

Res 2015-

**THIRD AMENDMENT TO MASTER
INTERGOVERNMENTAL AGREEMENT**
(Meadows Metropolitan Districts)

DATE: June __, 2015

PARTIES: **TOWN OF CASTLE ROCK**, a home rule municipal corporation, by and through the **TOWN OF CASTLE ROCK WATER ENTERPRISE** and the **TOWN OF CASTLE ROCK WASTEWATER ENTERPRISE**, 100 Wilcox Street, Castle Rock, Colorado, 80104 ("Town").

MEADOWS METROPOLITAN DISTRICTS NOS. 1-7, quasi-municipal corporations and political subdivisions of the State of Colorado, c/o Spencer Fane LLP, 1700 Lincoln Street, Suite 2000, Denver, Colorado, 80203 (collectively, "Districts").

RECITALS:

A. Town and Districts are parties to: (i) Master Intergovernmental Agreement dated December 1, 1991, (ii) the First Amendment to Master Intergovernmental Agreement dated October 1, 1993 (the "First Amendment"), and (iii) the Second Amendment to Master Intergovernmental Agreement dated December 12, 1996 (the "Second Amendment") (collectively, the "MIGA").

B. Town and Districts together with Castle Rock Development Company are parties to a Settlement Agreement and Release dated June __, 2015.

NOW, THEREFORE, in consideration of the execution and delivery of such Settlement Agreement and the mutual promises and covenants set forth below, the parties agree as follows:

***EDITORIAL NOTE:** ALL INITIALLY CAPITALIZED TERMS IN THIS AMENDMENT SHALL HAVE THE MEANINGS GIVEN IN THE MIGA. ALL ARTICLE AND SECTION REFERENCES IN THIS AMENDMENT REFER TO THE ARTICLE AND SECTIONS SO NUMBERED IN THE MIGA UNLESS OTHERWISE INDICATED.*

Section 1. Section 1.01 of the MIGA is amended to add the following definitions:

Capital Reserve Fee: a portion of the System Development Fees formerly retained by the Town from System Developments paid to Town within the Meadows pursuant to the MIGA which, after July 1, 2015, will be imposed by the Districts as a District Fee and collected by the Town and remitted to the Districts in accordance with Section 5 of this Agreement. The Capital Reserve Fee, \$2,580.09 in 2015, may be increased by the Districts at the rate of not more than 5% per annum, compounded on each January 1 through the term of this

Agreement. The Capital Reserve Fee is imposed by the Districts and separate from the System Development Fees which are imposed by the Town.

Development Agreement: The Meadows (4th Amendment) Development Agreement dated April 14, 2003, recorded July 10, 2003 at Reception No. 2003102970 in the public records (“Records”) of Douglas County, Colorado, as amended by the First Amendment to The Meadows (Fourth Amendment) Development Agreement dated April 16, 2013, recorded in the Records on May 17, 2013 at Reception No. 2013041129, and Second Amendment to The Meadows (Fourth Amendment) Development Agreement dated July 19, 2013, recorded in the Records on July 19, 2013 at Reception No. 2013050323.

Fee Study: The annual study performed by the Town’s rates and fees consultant to review its water and wastewater system development fees (SDFs) which reviews the underlying assumptions for new customers equity buy-in to capacity in the existing system and the incremental cost of additional capacity needed to accommodate growth and provides recommendations for Council adoption of updated fees for the upcoming year consistent with the requirements for impact fees set forth in C.R.S. § 29-20-104.5.

Meadows, The: the combined area within the boundaries of the Districts, consisting of approximately 3,952 acres.

Renewable Water Resources Water Fee: A capital charge or fee imposed under the Town Regulations for the acquisition or development of renewable water resources. The Renewable Water Resources Fee as of January 1, 2015 is imposed under 3.12.085 and 4.04.150 of the Code.

Section 2. The definition of System Development Fees under Section 1.01 of the MIGA is amended and restated to read as follows:

System Development Fees: the capital charges imposed by the Town under the Town Regulations as a condition to the right to connect to the municipal water or wastewater system to defray the cost of utilizing, expanding and developing of such systems. As of January 1, 2015 System Development Fees are imposed under 13.12.080 of the Code. A Renewable Water Resources Fee is not a System Development Fee under this Agreement and consequently the Districts acquire no right or interest in the Renewable Water Resources Fee under this Agreement.

Section 3. Section 2.01 is amended to read in its entirety as follows:

2.01 The Districts shall have no obligation to develop additional Facilities in the Meadows. Facilities development within the Districts’ service area is addressed in the Development Agreement.

Section 4. Sections 2.02 through 2.08 of the MIGA are repealed in their entirety.

Section 5. Section 3.02 “Fee Capture” of the MIGA is amended to read in its entirety as follows:

3.02 System Development Fee Allocation. The System Development Fees [at the rate imposed on a single family residential unit or equivalent, as defined under the Town Regulations (“SFE”)] within the Meadows shall be collected by the Town and then allocated between Town and Districts as follows:

- (a) Town shall remit to and Districts shall retain all System Development Fees with the exception of the following two components which shall be retained by the Town:
 - (i) When the demand for municipal water in The Meadows which as of _____ is _____ SFE exceeds 7,548 SFE’s, as customarily determined by the Town and Districts in accordance with past practices, Town shall thereafter retain the water treatment component of the water System Development Fee (“WSDF”) collected in the Meadows. The water treatment component of the WSDF (“Treatment Fee”) shall be calculated and updated from time to time based on the most recent Fee Study utilized by the Town in establishing the system-wide WSDF. To illustrate the calculation of the Treatment Fee, applying the Fee Study in effect on January 1, 2015, the Treatment Fee per SFE is \$986. Once the Town commences collection of the Treatment Fee in accordance with the above provisions, it shall provide notice to Districts of periodic adjustments to the Treatment Fee based on updated Fee Studies of the WSDF and such adjustment shall take effect on each following January 1st, based on the WSDF in effect on each such January 1st.
 - (ii) Beginning on July 1, 2015 and continuing thereafter, Town shall retain 90% of the wastewater System Development Fees collected in the Meadows. Provided however, if the treatment component of the total wastewater System Development Fee based upon the Town’s most recent adopted Fee Study is less than 90%, the Town’s retained portion shall reduce to such reflect such actual treatment component percentage. To illustrate application of such provision, if an adopted Fee Study finds that the cost of treatment on a per unit basis is 85% of the total projected

wastewater capital cost, Town shall retain 85% of the wastewater System Development Fee. However, in no event and despite any Fee Study, the Town shall never retain more than 90% of the wastewater System Development Fee. To illustrate, in the Fee Study finding that wastewater treatment is 95% of the total wastewater capital costs, nonetheless, the Town shall retain 90% of the WSDF.

Section 6. The first sentence of Section 3.03 of the MIGA is deleted and replaced in its entirety by the following:

Districts shall have the right to impose the Availability of Service or Facility Charges and Facility Development Fees and the Capital Reserve Fee (collectively, the “District Fees”). If so requested by Districts, Town shall collect District Fees on behalf the Districts, and remit to such District Fees to the Districts.

Section 7. Sections 1A, Development of Infrastructure and 2A, Capture of Development Fees of the First Amendment to Master Intergovernmental Agreement are repealed in their entirety.

Section 8. Except as modified by this Third Amendment, the MIGA, as previously amended by the First Amendment and Second Amendment shall remain in full force and effect.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

ATTEST:

TOWN OF CASTLE ROCK by and through the TOWN OF CASTLE ROCK WATER ENTERPRISE AND TOWN OF CASTLE ROCK WASTEWATER ENTERPRISE

Sally A. Misare, Town Clerk

Paul Donahue, Mayor

Approved as to form:

Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) **ss.**
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by Sally A. Misare as Town Clerk and Paul Donahue as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: _____

(S E A L)

Notary Public

**MEADOWS METROPOLITAN
DISTRICT NO. 1**

President

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ as _____ and _____ as _____ for the Meadows Metropolitan District No. 1.

Witness my official hand and seal.

My commission expires: _____

Notary Public

**MEADOWS METROPOLITAN
DISTRICT NO. 2**

President

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ as _____ and _____ as _____ for the Meadows Metropolitan District No. 2.

Witness my official hand and seal.

My commission expires: _____

Notary Public

**MEADOWS METROPOLITAN
DISTRICT NO. 3**

President

STATE OF COLORADO)
) ss.
COUNTY OF)

Witness my official hand and seal.

(S E A L)

Notary Public

**MEADOWS METROPOLITAN
DISTRICT NO. 4**

President

STATE OF COLORADO)
) ss.
COUNTY OF)

Witness my official hand and seal.

(S E A L)

Notary Public

**MEADOWS METROPOLITAN
DISTRICT NO. 5**

President

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ as _____ and _____ as _____ for the Meadows Metropolitan District No. 5.

Witness my official hand and seal.

My commission expires: _____

Notary Public

**MEADOWS METROPOLITAN
DISTRICT NO. 6**

President

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ as _____ and _____ as _____ for the Meadows Metropolitan District No. 6.

Witness my official hand and seal.

My commission expires: _____

Notary Public

ATTEST:

**MEADOWS METROPOLITAN
DISTRICT NO. 7**

Secretary

President

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____ as _____ and _____ as _____ for the Meadows Metropolitan District No. 7.

Witness my official hand and seal.

My commission expires: _____

(S E A L)

Notary Public