

## **WASTEWATER CAPACITY RESERVATION AGREEMENT**

This WASTEWATER CAPACITY RESERVATION AGREEMENT (hereinafter this “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024, between the Town of Castle Rock, Douglas County Colorado, a municipal corporation and political subdivision of the State of Colorado (the “Town”), and the Silver Heights Water and Sanitation District a special district of the State of Colorado (the “District”).

### **RECITALS**

A. This Agreement is made with respect to the following facts (initially capitalized terms used below as defined in Section 1):

B. The District is a Special District organized under Title 32 Colorado Revised Statutes for the purpose of providing water and sanitation services to residential and commercial entities located within its service area.

C. The Town is a member of the Plum Creek Water Reclamation Authority, formerly known as the Plum Creek Wastewater Authority (the “Authority”) pursuant to the Plum Creek Water Reclamation Authority Establishing Agreement dated December 14, 1989 by and among the Town, Castle Pines Metropolitan District and Castle Pines North Metropolitan District.

D. As a member of the Authority, the Town is entitled to wastewater treatment services on a volume basis at the Authority’s Plum Creek Wastewater Treatment Plant (the “Plant”).

E. The District receives wastewater treatment services on a volume basis from the Authority pursuant to (i) the Special Connector's Agreement between the District and the Authority, dated July 23, 1991 (the “Special Connector’s Agreement”), and (ii) the Agreement Concerning Wastewater Treatment with the Town and Castle Pines Holdings, Inc., dated July 26, 1991 (collectively, the “Plum Creek Agreements”).

F. Under the Plum Creek Agreements, the Authority is the exclusive provider of wastewater treatment services to the District.

G. The District is currently entitled to 48,740 gallons per day capacity in the Town's wastewater collection system and the Plant.

H. The District currently uses an average of 26,000 gallons per day, and it is expected a new senior living facility being built within the District’s service area will use the remaining capacity.

I. Grace Chapel Castle Rock, a church located within the District's service area at 935 Evalena Road (the “Church”), wishes to construct an addition to their existing building

(the “Development”).

J. A residential lot located within the District’s service area at 1161 Evalena Road (the “Resident”), wishes to construct an addition to their home.

K. The volume of wastewater treatment capacity allocated to the District by the Plum Creek Agreements is insufficient to serve the Development's and Resident’s anticipated demands for wastewater treatment services.

L. The Town has unused wastewater treatment capacity in the Plant that it desires to reserve for later sale to the District to serve the Development and Resident.

N. The Town agrees to reserve a portion of its unused wastewater treatment capacity in the Plant for future sale to the District in accordance with the terms of this Agreement.

### **AGREEMENT**

The District and the Town hereby enter this Agreement for the above-described purpose, subject to the terms, conditions, and agreements set forth herein.

1. **Definitions.** In this Agreement, the following defined terms have the meanings indicated:

1.1. “Additional Capacity” means the wastewater treatment capacity needed to serve the Development and Resident in excess of the District's Current Allocation . At this time, the amount of Additional Capacity is estimated to be 1,320 gallons per day of conveyance and treatment capacity, or 6 equivalent residential units (“EQR”), where one EQR equals 220 gallons per day (average day generation rate), subject to adjustment in accordance with paragraph 2.1 of this Agreement.

1.2. “Current Allocation” means the wastewater treatment capacity of 48,740 gallons per day, 45,000 gallons of which is allocated to the District under the Special Connector's Agreement and 3,740 gallons of which is the additional capacity purchased from the Town pursuant to the Wastewater Capacity Allocation Agreement between the District and the Town, dated July 21, 2020.

1.3. “Effective Date” means the date on which this Agreement has been executed by both parties.

1.4. “Initial Reservation Period” means the period of time during which the Town will reserve the Additional Capacity. The Initial Reservation Period is two years commencing on the Effective Date.

2. **Reservation of Additional Capacity.** The Town agrees to reserve the Additional Capacity for an initial period of two years from the Effective Date of this Agreement. Within 30 days of expiration of the Initial Reservation Period, either party may

terminate this Agreement upon written notice to the other party. Otherwise, this Agreement will automatically renew for additional six-month terms until Closing on the Additional Capacity or written notice of termination by either Party.

2.1. Amount of Additional Capacity. The Additional Capacity is currently estimated to be approximately 1,320 gallons per day of conveyance and treatment capacity, or 6 EQRs. The amount of Additional Capacity may increase if the District's demand for wastewater treatment services increases prior to Closing on the Additional Capacity. The District will provide written notice to the Town of any anticipated increase in the amount of Additional Capacity.

3. **Payment for Additional Capacity.** Payment for the Additional Capacity shall occur before the Development or Resident is connected to the District's water and sewer infrastructure. If Closing occurs within the Initial Reservation Period, the purchase price for the Additional Capacity will be based on Castle Rock Water's 2024 System Development Fee for wastewater, or \$5,562/EQR, plus a 25% surcharge for extraterritorial service, for a total of \$41,715 (6 EQR x \$5,562 x 1.25) for Development and Resident. If Closing does not occur within the Initial Reservation Period, the purchase price for the Additional Capacity will be based on the System Development Fee in effect at the time of the Closing, plus a 25% surcharge for extraterritorial service.

4. **Operations and Maintenance Cost.** Wastewater from the District must travel through the Town's wastewater collection system in order to reach the Plum Creek Wastewater Treatment Plant. There are significant costs to the Town associated with operating and maintaining the Town's wastewater collection system. The Town charges its customers for wastewater service using the Wastewater Volumetric Rate set forth in the Town's annual Utility Administrative Fee Schedule. A portion of the Wastewater Volumetric Rate contributes to the cost of operation, maintenance, and capital replacements for the Town's wastewater collection system (hereinafter, "Town Operations and Maintenance Cost").

4.1. Conveyance of Additional Capacity in Town's Wastewater Collection System. As a condition of the Town's agreement to reserve and sell the Additional Capacity to the District to meet the increase in demand caused by the Development, the District agrees to charge the Development the Town Operations and Maintenance Cost for the volume of wastewater generated by the Development in addition to any charges, rates or fees collected by the District. If necessary, the District agrees to use shut-off of water service as a means to ensure that the Town Operations and Maintenance Costs are paid timely by the Development.

4.2. Annual Rate. The Town Operations and Maintenance Cost will be based on the Wastewater Volumetric Rate established annually by the Town. As of the date of this Agreement, the Town's Wastewater Volumetric Rate is \$6.07 (per 1,000 gallons), of which approximately \$2.67 (or 44%) is the Town Operations and Maintenance Cost. The Wastewater Volumetric Rate is adjusted annually based on the Town's annual rates and fees study and Town Council direction. Subject to annual confirmation of amount, the Town Operations and Maintenance Cost will be calculated annually as approximately 44% of the

Town's then-current Wastewater Volumetric Rate.

4.3. Billing and Amount. Subject to paragraph 4.3.1. below, the monthly Town Operations and Maintenance Cost will be determined according to an average winter median consumption (“AWMC”) established each year by averaging the Development's water usage during November through February. The AWMC is used as the monthly charge for one year until a new AWMC is established the next year. The Town Operations and Maintenance Cost will be collected by the District on a monthly basis and paid to the Town as a condition of continued wastewater service to the Development.

4.3.1. Separate Meters. If indoor use is metered separately from metered outdoor use, then the indoor use meter value shall be used to calculate the Town Operation and Maintenance Cost

## **5. Conditions Precedent to Closing.**

5.1. Payment to District for Additional Capacity by the Church and Resident. The Town acknowledges that; (i) the District is entering this Agreement for the sole purpose of meeting the anticipated increase in demand created by the Development and Resident; (ii) the District has no need for or obligation to acquire the Additional Capacity but for the request to do so by the Development and Resident; and (iii) the Church and Resident are responsible for the cost of the Additional Capacity. Accordingly, payment to the District for the cost of the Additional Capacity shall be a condition precedent to Closing.

5.2. Amendment of Special Connector's Agreement. The Special Connector's Agreement must be amended to account for the District's acquisition of the Additional Capacity. Accordingly, an Amendment to Special Connector's Agreement in the form attached hereto as *Exhibit A* (or substantially similar thereto) shall be executed by the Authority at or before Closing. The Town agrees to support the District's request for approval of the Amendment to the Special Connector's Agreement from the Authority's Board of Directors at its first regularly scheduled meeting following execution of this Agreement.

6. **Closing.** At the Closing, the District will pay the Town for the Additional Capacity; the Town will deliver a Bill of Sale transferring the Additional Capacity to the District; and the Authority will deliver to the District the Amendment to Special Connector's Agreement.

7. **Notices.** Any notices required or allowed to be delivered hereunder shall be in writing and addressed to a party as set forth below:

### **Town of Castle Rock**

Town of Castle Rock

c/o Mark Marlowe, Director of Castle Rock Water  
175 Kellogg Court  
Castle Rock, Colorado 80109  
Email: [mmarlowe@crgov.com](mailto:mmarlowe@crgov.com)

Town of Castle Rock  
c/o Michael Hyman, Town Attorney  
100 Wilcox Street  
Castle Rock, Colorado 80104  
Email: [mhyman@crgov.com](mailto:mhyman@crgov.com)

**Silver Heights Water & Sanitation District**

Silver Heights Water & Sanitation District  
c/o Rich Rasmussen, President  
1027 Harvey Street  
Castle Rock, Colorado 80104  
(303) 688 5597  
Email: [rtrasmussen@comcast.net](mailto:rtrasmussen@comcast.net)

With a copy to:  
Mason H. Brown  
Katrina B. Fiscella  
Carlson, Hammond & Paddock, LLC  
1900 Grant Street, Suite 1200  
Denver, Colorado 80203  
(303) 861-9000  
Email: [mbrown@chp-law.com](mailto:mbrown@chp-law.com); [kfiscella@chp-law.com](mailto:kfiscella@chp-law.com)

(Signature page to follow)

**IN WITNESS WHEREOF**, the parties hereto have caused their respective representatives to execute this Agreement on their behalf, as of the date set forth above.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

Approved as to form:

Approved as to content:

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Mark Marlowe, Dir. of Castle Rock Water

**SILVER HEIGHTS WATER &  
SANITATION DISTRICT**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

Amendment to Special Connector's Agreement between the District and the Authority  
(to be inserted)