

EXHIBIT D

AGREEMENT REGARDING CONDITIONS OF CLOSING

This Agreement is entered on ____ day of _____, 2020 (“Effective Date”) by the **TOWN OF CASTLE ROCK, COLORADO BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE** (“Town”) and **INVERNESS WATER AND SANITATION DISTRICT** (“Inverness”), **DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT** (“Pinery”), **COTTONWOOD WATER AND SANITATION DISTRICT** (“Cottonwood”), **ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY** (“ACWWA”), and the **CHERRY CREEK PROJECT WATER AUTHORITY** (“Authority”). Inverness, Pinery, Cottonwood and ACWWA may be referred to collectively as the “Members.”

1. RECITALS

1.1. Pursuant to the *First Amended and Restated Water Project Agreement and Formation of the Cherry Creek Project Water Authority* dated August 20, 2008 (“Formation Agreement”), the Members formed the Cherry Creek Project Water Authority (“Authority”).

1.2. As specified in ¶ 2.1 of the Formation Agreement, ACWWA owns forty-one and twenty-five hundredths percent (41.25%) of the Authority.

1.3. the Town and ACWWA have entered into that certain Purchase and Sale Agreement between the Town of Castle Rock, Colorado by and through its Water Activity Enterprise and the Arapahoe County Water and Wastewater Authority Related to the Cherry Creek Project Water Authority (“Purchase and Sale Agreement”).

1.4. The Purchase and Sale Agreement evidences ACWWA’s desire to sell and the Town’s desire to purchase ACWWA’s 41.25% interest in the Authority.

1.5. A condition of closing on the Purchase and Sale Agreement is the Town’s receipt of representations and warranties by the Authority and ACWWA and representations by Inverness, Pinery and Cottonwood regarding: funding any specific capital project pursuant to Article III of the Formation Agreement (“Project”); the validity of the Formation Agreement; the existence of the Authority; and ACWWA’s interest in the Authority.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

2. **REPRESENTATIONS AND WARRANTIES.** ACWWA and the Authority hereby represent and warrant, to the best of their knowledge, and, Inverness, Pinery and Cottonwood hereby represent, to the best of their knowledge, as of the Effective Date the following:

2.1. The Formation Agreement is in full force and effect, has not been modified and has not been terminated.

2.2. There are no currently existing breaches to or defaults of the Formation Agreement by the Inverness, Pinery, Cottonwood or ACWWA.

2.3. The Authority is a water authority duly organized, validly existing and in good standing under the laws of Colorado.

2.4. ACWWA owns a 41.25% interest in the Authority, except for the Excluded Assets described in ¶ 4 of the Purchase and Sale Agreement, (“ACWWA’s Interest”), free and clear of any liens or encumbrances except \$4,014,450 in proposed general and capital assessments (collectively “Assessments”) identified in the Authority’s adopted 2020 budget (“Budget”). Despite the Assessments being revenue line items in the Budget, no Member Assessments are currently owed and no Member Assessments shall be owed to the Authority without an additional affirmative vote of the Authority’s Board.

2.5. The Authority owns good and marketable title to real property and water rights, including but not limited to those described in **EXHIBIT D-1**, free and clear of any liens or encumbrances

2.6. The Authority owns good and transferable title to personal property and assets, including but not limited to those described in **EXHIBIT D-2**, free and clear of any liens or encumbrances.

2.7. Subject to the requirements of ¶3.1.7 the Formation Agreement regarding transfer of a member’s interest, ACWWA’s sale of ACWWA’s Interest in the Authority to the Town will not directly or indirectly contravene, conflict with, or result in a violation or breach of any of the terms or requirements of the Formation Agreement, any contract, approval, permit or other legal document related to the Authority.

2.8. While the Authority’s Budget identifies an expenditure line item of \$9,567,000 for “Capital Projects,” including specific amounts of various Projects, the Members and the Authority have not taken any formal or informal actions or caused any actions to be taken that: 1) approved any specific Project; 2) earmarked, reserved or otherwise allocated funds for a specific Project; or 3) required, restricted or otherwise obligated the Authority to use funds for any specific Project. Despite Capital Projects and specific Projects being expenditure line items in the Budget, no Capital Projects expenditures have been approved and no Capital Projects expenditures will be approved without an additional affirmative vote of the Authority’s Board.

2.9. There is no pending or threatened proceeding by or against ACWWA or the Authority that may affect the value, use of or title to ACWWA’s Interest in the Authority.

3. **CONSIDERATION.** The Authority and the Members agree that the Town’s consideration for the representations and/or warranties in ¶ 2 is its agreement to close on ACWWA’s 41.25% interest in the Authority. The Authority and the Members agree that such consideration is adequate.

3. **GENERAL PROVISIONS.**

3.1. **Authority to Perform.** The Parties to this Agreement represent that they have the full power and authority to enter into and perform this Agreement.

3.2. **Jurisdiction.** Any proceeding arising out of or relating to this Agreement may be brought in the courts of the State of Colorado, Douglas County. Each of the parties irrevocably submits to the exclusive jurisdiction of such courts.

3.3. **Survival.** This Agreement and the Parties warranties and/or representations described in ¶ 2 under this Agreement shall survive the closing.

3.4. **Enforcement.** The Authority and the Members acknowledge and agree that the Town will be damaged by any breach of the representations and/or warranties as described in ¶ 2 by Authority, ACWWA, Inverness, Pinery and/or Cottonwood. Accordingly, in addition to any other right or remedy to which the Town may be entitled, at law or in equity, the Town shall be entitled to damages.

3.5. **Waiver; Remedies Cumulative.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right. No claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party by a waiver or renunciation unless in writing signed by the other party. No waiver that may be given by a party will be applicable except in the specific instance for which it is given.

3.6. **Entire Agreement and Modification.** This Agreement supersedes all prior agreements, whether written or verbal, between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

3.7. **Assignments, Successors and No Third-Party Rights.** No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties.

3.8. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.9. **Construction.** The headings of paragraphs in this Agreement are provided for convenience only and will not affect its construction or interpretation.

3.10. **Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

3.11. **Governing Law.** This Agreement will be governed by and construed under the laws of the State of Colorado.

3.12. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted electronically shall be deemed to be their original signatures for all purposes.

3.13. **No Construction Against Drafter.** This Agreement was drafted by the Town with the opportunity for the Authority, ACWWA, Inverness, Pinery and/or Cottonwood to seek review, comment, advice, and the contribution of legal counsel. Accordingly, the Parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**REMAINING PORTION BLANK
SIGNATURES APPEAR ON FOLLOWING PAGE**

**TOWN OF CASTLE ROCK, COLORADO, a
Colorado home rule municipality,
BY AND THROUGH ITS WATER ACTIVITY
ENTERPRISE**

By: _____
Jason Gray, Mayor

ATTEST:

By: _____
Lisa Anderson, Town Clerk

APPROVED AS TO FORM:

By: _____
Robert J. Slentz, Town Attorney

CHERRY CREEK PROJECT WATER AUTHORITY

By: _____
_____, _____

ATTEST:

Secretary

**ARAPAHOE COUNTY WATER AND
WASTEWATER AUTHORITY, a water authority
of the State of Colorado**

By: _____
_____, _____

ATTEST:

Secretary

**INVERNESS WATER AND SANITATION
DISTRICT**

By: _____
_____, _____

ATTEST:

Secretary

**DENVER SOUTHEAST SUBURBAN WATER
AND SANITATION DISTRICT**

By: _____
_____, _____

ATTEST:

Secretary

**COTTONWOOD WATER AND SANITATION
DISTRICT**

By: _____
_____, _____

ATTEST:

Secretary

EXHIBIT D-1

REAL PROPERTY AND WATER RIGHTS

THIS WILL NEED TO BE SUPPLEMENTED DURING DUE DILIGENCE

1. **Nontributary and Not Nontributary Groundwater Rights**

1.1. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Newton Parcel, decreed in Case No. 93CW93, District Court, Water Division No. 1

1.2. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Burgoyne Parcel, decreed in Case No. 93CW93, District Court, Water Division No. 1

1.3. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Stevens Parcel, decreed in Case No. 93CW93, District Court, Water Division No. 1

1.4. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Shafroth Parcel, decreed in Case Nos. 89CW46 and 93CW93, District Court, Water Division No. 1

1.5. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Parker Parcel, decreed in Case Nos. 84CW128 and 84CW129, District Court, Water Division No. 1

1.6. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Vessel Parcel, decreed in Case Nos. 84CW128 and 84CW129, District Court, Water Division No. 1

1.7. All nontributary and not nontributary groundwater underlying the Franktown Parcel, decreed in Case Nos. 84CW129 and 86CW205, District Court, Water Division No. 1

1.8. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Walker Parcel, decreed in Case Nos. 88CW96, District Court, Water Division No. 1

1.9. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Castlewood Parcel, decreed in Case Nos. 93CW93 and 94CW65, District Court, Water Division No. 1

1.10. All nontributary and not nontributary groundwater in the Lower Dawson, Denver, Arapahoe and Laramie Fox-Hills aquifers underlying the Grange Parcel, decreed in Case No. 85CW168, District Court, Water Division No. 1

2. Tributary Water Rights

2.1. 1.31 c.f.s. decreed to the John Jones Ditch, with an appropriation date of May 31, 1866, decreed in District Court, Douglas County on December 10, 1883 and changed in Case Nos. 08CW186 and 10CW318, District Court, Water Division No. 1

2.2. 1.41 c.f.s. decreed to the Lemen Ditch, with an appropriation date of June 1, 1866, decreed in District Court, Douglas County on December 10, 1883 and changed in Case Nos. W-517, 07CW66 and 10CW318, District Court, Water Division No. 1

2.3. 4.5 c.f.s. decreed to the Barnes Ditch, with an appropriation date of March 1, 1885, decreed in District Court, Douglas County on March 31, 1890 and changed in Case Nos. W-516, 07CW66 and 10CW318, District Court, Water Division No. 1

2.4. 3.44 c.f.s. decreed to Franktown Well No. 2, with an appropriation date of November 5, 1907, decreed in Case No. W-1776 and changed in Case Nos. 84CW680, 95CW280 and 10CW318, District Court, Water Division No. 1

2.5. 3.01 c.f.s. decreed to Franktown Well No. 1, with an appropriation date of September 4, 1950, decreed in Case No. W-1776 and changed in Case Nos. 84CW680, 95CW280 and 10CW318, District Court, Water Division No. 1

2.6. 2.33 c.f.s. decreed to Vessel Well No. 1, with an appropriation date of March 16, 1956, decreed in Case No. W-1776 and changed in Case Nos. 84CW680, 95CW280 and 10CW318, District Court, Water Division No. 1

2.7. 1.73 c.f.s. decreed to Kelty Well No. 1, with an appropriation date of September 6, 1950, decreed in CA3636, District Court, Douglas County and changed in Case Nos. 95CW280 and 10CW318, District Court, Water Division No. 1

2.8. 3.98 c.f.s. decreed to Christiansen Well No. 3, with an appropriation date of November 15, 1952, decreed in CA3635, District Court, Douglas County and changed in Case No. 07CW66 and 10CW318, District Court, Water Division No. 1

2.9. 0.89 c.f.s. decreed to Christiansen Well No. 4, with an appropriation date of October 23, 1963, decreed in CA3635, District Court, Douglas County and changed in Case No. 07CW66 and 10CW318, District Court, Water Division No. 1

2.10. 2.68 c.f.s. decreed to Hewins Well No. 2, with an appropriation date of March 21, 1956, decreed in CA3635, District Court, Douglas County and changed in Case No. 95CW280 and 10CW318, District Court, Water Division No. 1

2.11. 1.33 c.f.s. decreed to Walker Well No. 1, with an appropriation date of October 10, 1952, decreed in Case No. W-1869 and changed in Case Nos. 88CW97, 95CW280 and 10CW318, District Court, Water Division No. 1

2.12. 1.11 c.f.s. decreed to Walker Sump No. 1, with an appropriation date of June 20, 1954, decreed in Case No. W-1869 and changed in Case Nos. 88CW97, 95CW280 and 10CW318, District Court, Water Division No. 1

2.13. 3.34 c.f.s., conditional, decreed to Franktown QAL-3, with an appropriation date of April 19, 1984, decreed in Case No. 84CW680 and changed in Case Nos. 95CW280 and 10CW318, District Court, Water Division No. 1

2.14. 3.34 c.f.s., conditional, decreed to Vessel QAL-3, with an appropriation date of April 19, 1984, decreed in Case No. 84CW680 and changed in Case Nos. 95CW280 and 10CW318, District Court, Water Division No. 1

2.15. 1000 a.f., conditional, decreed to Walker Reservoir, with an appropriation date of December 1, 2010, decreed in Case No. 10CW318, District Court, Water Division No. 1

2.16. 2000 g.p.m., conditional, and 20 c.f.s. cumulative decreed to Walker Reservoir Well Nos. 1-35, 15W, 16W, 17W, 31W, Liberty Village Well Nos. 1 to 6, Walker Well No. 1, Walker Sump No. 1, Franktown Well Nos. 1, 2 and QAL-3, Kelty Well No. 1, Hewins Well No. 2 with appropriation dates of December 1, 2010, decreed in Case No. 10CW318, District Court, Water Division No. 1

2.17. 20 c.f.s., conditional, decreed to "Augmentation Exchange" and "Newlin Gulch Aqueduct No. 2 Exchange" with appropriation dates of December 30, 2010, decreed in Case No. 10CW318, District Court, Water Division No. 1

3. **Property**

3.1. Walker Parcel, legally described in **EXHIBIT D-1-A**

3.2. Franktown Parcel, legally described in **EXHIBIT D-1-B**

4. **Easements**

4.1. Reception No. _____, Douglas County, recorded on
_____ (_____ Infrastructure)

4.2. Reception No. _____, Douglas County, recorded on
_____ (_____ Infrastructure)

4.3. Reception No. _____, Douglas County, recorded on
_____ (_____ Infrastructure)

EXHIBIT D-2
PERSONAL PROPERTY

THIS WILL NEED TO BE SUPPLEMENTED DURING DUE DILIGENCE

1. The decrees entered in Case Nos. 93CW93, 89CW46, 84CW128, 84CW129, 86CW205, 88CW96, 94CW65 and 85CW268, District Court, Water Division No. 1, including ACWWA's right to additional amounts of nontributary and not nontributary water to which ACWWA is entitled upon a final determination of the amounts pursuant to retained jurisdiction in those cases
2. The decrees entered in District Court, Douglas County dated December 10, 1883 and dated March 31, 1890
3. The decrees entered in District Court, Douglas County in Civil Actions 3635 and 3636
4. The decrees entered in Case Nos. W-516, W-517, W-1776, W-1869, 84CW680, 95CW280, 88CW97, 95CW280, 07CW66, 08CW186 and 10CW318, District Court, Water Division No. 1
5. Well permits and registrations evidenced by Well Permit Nos. 14438-F, 18871R, 18870R, 16062R, 19220R-R, 20003R-R, 23256F, 20686S and 4700F
6. All water rights studies and reports
7. All water infrastructure studies, reports, designs and plans and specifications
8. All water rights models and accounting
9. All water infrastructure, including wells, pumps, instrumentation
10. All equipment
11. All accounts receivable
12. All contracts
13. All governmental authorizations and all pending applications or renewals
14. All data and records related to the Authority
15. All insurance policies and rights thereunder
16. All claims against third parties, whether choate or inchoate, known or unknown, contingent or noncontingent
17. All deposits and prepaid expenses, claims for refunds, and rights to offset

18. All revenues and assessments
19. All cash, cash equivalents, interest income and investments
20. All minute books, records and seals