



To: Honorable Mayor and Members of Town Council

Through: David L. Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water

Title Resolution Approving an Intergovernmental Agreement Between the Town of Castle Rock and Crowfoot Valley Ranch Metropolitan District Nos. 1 and 2 Regarding the Monitoring and Enforcement of Town Conservation Regulations

Executive Summary

The purpose of this memorandum is to request Council approval of a resolution (see Attachment A) approving an Intergovernmental Agreement Between the Town of Castle Rock and Crowfoot Valley Ranch Metropolitan District Nos. 1 and 2 ("Districts") regarding the monitoring and enforcement of Town Conservation Regulations. In June 2005, the Town entered into an extraterritorial water service intergovernmental agreement (IGA) with the Districts whereby the Town would be the exclusive water service provider to Canyons South. The water conservation provisions within this agreement (Article V of IGA) require that the Town shall provide the Districts with contractual monitoring and enforcement of the conservation regulations at a nominal cost in order to ensure uniform application of the regulations between the development and properties within the Town. This service agreement will fulfill that requirement. The Districts' boards approved this contract on March __, 2021.

History of Past Town Council, Boards & Commissions, or Other Discussions

On June 8, 2005, Town Council approved a resolution for the water service agreement with Canyons South obligating the Town to provide extraterritorial water service to Canyons South for up to 968 single family equivalents (SFEs). This agreement requires that the developer construct all water infrastructure internal to the development and transfer ownership of the water infrastructure to the Town, which the Town will then own, operate and maintain. Water service charges and fees will be charged at 110% of the levels established in Water Regulations. In conjunction with this water service agreement, Town Council also approved, under separate resolution, a water purchase agreement whereby Canyons South dedicated 2,746 acre-feet (AF) Denver Basin groundwater to the Town, which included a surplus amount of 1,396 AF purchased at a price of \$415,090. In essence, the Town acquired all of the groundwater associated with Canyons South, minus 465 AF reserved by the developer for a then proposed golf course.

On January 22, 2020, the Castle Rock Water Commission voted to recommend to Council approval of an extraterritorial wastewater service agreement since the Town was already committed to water service from the 2005 IGA.

On March 3, 2020, Council approved an extraterritorial wastewater service agreement with Canyons South since the Town was already committed to water service from the 2005 IGA.

Discussion

This IGA fulfills an obligation under the water service agreement and will help ensure that the Canyons South development ("Property") conforms to the same water conservation requirements required by all Castle Rock Water customers. The key terms of this agreement are summarized as follows:

- The Property will receive conservation monitoring and enforcement services to the same standards and be subject to the same requirements as properties within the Town;
- The provision of conservation and monitoring enforcement services will be governed by the Conservation Regulations as they evolve during the term of the IGA;
- The Town and the Districts hereby affirm their commitment as set forth in Section 5.01 of the Water Service IGA that all Conservation Regulations shall apply to the Property;
- The Town agrees to monitor and enforce the Conservation Regulations within the jurisdictional boundaries of the Districts;
- The Districts shall require each Property Owner to obtain the Town's approval for all landscaping and irrigation plans and irrigation permits, to pay all Irrigation Permit Fees, Residential Irrigation and Landscape Inspection Fees, and such other Town fees and charges as may be required by the Conservation Regulations; and
- The Districts will promptly adopt and, at all times during the term of this IGA, maintain in force the Conservation Regulations for application to the Property.

Staff recommends approval of this IGA to ensure water conservation requirements are met in the Canyons South development.

Budget Impact

The costs for monitoring and enforcement of the conservation regulations will be offset by the fees charged for such services. Assuming an absorption rate of 100 homes per year, the annual expenses and revenues will be approximately \$8,000 to \$10,000 for both revenue and expenditures. Non-residential irrigation permit fees could add another \$5,000 to \$10,000 in both revenue and expenditure. These costs will be accounted for in the annual budgeting process.

Staff Recommendation

Staff recommends approval of this service contract between the Town and Crowfoot Valley Ranch Metropolitan District Nos. 1 and 2.

Proposed Motion

"I move to approve the Resolution as introduced by title."

Attachments

Attachment A:	Resolution
Exhibit 1:	Agreement

DRAFT

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF
CASTLE ROCK AND CROWFOOT VALLEY RANCH METROPOLITAN
DISTRICT NOS. 1 AND 2 REGARDING THE MONITORING AND
ENFORCEMENT OF TOWN CONSERVATION REGULATIONS**

DATE: _____, 2021.

PARTIES: **TOWN OF CASTLE ROCK** (the “Town”), a home rule municipal corporation, acting by and through the **CASTLE ROCK WATER ENTERPRISE**

CROWFOOT VALLEY RANCH METROPOLITAN DISTRICT NOS. 1 and 2 (the “Districts”), quasi-municipal corporations and political subdivisions of the State of Colorado

RECITALS:

A. The Town operates an integrated municipal water supply system, providing potable water service within the Town’s corporate limits and to certain extraterritorial properties.

B. The Districts are organized to provide urban services within their service area, which is generally coextensive with the property in unincorporated Douglas County in development known as the Canyons South (the “Property”).

C. The Town and Districts have determined it is mutually beneficial for the Town to provide water service to the Property.

D. For that purpose, the Town and the Districts have entered into the Castle Rock/ Canyons South Water Service Intergovernmental Agreement, dated June 14, 2005, recorded with the Douglas County Clerk and Recorder on September 7, 2005 at Reception No. 2005085039, as amended by the First Amendment to Intergovernmental Agreement and Supplement to the Water Rights Contract, dated October 24, 2006 (the “Water Service IGA”).

E. Section 5.01 of the Water Service IGA provides that all regulations enacted by the Town that address water use and conservation, including limits on the amount, frequency and duration of lawn irrigation and the installation of irrigated turf, and the prescription of water-saving measures and devices, shall apply to the Property.

F. Section 5.01 further contemplates that the Town and the Districts shall formalize a service contract for conservation monitoring and enforcement prior to the occupancy of the Property by homeowners.

G. The Town and the Districts find that, given the progress of development of the Property, it is appropriate to enter into an IGA for conservation monitoring and enforcement.

H. The constitution and laws of the State of Colorado permit and encourage cooperative efforts by local governments to make the most efficient and effective use of their

powers, responsibilities and resources and to enter into cooperative agreements on such matters as are addressed in this IGA.

COVENANTS:

NOW, THEREFORE, in reliance on the matters set forth above and in consideration of the mutual promises contained in this IGA, the parties agree and covenant as follows:

ARTICLE I DEFINITIONS

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

Board: the Board of Directors of District No. 1 or District No. 2, as applicable.

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

Code: the Castle Rock Municipal Code, as amended.

Conservation Regulations: except as otherwise provided by Section 5.02 of the Water Service IGA, all provisions of the Charter, ordinances, resolutions, rules and regulations of the Town that address water use and conservation, limits on the amount, frequency and duration of lawn irrigation and the installation of irrigated turf, and the prescription of water-saving measures and devices, including, but not limited to, the Code and the Landscaping and Irrigation Standards, as the same may be amended from time to time. Reference to Conservation Regulations shall mean the Conservation Regulations in effect at the time of application of the term under this IGA.

Council: the Castle Rock Town Council, the governing body of the Town.

Development Plan: the land use development plans and regulations approved for the Property by Douglas County.

District No. 1: the Crowfoot Valley Ranch Metropolitan District No. 1.

District No. 2: the Crowfoot Valley Ranch Metropolitan District No. 2.

Districts: District Nos. 1 and 2.

Fee Schedule: the Town of Castle Rock Development Services Fee Schedule adopted January, 2021, as the same may be amended from time to time. Reference to the Fee Schedule shall mean the Fee Schedule in effect at the time of application of the term under this IGA.

IGA: this Intergovernmental Agreement regarding the application and enforcement of Conservation Regulations and any amendments and supplements to it.

Irrigation Permit Fee: a fee imposed by the Town on all non-residential landscape and irrigation installations on lands located within or served by the Town, as set forth in the Fee Schedule. Reference to Irrigation Permit Fees shall mean the Irrigation Permit Fee in effect at the time of application of the term under this IGA.

Landscaping and Irrigation Standards: the criteria imposed by the Town for landscape and irrigation design, installation, and maintenance on all public, institutional and private lands located within or served by the Town, as set forth in the Town of Castle Rock Landscape and Irrigation and Performance Standards and Criteria Manual, dated July 1, 2020, as the same may be amended from time to time. Reference to Landscaping and Irrigation Standards shall mean the Landscaping and Irrigation Standards in effect at the time of application of the term under this IGA.

Owner: the record owner(s) of the Property.

Plans: any and all plans, documents, drawings, and specifications prepared by or for the Districts and approved by the Town for the design, installation, and maintenance of landscaping and/or irrigation on the Property.

Property: the real property that is subject to this IGA and is described in the attached *Exhibit 1*.

Residential Irrigation and Landscape Inspection Fee: a fee imposed by the Town for the inspection of all residential landscape and irrigation installations on lands located within or served by the Town, as set forth in the Fee Schedule. Reference to Residential Irrigation and Landscape Inspection Fees shall mean the Residential Irrigation and Landscape Fee in effect at the time of application of the term under this IGA.

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

Wastewater Service IGA: Extra-Territorial Wastewater Service Intergovernmental Agreement, between the Town and the Districts, dated March 3, 2020, and recorded with the Douglas County Clerk and Recorder on May 8, 2020 at Reception No. 2020038330.

Water Service: the provision of potable water service for domestic use, inclusive of fire flows, in accordance with the terms of the Water Service IGA.

Water Service IGA: Castle Rock/ Canyons South Water Service Intergovernmental Agreement dated June 14, 2005, recorded with the Douglas County Clerk and Recorder on September 7, 2005 at Reception No. 2005085039, as amended by the First Amendment to Intergovernmental Agreement and Supplement to the Water Rights Contract dated October 24, 2006.

ARTICLE II GENERAL PROVISIONS

2.01 Interpretation and Construction. This IGA shall be applied and interpreted to further the following fundamental concepts, unless expressly provided to the contrary in the text:

- A. The Property is to receive conservation monitoring and enforcement services to the same standards and subject to the same requirements as properties within the Town;
- B. The provision of conservation and monitoring enforcement services will be governed by the Conservation Regulations as they evolve during the term of the IGA, so long as the Conservation Regulations are applied to the Property and properties within the Town Limits in a non-discriminatory manner; and

2.02. Intended Beneficiary. This IGA is entered into for the express and intended purpose of permitting the development of the Property in accordance with the Development Plan and in reliance upon and to enable the Town's Water Service commitment to the Property in accordance with the Water Service IGA (the "Service Commitment"). Owner(s) and any successors in interest to the ownership of the Property are entitled to all rights and benefits afforded the Districts under this IGA, including the contractual right to obtain enforcement of this IGA as provided for herein. The Town and the Districts acknowledge that, as of 2005, the record Owner of the Property executed a written acceptance and consent to the Water Service IGA, including the requirements that (i) all Conservation Regulations shall apply to the Property and (ii) the Town shall provide conservation monitoring and enforcement services to the Districts.

2.03 Reservation of Powers. Except as provided in this IGA or as necessary to give effect to the intent and purpose of this IGA, the Town and the Districts reserve all of their respective powers and authority as independent governmental entities. Nothing in this IGA shall preclude or impair the Districts from imposing their fees, provided that their imposition shall not cause the Town's right of enforcement or collection of its Irrigation Permit Fees and Residential Irrigation and Landscape Inspection Fees to be, in any manner impaired by or subordinated to the enforcement and collection of the Districts' fees.

2.04 Limited Purpose. This IGA is limited to the Town's commitment to provide conservation monitoring and enforcement services to the Property. Other than the services provided for by the Water Service IGA and the Wastewater Service IGA, and fire and emergency services provided by the Town on behalf of the Castle Rock Fire Protection District, the Town will not provide other municipal services to the Property. With the exception of the regulations, fees, charges, and exactions provided for in this IGA, the Water Service IGA, and the Wastewater Service IGA, neither the Districts or Owner(s) are subject to the enforcement of other Town regulations or the payment of other Town fees, charges and exactions imposed on development within Town boundaries.

ARTICLE III MONITORING AND ENFORCEMENT OF CONSERVATION REGULATIONS

3.01 Application of Conservation Regulations. The Town and the Districts hereby affirm their commitment as set forth in Section 5.01 of the Water Service IGA that all Conservation Regulations shall apply to the Property.

3.02. Monitoring and Enforcement Services. The Town agrees to monitor and enforce the Conservation Regulations within the jurisdictional boundaries of the Districts.

3.03. Landscaping and Irrigation. In consideration of the performance of Monitoring and Enforcement Services by the Town, the Districts shall require each Property Owner, or such Owner's agent or representative, prior to the installation of any landscaping or irrigation systems on the Property, to obtain the Town's approval for all landscaping and irrigation plans and irrigation permits, to pay all Irrigation Permit Fees, Residential Irrigation and Landscape Inspection Fees, and such other Town fees and charges as may be required by the Conservation Regulations. The Districts hereby delegate to the Town the requisite authority to collect and enforce payment of all such fees.

3.04. Adoption of Conservation Regulations. The Districts will promptly adopt and, at all times during the term of this IGA, maintain in force the Conservation Regulations for application to the Property as the independent and overlapping regulatory scheme of the Districts. Periodically, as the Town revises the Conservation Regulations it shall give the Districts reasonable prior notice of such revisions so that the Districts may take necessary legislative and administrative actions to incorporate the revisions into the Districts' regulations. Reasonable prior notice shall mean the public notice of the revisions the Town gives its citizens prior to adoption of Town regulations. Provided further, the Town shall make concerted efforts to involve the Districts and their residents in the informal Town processes preceding formal notice of any proposed revisions, such that there is adequate opportunity for the Districts and their residents to become apprised of, and give input on the proposed revisions prior to final action on the revisions. Nothing in this section, however, shall preclude the Town from adopting revisions to the Conservation Regulations under its emergency powers for the immediate preservation of the public health, safety and welfare.

ARTICLE IV DEFAULT AND TERMINATION

4.01 Default Notice and Cure Rights. In the event either party alleges that the other is in default of this IGA ("Default"), the non-defaulting party shall first notify the defaulting party in writing of the Default ("Default Notice") and specify the exact nature of the Default in the Default Notice. The defaulting party shall have 60 days from receipt of the Default Notice within which to cure the Default ("Cure Period") before the non-defaulting party may exercise its remedies.

4.02 Mutual Remedies. If a Default is not cured within the Cure Period, and in addition to any specific remedies or consequences provided elsewhere in this IGA, the non-defaulting party shall have the right to take whatever action at law or in equity that is necessary or desirable to enforce the performance and observation of this IGA by the defaulting party, including equitable remedies afforded under C.R.C.P. Rule 106. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney fees and litigation costs from the other party.

4.03 Termination of Service Commitment. In the event that: (i) the uncured Default is the failure of the Districts to comply with the obligations to enact and enforce the Conservation regulations and/or revisions to such Regulations, in accordance with Section 3.04, or (ii) there is a final judicial disposition of litigation commenced by the Town under 4.02 that encompasses both of the following elements, or (iii) one or both Districts are dissolved or vacancies on either or both District Boards precludes the maintenance of a quorum of such Boards for a period of time longer than 60 days, or (iv) one or both Districts seek relief under Chapter 9 of the United States Bankruptcy Code, (each of the foregoing constituting a “Terminable Event”) the Town may terminate the Service Commitment in accordance with the further provisions of this section:

- A. The Districts’ independent governmental powers and/or public policy preclude the judicial enforcement or the mandated cure of the Default or the grant of the other equitable relief sought by the Town against the Districts and/or their respective Boards; and
- B. There is no concurrent finding that the underlying Conservation Regulation upon which the Town seeks the Districts’ performance is invalid or was not lawfully adopted or enacted by the Town.

Upon commencement of a Terminable Event, the Town may give notice to the Districts of termination of the Service Commitment under this IGA and the Water Service IGA (“Termination Notice”). Alternatively, the Town may seek judicial relief. Absent supplemental agreement between the Town and the Districts, the Districts shall have 180 days from the date of the Termination Notice to acquire alternative water service from other water service providers (“Termination”). In conjunction with Termination, the assumption of water service to the Property by a third party, the Town shall convey its interest in the transmission and distribution mains, service lines, meters, and associated appurtenances used to provide Water Service to the Districts and all related easements necessary for the new water service provider to facilitate the assumption of ownership and maintenance responsibilities by such provider.

Upon Termination, the Town shall retain all ownership and interest in the water rights conveyed pursuant to that certain Agreement for the Purchase and Sale of Water Rights, dated June 14, 2005, between the Town and Canyons South, LLC, and all fees and charges imposed pursuant to this IGA and the Water Service IGA through the date of Termination.

ARTICLE V MISCELLANEOUS

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

If to Town:	Castle Rock Water Enterprise 175 Kellogg Court Castle Rock, Colorado 80109
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Attn: Director of Castle Rock Water

With copy to: Town Attorney
Town of Castle Rock
100 N. Wilcox Street
Castle Rock, Colorado 80104

If to Districts Crowfoot Valley Ranch Metropolitan District Nos. 1 and 2
c/o Special District Management Services, Inc.,
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228
Attn: Ann E. Finn

With copy to: Crowfoot Valley Ranch Metropolitan District Nos. 1 and 2
c/o Collins Cockrel & Cole, P.C.
390 Union Boulevard, Suite 400
Denver, Colorado 80228
Attn: Matthew Ruhland

5.02 Notice of Meetings. The District shall submit a copy of a written notice of every regular or special meeting of the District to the Town Clerk at least 24 hours prior to such meeting.

5.03 Assignment. No transfer or assignment of this IGA or of any rights hereunder shall be made by either party, other than Town may assign this IGA to another governmental entity as part of the transfer of all of the Town's water system to such entity. In the event of such transfer, the entity assuming responsibility for water service to the Property shall expressly assume the Town's responsibilities under this IGA.

5.04 Amendments. This IGA may be amended only in writing upon the consent of the parties. Amendments shall be approved by resolution of the Town Council and resolution of the Districts' Boards.

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

5.06 TABOR Compliance. This IGA does not create indebtedness or any party within the meaning of any constitutional, home rule charter or statutory limitation or provision. The obligations of the parties under this IGA do not create a multiple fiscal year obligation under Article X, Section 20 of the Colorado Constitution.

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

5.08 Effective Date. This IGA shall become effective upon its mutual execution by Town and Districts.

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TOWN:

ATTEST:

TOWN OF CASTLE ROCK,
acting by and through the
CASTLE ROCK WATER ENTERPRISE

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director, Castle Rock Water

DISTRICTS:

ATTEST:

CROWFOOT VALLEY RANCH
METROPOLITAN DISTRICT NO. 1

_____, _____

_____, President

ATTEST:

CROWFOOT VALLEY RANCH
METROPOLITAN DISTRICT NO. 2

_____, _____

_____, President