member only in the event the Participating Member requesting such additional capacity has exhausted its allocated capacity by placing all such capacity in service, and pays to the Authority the Capacity Fees, all in accordance with Section 7.09, below, provided further, however that such purchase of allocated capacity shall be subject to the following terms and restrictions:

1. A Participating Member may protect from purchase by another Participating Member, that portion of the former's allocated capacity not in service which, at the time of the purchase request or within the ninety (90) day period thereafter, it is or becomes obligated to utilize for the benefit of third parties under a *bona fide* tap purchase or service agreement within the 24 months succeeding the date the purchase request is made ("Protected Capacity"). A Participating Member shall file with the Board, promptly after execution, any contracts creating Protected Capacity in such Member, as well as any amendments or modifications thereto.

2. Allocated capacity may be purchased only in the event a building permit for such capacity is concurrently issued by the applicable governmental entity.

3. The call on allocated capacity shall be satisfied by the Authority proportionately from the capacities of the transferee Members. To illustrate, if two of the Members have 100 and 300 units, respectively, of capacity subject to purchase, and 100 units are purchased, 25 and 75 units, respectively, would be transferred by the Authority.

Nothing in this Agreement shall prohibit a Member from transferring its allocated capacity by agreement with another, on such terms and conditions as they may agree, and such transfer shall be binding upon the Authority upon written receipt of notice thereof from the Member receiving capacity thereby.

7.09 Required Capacity Fees. To the extent that a Participating Member has contributed its share of the costs of an Expansion to the Authority in cash, such Participating Member may fully utilize its allocated capacity, and the Authority shall have no right to assess or collect Capacity Fees from such Participating Member. In all other instances, the Authority shall impose on a Participating Member utilizing its allocated capacity, the Capacity Fee, then in effect. Should a Participating Member desire to utilize the allocated capacity of another Member as authorized by Section 7.08, above, the Authority shall impose upon such Participating Member the required Capacity Fee together with a percentage surcharge in an amount of two (2) points above the annualized prime rate of the United Bank of Denver, compounding annually and accruing from the effective date of the Expansion Agreement through the date the capacity fee and surcharge is received by the Authority. The Capacity Fees together with the surcharge shall be paid by the Authority to the Participating Member as compensation for such allocated capacity.

VIII. WASTEWATER.

8.01 Retention of Ownership. Article VIII addresses the allocation and use by the Members of wastewater which is treated pursuant to this Agreement. The Members acknowledge that the agreements contained herein regarding the use of treated wastewater do not transfer to or otherwise affect either ownership of, or dominion and control over, such wastewater. The treated wastewater, including without limitation the right to use, reuse and successively use the same to extinction remains the separate and distinct property of the respective Members, as do return flows resulting from land application of wastewater pursuant to this Agreement. In addition, to the extent that any of the Members have received a designated allocation of phosphorus discharge into the Chatfield or Cherry Creek Basins, neither the execution of this Agreement, the formation of the Authority, nor transfer of the Facilities to the Authority shall in any way constitute a transfer to the Authority or adjustment as among the Members.

8.02 Golf Course Irrigation. Pursuant to and as more particularly described in certain of the Prior Agreements, CP Metro stores and delivers to the Castle Pines Golf Club, Inc. and Colorado Castle Pines Realty, Inc. all of its treated wastewater for irrigation of the Castle Pines Country Club and the Country Club at Castle Pines Golf Courses (collectively, the "Golf Courses"). During any year that Town is obligated to make available its treated wastewater pursuant to the provision hereof, CP Metro shall apply all of its treated wastewater, together with any treated wastewater of CP North which CP Metro is contractually entitled to use (the "Castle Pines Wastewater") exclusively for irrigation of the Golf Courses.

The Town shall annually make available to CP Metro, without charge, all of its treated wastewater flows up to a maximum of 600 acre feet treated by the Authority to a secondary level at the

Castle Pines Plant, with the cost thereof assessed to the Town by the Authority pursuant to Article V, above, for Golf Course irrigation only; provided, however, that the Town's annual obligation hereunder shall be reduced by:

1. The Castle Pines Wastewater received from the Authority during the irrigation season (approximately April 15 through October 15);
2. Town's treated wastewater which is further treated for discharge by the Authority into Plum Creek at the direction of Town, as may be necessary in the reasonable discretion of Town, to operate any current temporary supply plan or court-approved augmentation plan or any future court-approved augmentation plan developed by or for the benefit of Town, provided however that, to the extent permitted by law or decree, the Town shall fully utilize all sources of tributary surface water or groundwater available to it for augmentation or replacement purposes to satisfy its obligations under such present or future court-approved augmentation plans, which utilization shall, in particular, be prior to its use of nontributary groundwater or the return flows therefrom for said purposes;
3. Treated wastewater the Town is obligated to deliver under the Prior Agreements;
4. The amount of the Town's treated wastewater which CP Metro on either a temporary or permanent basis, elects not to accept from Town provided that CP Metro shall give Town reasonable prior notice of such reduction in the Town's obligation hereunder.

Subject to the contractual obligations set forth herein, the Members agree to cooperate with each other in good faith to fully and efficiently satisfy their respective demands for irrigation by treated wastewater. The provisions of this Section 8.02 create a right, but not the obligation, of CP Metro to receive treated wastewater flows of the Town.

8.03 Costs of Application. Such treated wastewater shall be made available to CP Metro at the storage ponds known as Pond 17,

located on the Castle Pines Golf Course, and Pond 6A, located on the Country Club at Castle Pines Golf Course, at the sole expense of CP Metro and Town. The Town shall not incur any financial obligation to CP Metro or the Authority for capital expenditures, including without limitation the cost of storage and distribution facilities, which may be needed to utilize the treated wastewater furnished by the Town pursuant to the provisions hereof. Town makes no representation that it has sufficient capacity in the reuse components of the Castle Pines Plant to deliver such wastewater for application on the Golf Courses.

8.04 Supercession and Survival. This Article VIII shall supercede any provision in conflict or inconsistent with the Intergovernmental Agreement dated July 3, 1985 between CP Metro and Town, as amended on January 22, 1987, including without limitation, Section 3.11 of said amendment. Notwithstanding any provision hereof to the contrary, in the event the Authority is terminated or dissolved, and provided that CP Metro is not adjudicated to be in default of any obligation to Town created hereunder, the provisions of this Article VIII shall continue to be of full force and effect and shall be binding upon the Town, CP Metro and their respective successors and assigns.

IX. TERMINATION AND DISSOLUTION.

9.01 Termination. This Agreement may be terminated upon unanimous approval of the Board. Further, each of the Members (except the Member causing occurrence of the event) shall be entitled to terminate this Agreement upon notice to the other Members in any of the following events:

1. The filing of a voluntary or involuntary petition under the bankruptcy laws by or against two (2) of the Members;
2. Failure to cure a material breach of this Agreement by a Member within thirty (30) days of receipt of written

notice from any other Member of such breach;

3. Failure of the Authority to meet any commitment for reserved capacity or guaranty of Service of a Member pursuant to any Prior Agreement or this Agreement, more particularly described in Section 10.01, provided that such failure is not due, in whole or in part, to the performance or failure to perform of such Member under the Prior Agreement.

9.02 Manner. Other than as expressly set forth above, the Authority may be dissolved only by administrative or judicial action.

9.03 Distribution on Dissolution. In the event of the termination of this Agreement or dissolution of the Authority, property held by the Authority as a result of conveyance to the Authority by one of its Members, including without limitation the Castle Pines Plant and the Castle Rock Plant and the respective discharge permits, shall be forthwith reconveyed, free and clear of all liens and encumbrances except as to which the assignee Members expressly agree, to the Member which conveyed said property to the Authority. The remaining property and assets of the Authority, including without limitation any expansion of the Facilities, shall be conveyed to the Members, in such proportion as each Member contributed or purchased through the Authority to the total cost of the assets. However, the Members may otherwise provide, by unanimous agreement, for any alternative disposition of assets and property among the Members.

X. PRIOR CONTRACTUAL COMMITMENTS.

10.01 Prior Agreements. Each of the Members are parties to various agreements, including without limitation agreements to provide wastewater treatment to other persons, which are described on **Exhibit 8** (the "Prior Agreements"). The Authority shall have the power to provide Services for, or on behalf of any Member

pursuant to a Prior Agreement; provided, however, that each such Member shall remain solely liable for performance of its obligations under a Prior Agreement and the Authority shall not be the assignee of any Member with respect thereto. The Members expressly intend that the Authority shall not become subject to judicial or administrative proceedings or become liable, at law or in equity, with respect to claims arising from or related to the Prior Agreements, and that, in the event thereof, the Member who is a party to the Prior Agreement then in dispute will indemnify the Authority as provided in Section 11.04, below. Neither the Authority nor the Members acting through the Authority shall take any action or cause any action to be taken which is in violation of or contrary to any of the Prior Agreements. No provision of this Agreement shall be construed to in any manner limit, constrain, restrict or otherwise adversely affect performance by the Members of their respective obligations under the Prior Agreements. In the event that any provision of this Agreement conflicts or is inconsistent with any term of the Prior Agreements, the Prior Agreements shall control. Except as expressly stated herein, the Members warrant and represent to the Authority and each other, that none of the Prior Agreements to which they are a party will adversely and materially affect their respective performance of this Agreement.

10.02 Reactivation of Castle Rock Plant. Upon receipt of notice from Town requesting reactivation and certification that such reactivation is necessary in order for the Town to provide service under the Prior Agreements, as reasonably determined by Town, the Authority shall reactivate the Castle Rock Plant. Such reactivation if requested by Town shall be at the sole expense of Town and Town shall be required to escrow with the Authority the estimated cost of reactivation prior to commencement of the reactivation by the Authority. In the event of reactivation of the Castle Rock Plant at the request of the Town, the Authority shall charge Castle Rock the incremental costs and expenses incurred by

the Authority in operating the Castle Rock Plant, in addition to the Authority's established Service charges. Should the Castle Rock Plant be reactivated at the request of the Board, the reactivation costs shall be borne by the Authority. In the event of reactivation, Town shall make best efforts to meet its obligation to provide wastewater flows for Golf Course Irrigation as provided in section 8.02 above, including, but not limited to, utilizing water made available by exchange.

XI. **MISCELLANEOUS.**

11.01 Fiscal Years. The fiscal year of the Authority shall be the calendar year.

11.02 Principal Place of Business. The principal place of business of the Authority shall be established by the Board of Directors in Douglas County, Colorado. Annually, on or before the 1st day of February of each year, and within thirty (30) days following any change, the Authority shall file with the Division of Local Government of the State of Colorado the name of agent for service of process on the Authority, and the address of the principal place of business of the Authority.

11.03 Capacity Pool. Subject to the Prior Agreements, the Members will make good faith efforts to establish a mechanism whereby a pool of existing capacity is created for sale by the Authority on a first come, first serve basis to the participants, in order to discourage hoarding of capacities.

11.04 Indemnification. Each of the Members severally agrees, unconditionally, immediately and on demand, to indemnify and hold harmless the Authority and the other Members from and against any and all actions, causes of action, claims, counterclaims, demands, liabilities, losses, damages and expenses, including costs and attorneys' fees, that may be sustained or incurred by them in connection with:

1. Adjudicated breaches of any term or provision of this Agreement, including any warranty or representation made herein;
2. Cost or expenses incurred in connection with any expansion of the Facilities as more particularly described above or in an Expansion Agreement, in which event the indemnification obligation arising hereunder shall be limited to the Participating Members.
3. Any action, cause of action, claim, counterclaims or demand arising from or related to a Prior Agreement; and
4. Any action, cause of action, claim, counterclaims or demand made against any Member which also names or otherwise purports to include the Authority or any other Member acting by or through the Authority, including all actions, causes of actions, claims, counterclaims or demands arising in connection with the Bankruptcy of any Member.

Failure of any Member to satisfy an indemnification obligation arising hereunder shall constitute a material breach of this Agreement.

11.05 Representations, Covenants and Warranties of the Members.

In addition to the other representations, warranties and covenants made by the Members herein, the Members make the following representations, warranties and covenants to each other, and may be held liable for any loss suffered by such persons as a consequence of any misrepresentation or breach under this Article XI:

1. Each of the Members has the full right, power and authority to enter into, perform and observe this Agreement.
2. Neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the fulfillment of an compliance with the terms and conditions of this Agreement by the Members will conflict

with or result in a breach of any terms, conditions, or provisions of, or constitute a default under, or result in the imposition of any lien, charge, or encumbrance of any nature under any agreement, instrument, indenture or any judgment, order or decree to which any of the Members are a party or by which any of the Members are bound.

3. This Agreement is the valid, binding and legally enforceable obligation of the Members and is enforceable in accordance with its terms, except as limited by the laws of bankruptcy, moratorium or other creditors rights generally.

4. Each Member shall appoint one properly qualified designee to the Board of the Authority concurrently with the execution of this Agreement.

5. Each Member shall keep and perform all of the covenants and agreements contained herein.

11.06 Time is of the Essence. Time is of the essence hereof; provided, however, that if the last day permitted or the date otherwise determined for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated herein.

11.07 Covenants Running with the Land. The covenants, terms, conditions, and provisions set forth in this Agreement shall be construed as, and during the term of this Agreement remain, covenants running with the property affected hereby, including without limitation the Facilities.

11.08 Notices. Except as otherwise provided herein, all noticed or payments required to given under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, or air freight, to the following addresses:

Town: Town of Castle Rock
Attn: Town Attorney
680 N. Wilcox Street
Castle Rock, Colorado 80104

CP Metro: Castle Pines Metropolitan District
Attn: District Manager
482 Happy Canyon Road
Castle Rock, Colorado 80104

CP North: Castle Pines North
Metropolitan District
Attn: District Manager
482 Happy Canyon Road
Castle Rock, Colorado 80104

All notices or documents delivered or required to be delivered under the provisions of the Agreement shall be deemed received one day after said delivery or three days after mailing. Any Member by written notice so provided may change the address to which future notices shall be sent. The Board of the Authority shall establish, and shall so notify the Members, of the address of the Authority for purposes of providing notice hereunder.

11.09 Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall affect any other provision contained herein, the intention being that such provisions are severable.

11.10 Entirety. Except as expressly provided herein, this Agreement constitutes the entire contract between the Members concerning the subject matter herein, and all prior negotiation, representations, contract, understandings, or agreements pertaining to such matters are merged into and superseded by this Agreement; provided however that this provision shall not affect the Prior Agreements, except as expressly set forth herein.

11.11 Amendment. This Agreement may be amended at any time only by the unanimous written agreement of the Members.

11.12 Assignment. Except as otherwise provided herein, none of the rights, duties or benefits obtained hereunder may be assigned by any Member without the written consent of all Members; provided, however, that in the event of such authorized assignment, the covenants, terms, conditions, and provisions contained herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Any purported assignment not in compliance herewith shall be void and of no effect whatsoever.

11.13 Enforcement. Except as limited herein, the Members agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal and equitable relief as may be available subject to the provisions of the laws of the State of Colorado. In the event of litigation by or among the Members regarding this Agreement the Member's rights and obligations hereunder, the prevailing Member shall be entitled to recover its attorneys' fees and costs incurred in connection therewith.

11.14 Recordation. This Agreement shall be recorded with the Clerk and Recorder of Douglas County, Colorado, upon its execution.

11.15 Enabling Resolutions. Attached as Exhibit 9 are duly enacted resolutions of the respective governing bodies of the Members approving this Agreement and authorizing its execution.

IN WITNESS WHEREOF, the Members have caused this Agreement to be executed and the Agreement shall take effect on the date first written above.

ATTEST:

Gary R. Nigbee
Gary R. Nigbee, Town Clerk

TOWN OF CASTLE ROCK

William H. Schechter, Jr.
William Schechter, Jr., Mayor

APPROVED AS TO FORM AND CONTENT:

Ronald L. Mitchell
Ronald L. Mitchell,
Town Manager

Robert J. Slentz
Robert J. Slentz,
Town Attorney

ATTEST:

By: Paul D. [Signature]

CASTLE PINES METROPOLITAN DISTRICT

By: Samuel Spencer

APPROVED AS TO FORM:

Gary R. White
Counsel - GARY R. WHITE

ATTEST:

By: Paul D. [Signature]

CASTLE PINES NORTH METROPOLITAN DISTRICT

By: [Signature]

APPROVED AS TO FORM:

Gary R. White
Counsel - Gary R. White

EXHIBIT INDEX

Exhibit 1	Description of Castle Pines Plant
Exhibit 2	Description of Castle Rock Plant
Exhibit 3	Initial Board of Directors
Exhibit 4	Form of Budget
Exhibit 5	Indemnification Resolution
Exhibit 6	Existing Proprietary Capacity
Exhibit 7	Conveyance Agreement
Exhibit 8	Prior Agreement
Exhibit 9	Enabling Resolutions

EXHIBIT 1

DESCRIPTION OF CASTLE PINES PLANT

The following is a general description of the facilities to be transferred.

- I. Existing Facility as detailed on plans entitled "Castle Pines Metropolitan District, Wastewater Treatment Facility", dated June, 1981, as prepared by Taranto, Stanton & Tagge, Consulting Engineers, or as modified. The facility generally consists of the following:
 - A. Bar screen facility with two manual bar screens.
 - B. Operations building as modified under the East Plum Creek Wastewater Treatment Facility Expansion contract.
 - C. Process tankage and associated equipment consisting of the following:
 1. Influent mixing well
 2. Four (4) aeration basins
 3. Two (2) clarifiers
 4. Clarifier effluent transfer well
 5. Chlorine contact chamber
 6. Sludge thickener inlet mixing basin
 7. Sludge thickener
 8. Sludge digester basin
 - D. Pump Station/Blower building with effluent wet well, motor control center, centrifugal blowers, chlorine storage and feed room.
 - E. Effluent measuring flume and discharge pipeline.
 - F. All yard piping, aeration equipment and miscellaneous affixed appurtenances related to IA through IE above.
- II. Expansion Facility as detailed on plans entitled "Castle Pines Metropolitan District, East Plum Creek Wastewater Treatment Facility", dated December, 1986, as prepared.
 - A. Administration building with offices, laboratory, plant monitoring and miscellaneous other rooms.
 - B. Headworks building generally including:
 1. Influent basin with two (2) screw pumps.

EXHIBIT 1, Page 2

2. Ear screen and grit chamber room containing one influent measuring channel with mechanical bar screen, grit separator, grit pumps, grit washers and soda ash feeder.
 3. Blower room with three (3) centrifugal blowers.
 4. M.C.C. room containing the plant motor control center and one (1) standby generator.
 5. Mechanical room with heating and ventilating equipment.
- C. Process tankage and associated equipment consisting of the following:
1. Influent channel
 2. Town (2) aeration basins
 3. Clarifier feed channel
 4. Clarifier loading basin
 5. One (1) clarifier
 6. Return activated sludge pump basin
 7. Sludge premix basin
 8. Sludge thickener
 9. Return activated sludge mix basin
 10. Aerobic digester
 11. Valve pit
- D. Effluent pumping and sludge handling building and associated equipment consisting of the following:
1. Chlorine storage room
 2. Chlorine control room
 3. Air handling room
 4. Effluent pump room
 5. Sludge Handling room
 6. Chlorine contact basin
 7. Effluent wet well
 8. Pump and piping gallery
 9. Pressate holding basin
 10. Sludge holding basin
- E. Ferric chloride bulk storage tank and associated equipment.
- F. Yard piping within the property described in Exhibit A and all aeration equipment and affixed appurtenances related to 2A through 2E above.

EXHIBIT 1, Page 3

- III. Reuse effluent storage pond as detailed on plans entitled "Reuse Storage Pond and Piping", dated September, 1987, prepared by Taranto, Stanton & Tagge, Consulting Engineers.
- IV. The transfer and staging systems to Pond 17A on the Castle Pines Golf Club golf course and Pond 6A on the Country Club at Castle Pines golf course including without limitation all piping equipment, valving and other appurtenances associated with these lines (including the 12" force main) and including such easements and rights-of-way as are necessary to insure the Authority's access thereto for all purposes. Ponds 17 and 6A and all appurtenances thereto are expressly not included in the real and personal property described herein.
- V. Interceptor pipeline from the Castle Rock Wastewater Treatment Plant to the East Plum Creek Wastewater Treatment Facility, reserving any capacity therein which is proprietary to Castle Pines Metropolitan District.

together with the following described real property:

A portion of the Southwest Quarter of Section 21, Township 7 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado, described as follows:

Tracts A, B, C & D of the Lower East Plum Creek Regional Wastewater Treatment Facility, A Planned Development, according to the plat as recorded at Reception No. 8734309 in the office of the Douglas County Clerk and Recorder, containing 35.48 acres, more or less, together with:

1. All off-site easements and rights-of-way for interceptor and distribution lines related to operation of the wastewater treatment facilities (exclusive of reuse component);
2. Rights of access and pipeline crossing granted over Denver Rio Grande Western Railroad Company right-of-way (contracts #28588, 28739, 28740, 28741); and

EXHIBIT 2

Description of the Castle Rock Wastewater Treatment Plant:

A. PRELIMINARY TREATMENT

1. Hand Cleaned Bar Screen
2. Mechanically Cleaned Bar Screen
3. Grit Chamber
4. Wastewater Flow Measurement

B. SECONDARY TREATMENT

1. Aeration Basins
2. Secondary Clarifiers
3. Return Sludge Pumps
4. Return Sludge Measurement
5. Scum Pump
6. Waste Sludge Pump
7. Waste Sludge Measurement

C. ADVANCED WASTEWATER TREATMENT

1. Equalization Basin
2. Flash Mix
3. Flocculation
4. Filter
5. Chemical Feed

D. DISINFECTION

1. Contact Tank
2. Chlorine Feed Equipment

E. SLUDGE HANDLING

1. Aerobic Digester
2. Drying Beds

F. AERATION SYSTEM

1. Blowers
2. Activated Sludge Bridge
3. Aerobic Digester Bridge

together with the following described real property:

EXHIBIT 2, Page 2

LEGAL DESCRIPTION - Town of Castle Rock Wastewater Treatment Plant and Lagoons

A tract of land comprised of those three parcels conveyed to the Town of Castle Rock in those deeds recorded in Book 136 at Page 523, in Book 169 at Page 347 and in Book 204 at Page 141, located in the West Half of Section 2, Township 8 South, Range 67 West of the 6th Principal Meridian, Douglas County, Colorado being described as follows:

BEGINNING at the most Easterly corner of that parcel conveyed in said deed recorded in Book 169 at Page 347 being described therein, as bearing North 27°03'22" West, 2941.58 feet from the South Quarter corner of said Section 2; thence along the Southerly line of said parcel conveyed in Book 169 at Page 347 the following courses: South 44°43'28" West, 140.34 feet; thence North 83°59'33" West, 574.98 feet to the Southwest corner of said parcel conveyed in Book 169 at Page 347; thence along the West line of said parcels conveyed in Book 169 at Page 347 and in Book 204 at Page 141 North 17°09'54" West, 841.58 feet to the Northwest corner of said parcel conveyed in Book 204 at Page 141; thence South 84°58'42" East, 676.15 feet to the Northeast corner of said parcel conveyed in Book 204 at Page 141; thence North 19°10'54" West, 195.66 feet to the Northwest corner of said parcel conveyed in Book 136 at Page 523; thence along the Northeasterly line of said parcel conveyed in Book 136 at Page 523 the following courses: South 67°52'54" East, 145.00 feet; thence South 50°57'54" East, 168.50 feet; thence South 44°32'54" East, 105.00 feet; thence South 30°47'54" East, 162.00 feet; thence South 32°06'54" East, 232.50 feet; thence South 39°52'54" East, 116.70 feet to the most Easterly corner of said parcel conveyed in Book 136 at Page 523; thence along the Southerly line of said parcel conveyed in Book 136 at Page 523 the following courses: South 44°27'06" West, 198.00 feet; thence South 62°59'06" West, 193.00 feet to the POINT OF BEGINNING of this description, containing 17.42 acres, more or less.

SURVEYOR'S CERTIFICATE

I, MICHAEL C. CREGGER, do hereby certify that this legal description was prepared by me or under my direct supervision and is true and correct to the best of my knowledge.

December 27, 1989
Date

Michael C. Cregger
MICHAEL C. CREGGER
Professional Land Surveyor
Colorado Registration Number 22564



EXHIBIT 2, Page 3

NOTE: The conveyance of the above-described real property is subject to the conditional obligation of the Town to convey a portion thereof, consisting of approximately 4.5 acres pursuant to the terms of a certain Rule and Order of the Douglas County District Court in Civil Action No. 88-CV-302 recorded in Book 842 beginning at page 652.

EXHIBIT 3

INITIAL BOARD OF DIRECTORS

MEMBER

REPRESENTATIVE

Town

Steve Board,
Councilman-elect

Ronald L. Mitchell,
alternate

CP Metro

Merlin S. Widick,
Board Member

Samuel Spencer,
alternate

CP North

Robert M. McMullen
Board Member

C. Roger Addlesperger
alternate

EXHIBIT 4

FORM OF BUDGET

PERSONNEL SERVICES

Salaries
 O.T./Part Time
 Employment Ins. (Health)
 Unemployment Insurance
 Workman's Compensation
 PERA
 Other
 Education/Training

Subtotal

CONTRACTUAL SERVICES

Audit
 Engineering Fees
 Other (Legal & Misc.)
 Laboratory Fees
 Telemetry

Subtotal

SUPPLIES

Operating Supplies
 Gas & Oil
 Shop (Equipment)
 Laboratory
 Chemicals
 Office
 Other Supplies

Subtotal

GENERAL OFFICE

Postage/Freight
 Travel
 Telephone
 Other Miscellaneous

Subtotal

UTILITIES

Natural Gas
 Electricity
 Other

Subtotal

MAINTENANCE

Bldg. & Improvements
 Equipment M & E
 Repair/Line
 Other (Vehicle Maint.)

Subtotal

MISCELLANEOUS

Equipment
 Discharge Permit
 Insurance
 Other Pch'd. Services
 Rental Expenses
 Depreciation (1.)
 Stream Gauging
 Principle
 Interest

Subtotal

RESERVE

Contingency/Depr. (1)
 Compensation Res.
 Debt Reserve

Subtotal

Total

SHARED COSTS

Admin.
 Insurance
 Gen. Legal

Subtotal

Total

EXHIBIT 5

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
PLUM CREEK WASTEWATER AUTHORITY**

**A RESOLUTION PROVIDING FOR THE DEFENSE AND INDEMNIFICATION
OF DIRECTORS AND EMPLOYEES OF THE AUTHORITY**

WHEREAS, directors and employees of the Plum Creek Wastewater Authority ("Authority") may be subject to claims arising from acts or omissions occurring during the performance of their governmental duties; and

WHEREAS, the Authority desires to encourage persons to serve on its Board of Directors and accept employment with the District, by defending and indemnifying such persons against liability for acts or omissions occurring during the performance of their governmental duties; and

WHEREAS, it is in the best interest of the Authority and its member entities for the Authority to defend and indemnify its directors and employees against liability for acts and omissions which occur within their Scope of Employment and for which such defense and indemnification is not otherwise provided by Colorado law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PLUM CREEK WASTEWATER AUTHORITY THAT:

SECTION 1. Definitions. For purposes of this resolution, the terms below shall be defined as follows:

A. **Director:** includes current and former directors of the Authority, from the date of organization, who are sued for acts or omissions occurring during their term as a director of the Authority.

B. **Employees:** includes current and former employees of the Authority, from the date of organization, who are sued for acts or omissions occurring during their employment with the Authority.

C. **Scope of Employment:** an act or omission of a director or employee of the Authority is within the "scope of employment" if it reasonably relates to the business or affairs of the Authority and the director acted in good faith and in a manner a reasonable person would have believed to be in the best interest of the Authority.

SECTION 2. Tort Actions Governed by the Colorado Governmental Immunity Act.

A. In accordance with Section 24-10-110, C.R.S., the Authority shall pay the costs of defense of and settlements and judgments against a director or employee of the Authority, including reasonable attorney fees, where the action lies or could lie in tort, including any such action brought pursuant to federal law in any court of this State. As a prerequisite to such payment, the director or employee must furnish the Authority with an affidavit stating that: (1) the action against him/her is not purely personal, and (2) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment. However, the Authority shall not pay such judgments and shall seek reimbursement from the director or employee for the reasonable costs of his/her defense, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that the injuries did not arise out of an act or omission of the director or employee occurring during his/her term or employment with the Authority and within the Scope of Employment.

B. The Authority does not hereby waive the notice requirements of its directors and employees as set forth in Section 24-10-110(2), C.R.S.

SECTION 3. Other Actions Except Criminal. The Authority hereby agrees to pay the costs of defense and settlements and judgments against its directors and employees, including reasonable attorney fees, for all other actions, including but not limited to, actions which lies or could lie in contract, or arise under state or federal laws and is not governed by Section 24-10-110, C.R.S., except for criminal actions. As a prerequisite to such payment, the director or employee must furnish the Authority with an affidavit stating that: (1) the action against him/her is not purely personal, and (2) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment. The Authority shall not pay such judgments and shall be reimbursed by the director or employee for the reasonable costs of his/her defense, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that the injuries did not arise out of an act or omission of the director or employees occurring during his/her term or employment with the Authority and within the Scope of Employment.

SECTION 4. Criminal Actions. The Authority hereby agrees to pay the costs of defense, including reasonable attorney fees, and any fines or penalties assessed, where a criminal action is brought against its directors or employees for acts or omissions occurring during their term or employment with the Authority and within the Scope of Employment. As a prerequisite to such payment, the director or employee must furnish the Authority with an

affidavit stating that: (1) the action against him/her is not purely personal, (2) to his/her reasonable belief, the act or omission upon which the claim is based occurred within the Scope of Employment, and (3) he/she had no reasonable cause to believe his/her conduct was unlawful. However, the Authority shall not pay such fines or penalties and shall be reimbursed by the director or employee for the reasonable costs of his/her defense, including reasonable attorney fees, where it is determined by a court of competent jurisdiction that:

A. The injuries did not arise out of act or omission of the director or employee occurring during his/her term or employment with the Authority and within the Scope of Employment; or

B. The employee or director had reasonable cause to believe his/her conduct was unlawful.

SECTION 5. Miscellaneous Provisions. The following provisions shall apply to any of the actions discussed in Sections 2, 3 and 4 above:

A. Consent to Compromise or Settlement. The Authority shall pay no judgment or settlement of claims against its director or employee where the latter has compromised or settled the claim without the Authority's written consent.

B. Legal Representation of the Director or Employee. The Authority's legal counsel shall serve as counsel to the director or employee, unless it appears to such counsel that the interest of the Authority and the director or employee may be adverse. In the latter event, the director or employee may select separate counsel to be approved in writing by the Authority. The director or employee shall cooperate with the Authority and its legal counsel in his defense.

C. Director's or Employee's Costs. The Authority shall not be responsible for costs to its directors or employees associated with time spent in giving depositions, testifying or otherwise cooperating with their defense.

SECTION 6. No Waiver of Sovereign Immunity. By the adoption of this Resolution, the Authority does not waive its defense of sovereign immunity as to any action.

SECTION 7. No Waiver of Insurance Coverage. The approval and adoption of this Resolution shall not constitute a waiver of insurance coverage with respect to any liability assumed by the Authority under this Resolution. The Resolution shall render the Authority secondarily liable in the event the Authority's insurance does cover such liability and the conditions of this Resolution are met.

SECTION 8. Liberal Construction. The purpose of this Resolution is to protect directors and employees of the Authority against personal liability for their actions taken on behalf of the Authority. Therefore, it is the intent of the Authority that this Resolution be liberally construed in favor of protection of such directors and employees.

SECTION 9. Invalidation. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

SECTION 10. Renewal of Indemnifications. All indemnifications described in this Resolution shall be valid during the current fiscal year, and shall be considered automatically renewed on each January 1 thereafter, unless repealed by resolution of the Board of Directors of the Authority on or before January 30 of the then current fiscal year.

APPROVED AND ADOPTED THIS _____ day of January, 1990.

[S E A L]

PLUM CREEK WASTEWATER AUTHORITY

By: _____

ATTEST:

By: _____
Title: _____

EXHIBIT 6

EXISTING PROPRIETARY CAPACITY

<u>RESERVED CAPACITY IN FACILITIES (GPD)</u>	<u>CPMD*</u>	<u>CPC</u>	<u>CPNMD</u>	<u>CASTLE ROCK</u>	<u>VCRMD</u>	<u>MMD</u>	<u>TOTAL CAPACITY (MGD)</u>
Primary/Secondary	203,250	0	581,333	746,667	183,750	585,000	2.30
Advanced Wastewater Treatment	71,250	0	95,000	500,000	121,250	212,500	1.00
Reuse/Land App.	63,200	0	102,600	0	144,700	229,500	0.54
Phase 1 Interceptor	36,720	37,440	0	0	3,517,920	7,920	3.60
Phase 2 Interceptor	4,896	4,992	0	0	469,056	1,056	0.48

* In addition to these capacities, CPMD retains interest in 230,000 gpd of "float", which is realized upon subsequent expansion.

EXHIBIT 7CONVEYANCE AGREEMENT

This Conveyance Agreement is executed this ___ day of _____, 1989 between the Town of Castle Rock, a home rule municipal corporation (the "Town"), the Castle Pines Metropolitan District, a quasi-governmental agency ("CP Metro") and the Plum Creek Wastewater Authority, a quasi-governmental entity (the "Authority").

RECITALS

A. The Town, CP Metro, and Castle Pines North Metropolitan District ("CP North") have entered into that certain agreement entitled "Establishing Agreement For The Plum Creek Wastewater Authority" (the "Establishing Agreement") for the purposes of establishing a separate legal entity to provide wastewater service;

B. The Establishing Agreement contemplates that the Town will convey to the Authority its wastewater treatment facilities (referred to in the Establishing Agreement as the "Castle Rock Plant") and CP Metro will convey to the Authority its wastewater treatment facilities (referred to in the Establishing Agreement as the "Castle Pines Plant") for operation by the Authority in accordance with the terms and conditions set forth in the Establishing Agreement;

C. This Conveyance Agreement sets forth the terms and conditions under which the Town and CP Metro shall convey their respective Plants to the Authority.

Now, therefore, in consideration of the premises, and the mutual covenants hereinafter set forth, the parties agree as set forth in this Conveyance Agreement.

AGREEMENT

1. Agreement to Convey. Subject to the terms and conditions set forth in this Conveyance Agreement, the Town hereby agrees to transfer and convey to the Authority all of its right, title and interest in and to the real and personal property commonly known as the Castle Rock Plant (as more particularly defined in subparagraph 1(c) below) and CP Metro hereby agrees to transfer and convey to the Authority all of its right, title and interest in and to the real and personal property commonly known as the Castle Pines Plant (as more particularly defined in subparagraph 1(d) below).

(a) Real Property Conveyances. The conveyance of the Castle Rock Plant to the Authority shall include the Town's interest in the real property comprising and associated with the Town's wastewater treatment facilities described as follows: (1)

the parcel of land upon which the plant is located as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "CR Land"); (ii) all easements, rights of way, vacated roads, streets and alleys adjacent or appurtenant to the CR Land; and, (iii) all buildings, fixtures and improvements on the CR Land (collectively referred to herein as the "CR Real Property").

The conveyance of the Castle Pines Plant to the Authority shall include CP Metro's interest in the real property comprising and associated with CP Metro's wastewater treatment facilities described as follows: (i) the parcel of land upon which the wastewater treatment plant is located as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "CP Land"); (ii) all easements, rights of way, vacated roads, streets and alleys adjacent or appurtenant to the CP Land; and (iii) all buildings, fixtures and improvements on the CP Land (collectively referred to herein as the "CP Real Property").

(b) Personal Property Conveyances. The conveyance of the Castle Rock Plant also shall include the Town's interest in the personal property used in the operation of its wastewater treatment facilities described as follows: (i) all licenses, permits, contracts, warranties and guarantees, security and damage deposits, any tradenames associated therewith, and all other intangible personal property associated with or related to the wastewater treatment operations on the CR Real Property; and, (ii) all furnishings, equipment, machinery, supplies and other tangible personal property owned by the Town and associated with and used on the Real Property for operation of the wastewater treatment facilities (collectively referred to herein as the "CR Personal Property"). The CR Personal Property is described in part and without limitation on Exhibit A.

The conveyance of the Castle Pines Plant also shall include CP Metro's interest in the personal property used in the operation of its wastewater treatment facilities described as follows: (i) all licenses, permits, contracts, warranties and guarantees, security and damage deposits, the trade name "Lower East Plum Creek Regional Wastewater Treatment Plant" and all variations thereof, and all other intangible personal property associated with or related to the wastewater treatment operations on the CP Real Property; and (ii) all furnishings, equipment, machinery, supplies and other tangible personal property owned by CP Metro and associated with and used on the CP Real Property for operation of the wastewater treatment facilities (collectively referred to herein as the "CP Personal Property"). The CP Personal Property is described in part and without limitation on Exhibit A.

(c) Castle Rock Plant. The CR Real Property and CR Personal Property are collectively referred to herein as the "Castle Rock Plant".

(d) Castle Pines Plant. The CP Real Property and CP Personal Property are collectively referred to herein as the "Castle Pines Plant".

2. Consideration. The transfers contemplated by this Conveyance Agreement are for the purpose of, among other things, establishing the Authority as the legal entity which will provide wastewater treatment facilities for CP Metro, CP North, the Town and the surrounding region. In return for the transfers, the Town and CP Metro shall receive, among other things, their rights under the Establishing Agreement. No separate consideration shall be paid or required as a condition to the conveyances provided for under this Conveyance Agreement.

3. Evidence of Title. The Town shall furnish to the Authority, at the Town's expense, a current commitment for an owner's title insurance policy in the amount of \$_____ on or before February 1, 1990. The Authority may require the Town to provide copies of instruments (or abstracts of instruments) listed in the schedule of exceptions to the title commitment (the "CR Exceptions"). This requirement shall pertain only to instruments shown of record in the office of the Clerk and Recorder of Douglas County, Colorado. The title insurance commitment, together with any copies or abstracts of instruments furnished pursuant to this subparagraph, constitute the title documents (the "CR Title Documents"). The Authority must request the Town to furnish copies or abstracts of instruments listed in the schedule of Exceptions no later than 60 (sixty) calendar days after the Authority's receipt of the title insurance commitment. The Town shall cause the title insurance policy to be delivered to the Authority as soon as practicable after the closing provided for in paragraph 7 of this Conveyance Agreement and shall pay the premium for the policy.

CP Metro shall furnish to the Authority, at CP Metro's expense, a current commitment for an owner's title insurance policy in the amount of \$_____ on or before February 1, 1990. The Authority may require CP Metro to provide copies of instruments (or abstracts of instruments) listed in the schedule of exceptions to the title commitment (the "CP Exceptions"). This requirement shall pertain only to instruments shown of record in the office of the Clerk and Recorder of Douglas County, Colorado. The title insurance commitment, together with any copies or abstracts of instruments furnished pursuant to this subparagraph, constitute the title documents (the "CP Title Documents"). The Authority must request CP Metro to furnish copies or abstracts of instruments listed in the schedule of Exceptions no later than 60 (sixty) calendar days after the Authority's receipt of the title insurance commitment. CP Metro shall cause the title insurance policy to be

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delivered to the Authority as soon as practicable after the closing provided for in paragraph 7 of this Conveyance Agreement and shall pay the premium for the policy.

4. Title.

(a) Title Review. The Authority shall have the right to inspect the CR Title Documents and the CP Title Documents. Written notice by the Authority of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of the Authority and given to the Town or CP Metro, as applicable, on or before 10 calendar days after the Authority receives the Title Documents, or within 5 days after receipt by the Authority of any Title Documents or endorsements adding new Exceptions to the title commitment together with a copy of the Title Document adding new Exceptions to the title commitment. If the Town or CP Metro, as applicable, does not receive such notice from the Authority by the date specified above, the Authority shall be deemed to have accepted the condition of title as disclosed by the respective Title Documents as satisfactory.

(b) Matters Not Shown By the Public Records. The Town shall deliver to the Authority, on or before February 1, 1990 true copies of all surveys in the Town's possession pertaining to the Castle Rock Plant and shall disclose to the Authority all easements, liens or other title matters not shown by the public records of which the Town has actual knowledge. The Authority shall have the right to inspect the Castle Rock Plant to determine if any third party has any rights in the plant not shown by public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory conditions disclosed by the Town or revealed by such inspection shall be signed on behalf of the Authority and given to the Town on or before April 1, 1990. If the Town does not receive the Authority's notice by said date, the Authority shall be deemed to have accepted title subject to such rights, if any, of third parties, of which the Authority has actual knowledge.

CP Metro shall deliver to the Authority, on or before February 1, 1990, true copies of all surveys in CP Metro's possession pertaining to the Castle Pines Plant and shall disclose to the Authority all easements, liens or other title matters not shown by the public records of which CP Metro has actual knowledge. The Authority shall have the right to inspect the Castle Pines Plant to determine if any third party has any rights in the plant not shown by public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory conditions disclosed by CP Metro or revealed by such inspection shall be signed on behalf of the Authority and given to the CP Metro on or before April 1, 1990. If CP Metro does not receive the Authority's notice by said date, the Authority

shall be deemed to have accepted title subject to such rights, if any, of third parties, of which the Authority has actual knowledge.

The Town and CP Metro state and represent to the Authority that, as of the date hereof, no third party has the right to possession of the Castle Rock Plant and Castle Pines Plant, respectively.

(c) Town's Obligation to Cure. If the Town receives notice of unmerchantability of title or of any other unsatisfactory title condition as provided in subsection (a) or (b) above, the Town shall use reasonable efforts to correct said unsatisfactory title condition prior to the date of closing. If said unsatisfactory title condition is not corrected on or before the date of closing, this Conveyance Agreement may be terminated by the Authority subject to the provisions of this Agreement; provided, however, the Authority may, by written notice delivered to the Town on or before closing, waive objections to any unsatisfactory title conditions.

(d) CP Metro's Obligation to Cure. If CP Metro receives notice of unmerchantability of title or of any other unsatisfactory title condition as provided in subsection (a) or (b) above, CP Metro shall use reasonable efforts to correct said unsatisfactory title condition prior to the date of closing. If said unsatisfactory title condition is not corrected on or before the date of closing, this Conveyance Agreement may be terminated by the Authority subject to the provisions of this Agreement; provided, however, the Authority may, by written notice delivered to CP Metro on or before closing, waive objections to any unsatisfactory title conditions.

5. Actions Pending Closing. Prior to closing, neither the Town nor CP Metro shall take any action, or fail to take any action, the result of which is to impair in any material respect the physical condition of, or the title to, the Castle Rock Plant or the Castle Pines Plant, respectively.

6. Date of Closing. The date of closing shall be June 29, 1990, or by mutual agreement, at an earlier date. The hour and place of closing shall be designated by the Authority.

7. Closing: Transfer of Title. Subject to compliance by the Authority with the other terms and provisions hereof, the Town shall execute and deliver a good and sufficient Special Warranty Deed to the Authority on the closing date, conveying the Castle Rock Plant free and clear of all liens and encumbrances except the following: (a) those matters reflected by the Title Documents accepted by the Authority in accordance with paragraph 4 above; and (b) the applicable building and zoning regulations.

Subject to compliance by the Authority with the other terms and provisions hereof, CP Metro shall execute and deliver a good and sufficient special warranty deed to the Authority on the closing date, conveying the Castle Pines Plant free and clear of all liens and encumbrances except the following: (a) those matters reflected by the Title Documents accepted by the Authority in accordance with paragraph 4 above; and (b) the applicable building and zoning regulations.

8. Closing Costs, Documents and Services. The Authority shall pay the closing costs at closing, except as otherwise provided herein. The parties shall sign and complete all customary and required documents at or before closing. Fees for real estate closing and settlement services shall not exceed \$100 and shall be paid at the closing by the Authority.

9. Proration. Town and CP Metro warrant to the Authority that the Castle Rock Plant and the Castle Pines Plant, respectively, are not subject to property taxes or similar assessments and charges.

10. Possession. Possession of the Castle Rock Plant and Castle Pines Plant shall be delivered to the Authority at closing subject to the terms of the Establishing Agreement.

11. Condition of and Damage to the Plants. The Castle Rock Plant and Castle Pines Plant shall be conveyed to the Authority in its present condition, ordinary wear and tear accepted. If either Plant shall be damaged by fire or other casualty prior to the time of closing in the amount of not more than 10% of the total replacement cost, the Town or CP Metro, as applicable, shall be obligated to repair the same before the date of closing. If such damage is not repaired within such time, or if damages exceed such sum, this Conveyance Agreement may be terminated at the option of the Authority. Should the Authority elect to carry out this Conveyance Agreement despite any damage, the Authority shall be entitled to credit for all insurance proceeds resulting from such damage; provided, however, that the Authority shall not be obligated to expend any amount in addition to the insurance proceeds to repair or replace such damage. If any of the Personal Property should be damaged between the date of this Conveyance Agreement and the date of closing, then the Town or CP Metro, as applicable, shall be liable for the repair or replacement of such Personal Property with property of a similar size, age and quality or equivalent credit, less any insurance proceeds received by the Authority covering such repair or replacement.

12. Town's Representations and Warranties. The Town represents and warrants as follows:

(a) Authorization. The Town has full power and authority to enter into this Agreement and to carry out the

transactions contemplated hereby. This Agreement has been duly and validly executed and delivered and no other action by the Town is necessary. This Agreement is a valid and binding obligation of the Town enforceable in accordance with its terms except to the extent that (i) the enforcement of this Agreement is subject to bankruptcy, reorganization and similar laws of general application, and (ii) the enforceability of any particular provision of this Agreement under principles of equity or the availability of equitable remedies, such as specific performance, injunctive relief, waiver or other equitable remedies, is subject to the discretion of courts.

(b) Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any person or entity is required in connection with the execution, delivery and performance of this Agreement by the Town and the consummation of the transactions contemplated thereby. The form of resolution authorizing the execution of this Conveyancing Agreement is attached hereto as Exhibit C.

(c) Authority. The Town has the right, power, and authority to convey the Castle Rock Plant to the Authority. Except as otherwise provided in this Agreement, the Authority, by accepting conveyance of the Castle Rock Plant pursuant to this Agreement, shall not become liable for any of the Town's obligations with respect to the Castle Rock Plant accruing prior to the date of the closing, nor any other obligation therefor except as specifically set forth in the Establishing Agreement.

(d) Compliance with Stipulation. Execution of this Conveyancing Agreement constitutes compliance with paragraph 4 of that certain Stipulation, dated December 21, 1989, in Civil Action No. 88-CV-666.

13. CP Metro's Representations and Warranties. CP Metro represents and warrants as follows:

(a) Authorization. CP Metro has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered and no other action by CP Metro is necessary. This Agreement is a valid and binding obligation of CP Metro enforceable in accordance with its terms except to the extent that (i) the enforcement of this Agreement is subject to bankruptcy, reorganization and similar laws of general application, and (ii) the enforceability of any particular provision of this Agreement under principles of equity or the availability of equitable remedies, such as specific performance, injunctive relief, waiver or other equitable remedies, is subject to the discretion of courts.

(b) Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any person or entity is required in connection with the execution, delivery and performance of this Agreement by CP Metro and the consummation of the transactions contemplated thereby. The form of resolution authorizing the execution of this Conveyance Agreement is attached hereto as Exhibit D.

(c) Authority. CP Metro has the right, power, and authority to convey the Castle Pines Plant to the Authority. Except as otherwise provided in this Agreement, the Authority, by accepting conveyance of the Castle Pines Plant pursuant to this Agreement, shall not become liable for any of Castle Pines' obligations with respect to the Castle Pines Plant accruing prior to the date of the closing, nor any other obligation therefor except as specifically set forth in the Establishing Agreement.

(d) Compliance with Stipulation. Execution of this Conveyancing Agreement constitutes compliance with paragraph 4 of that certain Stipulation, dated December 21, 1989, in Civil Action No. 88-CV-666.

14. Deactivation of the Castle Rock Plant. The parties acknowledge that the Town intends to deactivate the Castle Rock Plant. The Town shall take all actions necessary to complete the deactivation prior to closing. The Town shall be solely responsible for all costs and expenses incurred in connection with the deactivation.

Should the Town fail to deactivate the Castle Rock Plant prior to closing and transfer of such facility to the Authority, the Town shall remain solely responsible for all costs and expenses of operation and maintenance of the Castle Rock Plant and shall indemnify the Authority for liability, of any nature, arising from the operation of the Castle Rock Plant until such plant is conveyed to the Authority. In any event, the Castle Rock Plant shall be deactivated no later than December 31, 1990.

15. Default. Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, the Authority may, at its option, either terminate this Conveyance Agreement or treat it as being in full force and effect and exercise the right to specific performance hereof. The rights and obligations concerning the Town's agreement to convey the Castle Rock Plant to the Authority are intended to be separate and severable from the rights and obligations concerning CP Metro's agreement to convey the Castle Pines Plant to the Authority. Nothing in this Conveyance Agreement shall be deemed to create any remedies or rights in the Town in the event of a default by CP Metro or to create any remedies or rights in CP Metro in the event of a default by the Town.

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16. Costs and Expenses. Anything to the contrary herein notwithstanding, in the event of any litigation or arbitration arising out of this Conveyance Agreement, the court shall award the prevailing party all reasonable costs and expenses, including attorneys' fees.

17. Inspection. The Authority or its designee shall have the right to inspect the physical condition of the Castle Rock Plant or the Castle Pines Plant at the Authority's expense. If written notice of any unsatisfactory conditions signed by the Authority is not received by the town or CP Metro on or before April 1, 1990, the physical condition of the respective Plants shall be deemed to be satisfactory to the Authority. If written notice of any unsatisfactory conditions signed by the Authority is given as set forth in this paragraph and if the Authority and the Town or CP Metro have not reached a written agreement of settlement thereof on or before June 15, 1990, this Conveyance Agreement shall terminate at the election of the Authority and subject to the terms hereof. The Authority is responsible and shall pay for all damages which occur to the Castle Rock Plant or the Castle Pines Plant as a result of such inspections.

18. Civil Action No. 88-CV-666. This Agreement, and the terms, conditions, covenants and agreements contained herein shall be incorporated into a final judgment and decree in Civil Action No. 88-CV-666, Douglas County District Court.

19. Termination. In the event this Conveyance Agreement is terminated, all payments and things of value received hereunder shall be returned and parties shall be relieved of all obligations hereunder.

20. No Recording. None of the parties shall record, or cause the recording of this Agreement in the real property records of Douglas County, Colorado. Any such recording shall be deemed a material default under this Agreement; provided, however, that a memorandum of this Conveyance Agreement mutually agreeable to the Town, CP Metro and the Authority may be so recorded.

21. Survival of Representations, Warranties and Covenants. The parties intend that the representations, warranties and

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covenants of each of them shall survive the closing and shall not be deemed merged into the deeds or other conveyance documents.

Executed this ____ day of _____, 1989.

TOWN OF CASTLE ROCK

By: _____
Phillip S. Melody, Mayor

ATTEST:

Phyllis L. Brown
Town Clerk

CASTLE PINES METROPOLITAN DISTRICT

By: _____
President

ATTEST:

Secretary

PLUM CREEK WASTEWATER AUTHORITY

By: _____
President

ATTEST:

Secretary

(F:\CLIENTS\1835.3\DABCA.001)

EXHIBIT 8

PRIOR AGREEMENTS

(Note: All Amendments to the listed documents without further reference, are incorporated)

<u>Date Recording</u>	<u>Caption</u>	<u>Parties</u>	<u>Reception No.</u>
07/26/84	Intergovernmental Agreement	CP Metro & CP North	
07/26/84	Lease	CP Metro & CP North	
07/03/85	Agreement	CP Metro & Town	8709319
09/26/83	Resolution Authorizing IGA with Villages D8 & Park Funding	Town & Villages D8	
03/20/86	Lease	CP Metro & Town	8709320
03/20/86	Sub-Lease	Town & Villages D-8	
03/27/86	Plant Expansions Contract	CP Metro, CP North & Town	8709322
03/17/86	Amendment #1 to IGA	CP Metro & Town	8709324
	Amendment #1 to IGA	CP Metro & CP North	
	Amendment #2 to IGA	CP Metro & CP North	
01/22/87	Amendment #1 to IGA	CP Metro & Town	
03/20/87	Construction Agreement	CP Metro, CP North & Town	8711355
03/27/87	Amendment #1 to IGA	Town & Villages D-8	
06/06/87	Memorandum of Understanding	CP Metro, CP North & Town	8810965
06/18/87	Reuse Design Contract	CP Metro, CP North & Town	8810964
_____	Amendment #1 to Reuse Construction Agreement	CP Metro, CP North & Town	8810967
_____	Agreement	Town, CP Metro & CP North	8820358

<u>Date Recording</u>	<u>Caption</u>	<u>Parties</u>	<u>Reception No.</u>
03/27/86	Plant Expansion Escrow	Town, CP Metro, CP North, Villages & Meadows	8709323
03/27/86	Plant Expansion Escrow	CP Metro, CP North & Town	
03/12/87	Construction Escrow	Town, CP Metro, CP North, Villages Meadows	8709325
06/18/87	Reuse Planning & Design Escrow Agreement	CP Metro, CP North, Town, Meadows D-4, Villages 4, & First National Bank of Castle Rock	
	Reuse Design Escrow	Town, CP Metro, CP North, Villages & Meadows	
	Reuse Construction Escrow	Town, CP Metro, CP North, Villages & Meadows	
02/20/86	Intergovernmental Agreement	Villages D8, Town, & Park Funding	8702137
02/20/06	Plant Expansion Contract	Villages D8 & Town	8709331
03/26/87	Intergovernmental Agreement	Villages D4 & Town	
03/27/87	Amendment #1 to IGA	Villages D4 & Town	8711352
06/26/87	Intergovernmental Agreement	Villages D4 & Town	8810966
02/04/86	Intergovernmental Agreement	Meadows D1-8 & Lincoln S&L, & Town	NR
02/04/86	Intergovernmental Agreement	Meadows D-4, Lincoln & Town	
03/27/86	Plant Expansion	Meadows D1-8 & Town	NR
03/27/86	Escrow No. 1	CP Metro, CP North, Meadows D1-8, Lincoln	

<u>Date Recording</u>	<u>Caption</u>	<u>Parties</u>	<u>Reception No.</u>
		S&L, Villages D-8 & Park Funding	
09/17/87	Intergovernmental Agreement	Meadows D8 & Town	NR
09/17/87	Intergovernmental Agreement	Meadows D4 & Town	NR
09/17/87	Amendment #1 to IGA	Meadows D4 & Town	NR
10/11/85	Intergovernmental Agreement	Town & Villages D8	8600181
04/11/86	Intergovernmental Agreement	Town & Villages D9	8604909
07/22/85	Intergovernmental Agreement	Town & Meadows D1-8	NR
Various Dates	Sewer System Development Fee Payment Agreements	Town, BDC Group, Crystal Valley D1-2, First Capitol Corporation, Castle Highlands/Rampart Inc., Plum Creek Pointe, Ltd., Westfield D1, MSP Investment Co., Villages D4, Plum Creek Metro District, Bellamah Community Development	NR
03/12/87	Escrow Agreement	CP Metro, CP North, Town, Meadows 1-8, Lincoln S&L, Villages 8 & Park Funding	
Various Dates	Villages Annexation Agreements	Various parties	
12/06/84	Annexation and Development Contract	Town, Lincoln Meadows Limited Partnership	342954
09/26/85	Annexation and Development Contract	Town & Lincoln S&L	
07/27/82	Development Contract Plum Creek	Town, EDI-Castle Rock Landholdings; Ltd.	

<u>Date Recording</u>	<u>Caption</u>	<u>Parties</u>	<u>Reception No.</u>
11/22/85	Annexation and Development Contract (Plum Creek South)	Town & EDI	369874
11/22/85	Annexation and Development Contract (Plum Creek South - North Portion)	Town & EDI	369875
07/31/85	Annexation and Development (Plum Creek West)	Town & EDI	359807
12/20/85	Intergovernmental Agreement	Town & Plum Creek Metropolitan District	371818
11/15/84	Annexation and Development Contract (MSP Investment)	Town & Investment MSP	343354
11/15/84	Annexation and Development Contract (Bellamah)	Town & Bellamah Annexations	343356
11/___/84	Annexation and Development Contract (Castle Highlands)	Town, Resource Exploration and Mining, Inc.	342930
11/15/84	Annexation and Development Contract (Creekside Annexation)	Town, Sheldon & Margaret Boone	343352
11/29/84	Annexation and Development Contract (Heckendorf Ranch)	Town, Francis & Darlene Heckendorf	NR
01/08/82	Annexation Contract (Miller Ranch)	Town, Miller Ranch Business Tech Park	258545
03/21/85	Annexation and Development Contract (Oaks)	Town & First Capitol Corporation	355333
07/21/81	Sewage Effluent	Town & Cedar Hill Cemetery Association	NR
07/22/77	_____	Town Walter J. & Ida M. Scott	203963

<u>Date Recording</u>	<u>Caption</u>	<u>Parties</u>	<u>Reception No.</u>
05/02/89	Tap Purchase and Debt Service Guaranty Agreement	CP Metro Fidelity Castle Pines, Ltd USF&G	NR
12/12/85	Service Agreement	CP Metro Silver Heights Water & Sanitation District	8802358
06/10/87	Assignment of Contractual Intra. IGA & Plant Exp. Agreement	Villages 8 & Villages 4	
11/02/87	Memorandum of Understanding	CP Metro & Town	870164
09/24/87	Reuse Construction Agreement	CP Metro, CP North & Town	
09/24/87	Escrow Agreement (No. 3)	CP Metro, CP North, Town, Meadows 1-8, Villages 4 & CP Commercial	
05/02/89	Country Club Effluent Agrmt.	CP Metro & Colorado CP Realty, Inc.	
05/18/81	Agreement for Provision of Domestic Water Service & for Disposal of Effluent	CP Metro & CP Golf Club, Inc.	

EXHIBIT 9

RESOLUTION NO. 89-132

A RESOLUTION APPROVING THE
AGREEMENT ESTABLISHING THE
PLUM CREEK WASTEWATER AUTHORITY

WHEREAS, the Town of Castle Rock, the Castle Pines Metropolitan District, and the Castle Pines North Metropolitan District have agreed to the terms and conditions for formation of a regional wastewater authority, for the reasons stated in the recitals to the Establishing Agreement for the Plum Creek Wastewater Authority, attached as Exhibit A.


NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

SECTION 1. Approval. The Establishing Agreement for the Plum Creek Wastewater Authority, in the form as attached as Exhibit A is hereby approved and the Mayor and Town Clerk are hereby acknowledged and empowered to execute the Agreement, by and on behalf of the Town of Castle Rock.

PASSED, APPROVED AND ADOPTED this 14 day of December, 1989, by the Town Council of the Town of Castle Rock, Colorado on first and final reading, by a vote of 5 for and 0 against.

ATTEST:

TOWN OF CASTLE ROCK

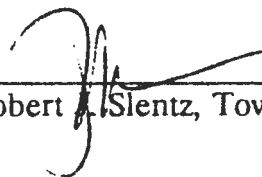


Gary R. Higbee, Town Clerk



Phillip S. Melody, Mayor

APPROVED AS TO FORM:



Robert J. Slentz, Town Attorney

RESOLUTION

WHEREAS, the Castle Pines North Metropolitan District ("Castle Pines North"), the Castle Pines Metropolitan District ("Castle Pines"), and the Town of Castle Rock (the "Town"), (collectively, the "Parties") have been involved in certain litigation (the "Litigation") concerning the Lower East Plum Creek Regional Wastewater Treatment Plant (the "Plant") owned by Castle Pines; and

WHEREAS, Castle Pines North, Castle Pines, and the Town have heretofore entered into a Settlement Agreement and Stipulation for Dismissal of said Litigation, which "Settlement Agreement" contemplates the formation of the Plum Creek Wastewater Authority (the "Authority") and the conveyance of certain facilities, including the Plant to the Authority; and

WHEREAS, Castle Pines North, Castle Pines, and the Town have determined it to be in their mutual best interest to create the Authority for the purpose of operating, owning, and maintaining the Plant; and

WHEREAS, the terms of an Establishing Agreement for the Authority have been reviewed by the Board of Directors of Castle Pines; and

NOW, THEREFORE, be it hereby resolved by the Board of Directors of Castle Pines that:

1. The Establishing Agreement for the Plum Creek Wastewater Authority attached hereto is hereby approved and the President and Secretary to the Board are hereby authorized to execute said Agreement on behalf of Castle Pines.

2. Castle Pines hereby designates Merlin Widick as its Director representative and Samuel Spencer as its alternate Director representative to serve on the Board of Directors of the Plum Creek Wastewater Authority.

3. Merlin Widick and Paul V. Dannels are hereby authorized to execute the "Conveyance Agreement" as required by the Establishing Agreement.

4. To the knowledge of the Board of Directors of Castle Pines, no further authorization or approval is required from the

Board of Directors nor from any other person or entity in order for Castle Pines to perform its obligations under the agreements referred to herein.

RESOLVED this 18th day of January 1990.

CASTLE PINES METROPOLITAN DISTRICT

By: Samuel Spencer
Samuel Spencer

ATTEST:

Paul V. Dannels
Paul V. Dannels, Secretary

RESOLUTION

WHEREAS, the Castle Pines North Metropolitan District ("Castle Pines North"), the Castle Pines Metropolitan District ("Castle Pines"), and the Town of Castle Rock (the "Town"), (collectively, the "Parties") have been involved in certain litigation (the "Litigation") concerning the Lower East Plum Creek Regional Wastewater Treatment Plant (the "Plant") owned by Castle Pines; and

WHEREAS, Castle Pines North, Castle Pines, and the Town have heretofore entered into a Settlement Agreement and Stipulation for Dismissal of said Litigation, which "Settlement Agreement" contemplates the formation of the Plum Creek Wastewater Authority (the "Authority") and the conveyance of certain facilities, including the Plant to the Authority; and

WHEREAS, Castle Pines North, Castle Pines, and the Town have determined it to be in their mutual best interest to create the Authority for the purpose of operating, owning, and maintaining the Plant; and

WHEREAS, the terms of an Establishing Agreement for the Authority have been reviewed by the Board of Directors of Castle Pines North; and

NOW, THEREFORE, be it hereby resolved by the Board of Directors of Castle Pines North that:

1. The Establishing Agreement for the Plum Creek Wastewater Authority attached hereto is hereby approved and the President and Secretary to the Board are hereby authorized to execute said Agreement on behalf of Castle Pines North.

2. Castle Pines North hereby designates Robert McMullen as its Director representative and Roger Addlesperger as its alternate Director representative to serve on the Board of Directors of the Plum Creek Wastewater Authority.

3. To the knowledge of the Board of Directors of Castle Pines North, no further authorization or approval is required from the Board of Directors nor from any other person or entity in order

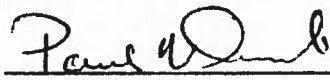
for Castle Pines North to perform its obligations under the agreements referred to herein.

RESOLVED this 12th day of January, 1990.

CASTLE PINES NORTH METROPOLITAN DISTRICT

By: 
Ernest P. Fazekas III

ATTEST:


, Secretary

[Faint vertical text on the right margin, possibly a stamp or recording information]