

**INTERGOVERNMENTAL WATER INFRASTRUCTURE COST SHARING,  
CONSTRUCTION AND CAPACITY ALLOCATION AGREEMENT**

**(RIDGEGATE LINE)**

THIS INTERGOVERNMENTAL WATER INFRASTRUCTURE COST SHARING, CONSTRUCTION AND CAPACITY ALLOCATION AGREEMENT ("the Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2016 (the "Effective Date"), by and between the SOUTH METRO WISE AUTHORITY ("Authority"); PARKER WATER AND SANITATION DISTRICT, ("PWSD"), THE TOWN OF CASTLE ROCK, ("Castle Rock"), DOMINION WATER & SANITATION DISTRICT ("Dominion"), DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT (D/B/A PINERY WATER AND WASTEWATER DISTRICT) (the "Pinery"), and STONEGATE VILLAGE METROPOLITAN DISTRICT ("Stonegate") (individually a "Party" and collectively, the "Parties").

**RECITALS**

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide;

WHEREAS, the Authority exists to facilitate the acquisition, construction and operation of a water delivery system for its members, and all of the Parties are members of the Authority;

WHEREAS, as part of their participation in the regional Water Infrastructure and Supply Efficiency ("WISE") Project, the Parties desire to cooperate in the construction of a water conveyance pipeline that is located on property commonly referred to as the RidgeGate development and which generally commences at E470 and continues south to the PWSD's Rueter-Hess Water Purification Facility, as more specifically described in **Exhibit A** (the "RidgeGate Pipeline");

WHEREAS, the RidgeGate Pipeline will be used to convey WISE Project water to the Parties, and constitutes Local Infrastructure, as that term is defined in the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement ("Organizational Agreement"), to which the Parties are Members;

WHEREAS, PWSD will construct, own, operate, repair, maintain, and replace (as necessary) the RidgeGate Pipeline on behalf of the Parties, and the Parties shall share capacity in the RidgeGate Pipeline and the associated costs of the RidgeGate Pipeline as set forth herein;

WHEREAS, the Authority's sole obligation hereunder is to facilitate the distribution of funds to pay the costs of RidgeGate Pipeline; and

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which PWSD will construct and own the RidgeGate Pipeline and how capacity in the RidgeGate Pipeline shall be allocated between the Parties;

WHEREAS, this Agreement does not establish the terms and conditions pursuant to which PWSD will convey (or “wheel”) water through the RidgeGate Pipeline or other PWSD water facilities or how the related operational, maintenance, repair, and replacement costs will be assessed, which are the subject matter of separate individual agreements between PWSD and each of the other Parties anticipated to be executed concurrently with this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the Parties hereby agree as follows:

**1. PROJECT IMPROVEMENTS.** PWSD shall construct the RidgeGate Pipeline in accordance with the design that has been approved by the Parties, and acquire all required easements for the RidgeGate Pipeline (collectively, the “Project”) as generally described in Exhibit A, which is attached hereto and incorporated by this reference. PWSD shall competitively bid the construction of the Project in accordance with applicable law and its internal procedures and policies. PWSD shall pay all such Project costs, subject to contribution by the Parties as set forth in Section 2, below. Attached as **Exhibit B** is a timetable for completion of the Project indicating that the Parties shall seek to have the Infrastructure operational by October 1, 2017. PWSD will make diligent and good faith efforts to meet the various Project milestones as indicated on Exhibit B. The construction contract for the Project shall contain customary provisions to assure that the contractor adheres to the construction timetable. However, the Parties acknowledge that despite such efforts, unavoidable delays may be encountered with a project of this nature. On a monthly basis, PWSD will provide notice to the Parties of the progression of the Project.

**2. ALLOCATION OF CONSTRUCTION COSTS.**

A. The estimated costs of constructing and installing the RidgeGate Pipeline, including each Party’s pro rata share, are set forth in **Exhibit C**, which is attached hereto and incorporated by this reference (the “Estimated Costs”). The Estimated Costs include without limitation, the costs of PWSD staff time spent administering the work set forth herein and the costs of the owner’s agent that will be providing construction and contract management. PWSD staff time shall not be tracked. Instead, the costs of PWSD staff time shall be set at 0.5% of the Infrastructure Construction Costs. The Parties acknowledge the Estimated Costs are a general estimate of the Infrastructure Costs, which are subject to modification after completion of a competitive bidding process by PWSD. The Estimated Costs shall be amended upon award of the contract by PWSD after a competitive bidding process and execution of a final contract with the successful bidder. Upon execution of a contract for construction of the Infrastructure, PWSD shall prepare an amended Exhibit C containing revised Estimated Costs based on the costs set forth in the construction contract and the Parties adjusted pro rata shares, which shall be substituted for the original Exhibit C as a part of this Agreement.

B. Within thirty (30) days of the Effective Date, each Party shall deposit twenty percent (20%) of its pro rata share of the Estimated Costs (the “Construction Funds”) with the Authority. PWSD shall separately account for and use the Construction Funds solely for payment of RidgeGate Pipeline-related costs as specified in Exhibit C (as it may be amended to reflect actual costs). At no time shall a Party’s portion of the Construction Funds held by the

Authority be less than the lesser of: (1) ten percent (10%) of such Party's pro rata share of the Estimated Costs; or such Party's pro rata share of the remaining unpaid Estimated Costs ("Minimum Escrow Balance"). The Authority shall notify all the Parties whenever one Party's funds fall below its Minimum Escrow Balance.

C. On a monthly basis, PWSD shall deliver to the Authority an invoice summarizing the costs of the RidgeGate Pipeline, and requesting payment of such costs from the Construction Funds held by the Authority. The Authority shall submit payment to PWSD within thirty (30) days of receipt of PWSD's invoice only to the extent the Authority has received sufficient Construction Funds from the Parties. Upon receipt of an invoice by PWSD, the Authority shall invoice the Parties based on their pro rata share as set forth in Exhibit C, and the Parties shall have thirty (30) days to submit payment to the Authority to replenish the Construction Funds. At the Authority's request, PWSD shall provide detailed records relating to the construction of the RidgeGate Pipeline, including copies of each draw request from PWSD's general contractor, together with paid invoices or such other documentation as may be available and reasonably requested by the Authority. The Authority shall maintain such documentation and upon request by a Party shall make it available for review. The Authority's only role pursuant to this Agreement is to invoice, receive and distribute the Construction Funds and maintain records related to invoices received from PWSD. The Authority shall not be responsible for collection or taking any action related to the failure of any other Party in regard to the payment or lack of payment of the Construction Funds.

D. The Authority will not charge an administration fee, but will be entitled to keep any interest accrued on funds being held per this Agreement.

E. Upon completion of the RidgeGate Pipeline, the Parties' pro rata share shall be finally adjusted and set forth in the Amended Exhibit C. Any overpayment shall be refunded by the Authority, and any underpayment shall be satisfied by the Parties in the same proportion as their contributions as specified in the Amended Exhibit C. The Authority shall have no obligation to satisfy any Party's failure to pay the full amount of a Party's pro rata share. No Party shall be liable for the pro rata share of another Party.

F. The Estimated Costs may increase at any time during construction or installation of the Project. Accordingly, the Estimated Costs may be adjusted at any time by PWSD. Adjusted cost estimates will be made based upon actual construction bids or change orders. If the Estimated Costs are adjusted, PWSD shall give written notice to the Parties. The Parties shall, within thirty (30) days after receipt of said written notice, deposit new funds with the Authority necessary to pay its pro rata share of the increased Estimated Costs as updated.

### **3. RIDGEGATE PIPELINE OWNERSHIP AND INSURANCE.**

A. PWSD shall be the sole owner of the RidgeGate Pipeline and all related assets, subject to the rights of the Parties as further set forth herein. PWSD represents and warrants to the Parties that PWSD either has, or will obtain, all necessary right, title and interest in the RidgeGate Pipeline to convey the license set forth in Section 4, below, and enter into this Agreement. PWSD does covenant and agree that it shall warrant and forever defend the Parties in their quiet and peaceful possession of their license rights granted herein against all and every person

or persons. In the event that the license or any part thereof is challenged by the person or entity granting rights, interests or title to PWSD or any portion thereof, PWSD shall, to the extent permitted by law, take all necessary actions to acquire the requisite interest needed to satisfy its obligations hereunder; provided that each Party may be required by PWSD to pay its pro rata share of the costs related to actions taken by PWSD if the need for such actions was not due to the negligence of PWSD. The representations and warranties of this Section are for the sole benefit of the Parties and shall not be deemed to be given to any third party.

B. PWSD shall procure and maintain property insurance for the RidgeGate Pipeline that is substantially similar to the coverage maintained by PWSD for other PWSD-owned water pipelines. If the RidgeGate Pipeline is damaged, PWSD shall allocate all proceeds from an insurance award towards repairing the RidgeGate Pipeline.

**4. LICENSE - CAPACITY RESERVATION AND ALLOCATION.** Each Party hereto is granted a perpetual, nonexclusive license for capacity in the RidgeGate Pipeline, upon its completion, as further set forth herein.

A. Access Restriction. Each Party acknowledges that the License granted herein is for capacity in the RidgeGate Pipeline only. No Party shall at any time access the RidgeGate Pipeline or other facilities or property owned or controlled by PWSD, except pursuant to the terms, restrictions and conditions set herein.

B. License Capacity. The license for capacity granted herein is limited in volume to the percentages listed for each Party in Exhibit C, which is attached hereto and incorporated by this reference, and as may be sold or assigned by a Party pursuant to the same procedures as set forth in Section 14 of the Organizational Agreement relating to the assignment or sale of Participant pro-rata shares.

C. Capacity Restriction. If capacity in the RidgeGate Pipeline is restricted on account of maintenance, emergencies, force majeure, or legal or regulatory requirements, PWSD shall forthwith advise the Parties of such capacity restriction and the anticipated duration thereof, and apportion capacity in the RidgeGate Pipeline proportionally based upon each Party's pro rata share of RidgeGate Pipeline capacity as set forth in Exhibit C.

D. Conveyance and Delivery of Non-WISE Project Water. A Party may use its licensed capacity in the RidgeGate Pipeline for the delivery of non-WISE Project water; provided the quality of the non-WISE Project water being delivered through the RidgeGate Pipeline meets the standards set forth in **Exhibit D**.

E. Revocation of License. The license granted herein shall be revocable by PWSD in the event of a default of a Party and the Party's failure to cure such default in accordance with the provisions of Section 5, below.

## **5. DEFAULT / REMEDIES.**

A. In the event a Party deems another Party to be in default, it shall provide written notice to all Parties indicating the event of default. The defaulting party shall have forty-five

(45) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within forty-five (45) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed forty-five (45) days for monetary defaults, or sixty (60) days for non-monetary defaults, except by written consent of the non-defaulting party. In the event the defaulting party has failed to cure in accordance with this Section, the non-defaulting Parties may pursue all available remedies at law or equity. In addition to such remedies, PWSD shall have the right to terminate the license provided to a Party in this Agreement upon a default by the Party and the Party's failure to cure the default as set forth herein. If a Party fails to cure a default as set forth herein, PWSD may only terminate that Party's license by providing the defaulting Party with written notice of termination, whereupon the license shall terminate upon the date given in the notice. In no event shall PWSD have the right to terminate the License for a violation of the water quality standards set forth in Exhibit D.

B. Upon termination of a Party's license for an event of default, that Party's licensed capacity ("Excess Capacity") shall be available for acquisition by another Party, in part, or in whole. The cost of such acquisition shall be the assumption of the proportional annual costs associated with such Excess Capacity by the acquiring Party. If all the Excess Capacity is not acquired by the remaining Parties, it shall be allocated to the remaining Parties in equal percentages to each, and the remaining Parties shall be responsible for the associated extra costs, and Exhibit C shall be amended to reflect the modification to each Party's licensed capacity.

C. The remedies set forth herein shall be in addition to any remedy available at law or equity. Nothing set forth in this Section shall limit the remedies available to a Party. Upon a default by any Party, the other Parties may pursue any remedies available at law or equity against the defaulting Party.

## **6. MISCELLANEOUS.**

A. Governing Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for Douglas County, State of Colorado.

B. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof and there are no prior or contemporaneous agreements, either oral or written, relating to the subject matter hereof except as expressly set forth herein.

C. Agreement Modification. The Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

D. Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto.

E. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available

by law to the Parties or their officials, employees, contractors, or agents, or any other person acting on behalf of the Parties and, in particular, governmental immunity that may be afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

F. Assignability. This Agreement and the License granted herein may be assigned, pledged or transferred by a Party pursuant to the terms and requirements of the Organizational Agreement procedure relating to the assignment, pledge or transfer of the Member's Pro Rata Share.

G. No Public Dedication/No Third Party Beneficiary. Nothing contained herein shall be deemed to be a grant or dedication of any rights or use to the public in general, and no third party beneficiary interests are created nor intended to be created by this Agreement.

H. Headings for Convenience. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

I. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth in **Exhibit E**, or at such other address as has been previously furnished in writing, to the other parties. Such notice shall be deemed to have been given when deposited in the United States mail.

J. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

K. Recordation. The Parties agree that this Agreement may be recorded in the records of the Clerk and Recorder for county in which a Party has its principal place of business.

L. Binding Agreement. The benefits and burdens of this Agreement shall inure to and be binding upon on the successors, and assigns of the Parties.

M. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time. Any capitalized term not defined herein shall have the meaning set forth in the definitions of the Organizational Agreement.

N. Survival of Representations. Each and every covenant, promise, and payment contained in this Agreement shall survive each and be binding and obligatory upon each of the Parties and shall not merge into any deed, assignment, covenant, escrow agreement, easement, lease or any other document.

O. Non-Severability. Each Section of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.

P. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any Party or as to all Parties, the Parties will immediately negotiate valid alternative portion(s) that as near as possible give effect to any stricken portion(s).

Q. Force Majeure. Each Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; action of the government (except the parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

SOUTH METRO WISE AUTHORITY

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

Attest:

\_\_\_\_\_

PARKER WATER AND SANITATION  
DISTRICT

By: \_\_\_\_\_  
Ron R. Redd, Manager

Attest:

\_\_\_\_\_

TOWN OF CASTLE ROCK

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

Attest:

\_\_\_\_\_

DENVER SOUTHEAST SUBURBAN WATER  
AND SANITATION DISTRICT (D/B/A PINERY  
WATER AND WASTEWATER DISTRICT)

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

Attest:

\_\_\_\_\_

STONEGATE VILLAGE METROPOLITAN  
DISTRICT

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

Attest:

\_\_\_\_\_

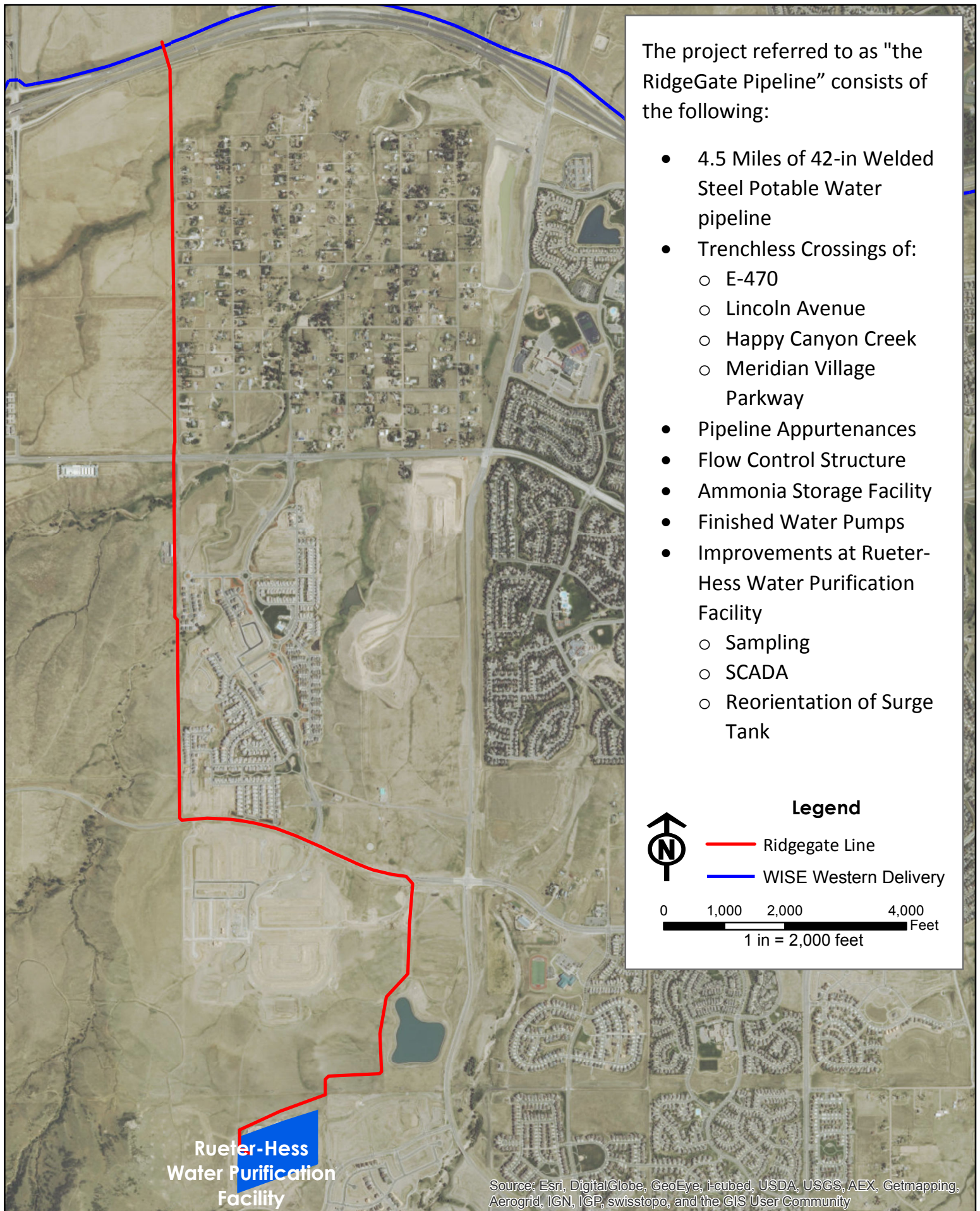
DOMINION WATER AND SANITATION  
DISTRICT

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

Attest:

\_\_\_\_\_



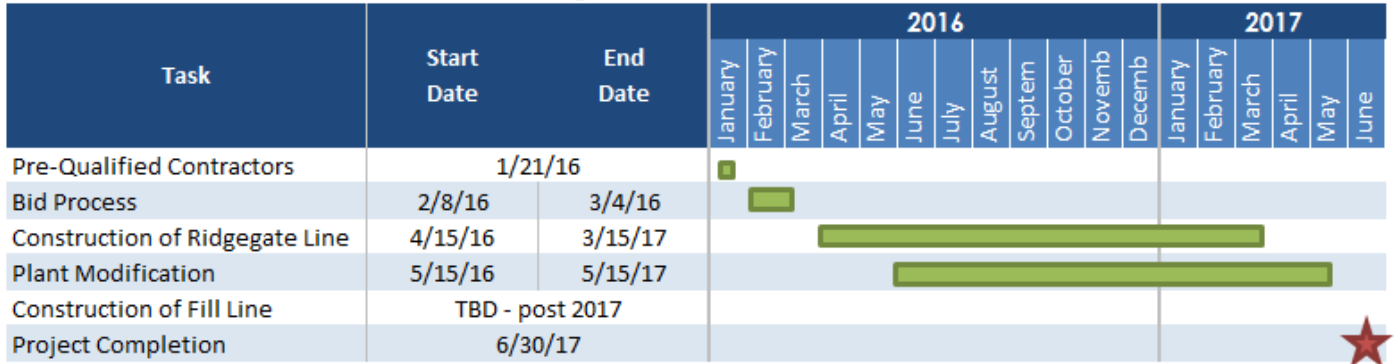


**Exhibit A**  
**The RidgeGate Pipeline**

## EXHIBIT B

### [ESTIMATED CONSTRUCTION SCHEDULE]

RidgeGate Line Schedule



\*A more detailed schedule will be provided upon completion of the bid process

# **EXHIBIT C** **[ESTIMATED COSTS AND CAPACITY ALLOCATION]**

Construction Cost Breakdown											
Authority Member	Subscription Amount	Peak Flow (mgd)	Ownership Percentage	Layne Construction Bid	CH2M Construction Services <sup>1</sup>	Cultural Resource Monitoring	Design Project Management <sup>2</sup>	Construction Project Management <sup>3</sup>	B&V Connection Consulting	Cost Share Summary	Initial Upfront Payment
				\$14,297,876	\$1,595,332	\$250,000	\$30,872	\$167,979	\$20,000		
				Pro-rata Share	Pro-rata Share	Pro-rata Share	Pro-rata Share	Pro-rata Share	Pro-rata Share	Total Pro-rata Share	20%
Dominion	1325	3.98	26.4%	\$3,770,100	\$420,660	\$65,900	\$8,100	\$44,300	\$5,300	\$4,314,400	\$949,200
Parker	1200	3.60	23.9%	\$3,414,400	\$380,975	\$59,700	\$7,400	\$40,100	\$4,800	\$3,907,400	\$859,600
Castle Rock	1000	3.00	19.9%	\$2,845,300	\$317,479	\$49,800	\$6,100	\$33,400	\$4,000	\$3,256,100	\$716,300
Pinery	500	1.50	10.0%	\$1,422,700	\$158,740	\$24,900	\$3,100	\$16,700	\$2,000	\$1,628,100	\$358,200
Stonegate	1000	3.00	19.9%	\$2,845,300	\$317,479	\$49,800	\$6,100	\$33,400	\$4,000	\$3,256,100	\$716,300
Total*	5025	15.08	100.0%	\$14,297,800	\$1,595,332	\$250,100	\$30,800	\$167,900	\$20,100	\$16,362,100	\$3,599,600

(1) Final Cost and includes ERO Cultural Site Clearing

(2) Based on 3% of the Design Cost

(3) Labor based on 1% of the Construction Cost + \$25,000 for Construction Facilities

\* Due to rounding totals may differ by +/-100

NOTE: The cost breakdown is reflective of the low bidder's estimate.

## **EXHIBIT D**

1. Compliance with Drinking Water Standards and TDS Limit. All water introduced by a Party into the RidgeGate Pipeline shall meet all state and federal safe drinking water regulatory requirements as such may exist now or in the future, including without limitation the Safe Drinking Water Act and Colorado Primary Drinking Regulations (5CCR 1002-1), as they may be amended. Primary drinking water standards have not been established for TDS at the time of execution of this Agreement; provided that the current secondary standard is 500 mg/l. Unless the PWSD agrees otherwise, no Party shall introduce water that exceeds the secondary standard of 500 mg/l. All water introduced at the Point of Receipt shall be disinfected with Chloramines, unless PWSD agrees otherwise.

2. Rejection of Water. Each Party shall be solely responsible for making any water it introduces into the RidgeGate Pipeline compatible with the standards set forth in Section 1 of this Exhibit D. Violation of such standards shall be immediately reported to the Parties. PWSD may reject any deliveries that violate these standards. In addition, violations of such standards for a period of 24 continuous hours or more than three times within any three-month period shall permit PWSD to require that deliveries by the violating Party cease until the violating Party cures the cause of such violation and provides reasonable evidence of the cure supported by testing documentation.



## EXHIBIT E

### [PARTY ADDRESSES FOR NOTICES]

Town of Castle Rock 175 Kellogg Court Castle Rock, CO 80109 Attn: Mark Marlowe Facsimile: 303-688-0437 E-mail: mmarlowe@crgov.com	Denver Southeast Suburban Water & Sanitation District (dba Pinery Water and Wastewater District) 5242 Old Schoolhouse Road Parker, CO 80134 Attn: Heather Beasley Facsimile: 303-841-2123 E-mail: hbeasley@pinerywater.com
Dominion Water & Sanitation District 1805 Shea Center Drive, Suite 210 Highlands Ranch, CO 80129 Attn: Mary Kay Provaznik Facsimile: 303-232-9088 E-mail: maryk@sterlingranchcolorado.com	Parker Water and Sanitation District 18100 E. Woodman Drive Parker, CO 80134 Attn: Ron Redd Facsimile: (303) 901-0175 E-mail: rredd@pwsd.org
Stonegate Village Metropolitan District c/o CRS of Colorado. 7995 East Prentice Ave. Suite 103E Greenwood Village, CO 80111 303-381-4972 Office Attn: James McGrady E-mail: jmcgrady@crsofcolorado.com	South Metro Water Supply Authority 8400 E Prentice Avenue, Ste 1500 Greenwood Village, CO 80111 Attn: Rick Marsicek Facsimile: 303-409-7748 E-mail: rickmarsicek@southmetrowater.org