

**INTERGOVERNMENTAL AGREEMENT REGARDING
THE WISE PUMP STATION AND INFRASTRUCTURE DESIGN**

THIS AGREEMENT ("Agreement") is effective the ____ day of _____ 2021 and is entered by and between the **South Metro WISE Authority** ("Authority"), the **Town of Castle Rock, a Colorado home rule municipality, acting by and through the Castle Rock Water Enterprise** ("Castle Rock"), **Dominion Water and Sanitation District, Parker Water and Sanitation District ("PWSD")**, (together the "Participants") all quasi-municipal or municipal corporations and political subdivisions of the State of Colorado.

RECITALS

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

WHEREAS, the Authority and Participants are authorized and desire to enter into this Agreement regarding participation in and payment of the costs associated with the design of the WISE Pump Station and the additional infrastructure needed at and around the Rueter-Hess Reservoir and Water Purification Facility as defined in **Exhibit A** (collectively the "Pump Station Infrastructure") to deliver WISE water to the Participants; and

WHEREAS, the Authority and the Participants desire to memorialize their participation in the costs associated with the design and work related to the design of the WISE Pump Station Infrastructure; and

WHEREAS, this Agreement is limited to the funding of the costs associated with the design of the Pump Station Infrastructure; and

WHEREAS, the execution of this Agreement is in the best interest of the Authority, its members, the Participants and their respective customers and constituents; and

WHEREAS, PWSD shall contract for and lead the design activities on behalf of the Participants under terms reasonably acceptable in the Denver Metropolitan market and shall oversee all aspects of the contract ("Design Contract").

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and Participants agree as follows:

SECTION 1. MANAGEMENT / ADMINISTRATION

- A. Meetings of Participants. Each Participant shall appoint a designated representative to represent its interests and vote on behalf of the Participant as set forth herein. The Participants shall meet as necessary to address items required under this Agreement and related to the design of the Pump Station Infrastructure. At a

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meeting of the Participants, each Participant shall have one (1) vote. When a major decision effecting cost is necessary, two-thirds of the Participants shall be a quorum for making decisions related to the design of the Pump Station Infrastructure. A majority vote of Participants shall be required for approval of any matter. Should any aspect of the design or any decision by the Participants relating to the design be judged by PWSD to have a detrimental financial, technical or operational impact on PWSD, then PWSD shall provide notice to the Authority and the other Participants objecting to the matter along with a detailed explanation of the basis for the objection, including any relevant information supporting the objection and any proposed alternatives acceptable to PWSD. If the other Participants and PWSD cannot resolve the objection to the satisfaction of PWSD within thirty (30) days of delivery of the objection, PWSD or any of the other Participants may terminate this Agreement by providing written notice of such termination to the other participants as well as the Authority within fifteen (15) days of expiration of the 30-day resolution period (the "Termination Period"). Upon expiration of the Termination Period, it shall be deemed that all decisions were agreed upon, and any future design changes shall be addressed in a separate agreement governing the construction of the Pump Station Infrastructure.

The Authority's only interest in this Agreement is to ensure compatibility with the overall WISE system. The Authority shall not be an owner or otherwise a party to the Pump Station Infrastructure.

B. Administration.

- a. Meetings. Meetings of the Participants are not intended to be public meetings.
- b. Minutes. The Participants may keep minutes of meetings.
- c. Financial Records. Any financial records related to or created pursuant to this Agreement shall be kept as part of PWSD records with copies provided to the Authority for its records.

C. Design.

The Participants intend to pay for the costs associated with the design of the Pump Station Infrastructure. PWSD shall contract for the design activities on behalf of the Participants under terms reasonably acceptable in the Denver Metropolitan market and shall oversee all aspects of the Design Contract. The other Participants and the Authority shall not be parties to the Design Contract and shall have no liability thereunder. The Authority and Participants shall approve the total expenditure amount of the Design Contract as provided in this Agreement. PWSD shall provide reports and documentation as may be reasonably requested by the Participants related to the design process and status of activities related thereto.

Following the design, each Participant will be supplied with a complete electronic set of the design documents and plans upon request.

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SECTION 2. COSTS.

- A. Allocation. The costs associated with the Pump Station Infrastructure Agreement shall be shared by the Participants on a pro rata basis as set forth in Exhibit B, which is attached hereto and incorporated herein. The costs in Exhibit B are estimates and shall be adjusted after the Design Contract is approved and again after the design is complete to incorporate any change orders, if necessary. PWSD is prohibited from incurring any costs in excess of those set forth in Exhibit B, as adjusted upon after design consultant selection, without unanimous consent of the Participants.
- B. Remaining Funds. If, upon termination of this Agreement or completion of the design, there are funds remaining, such funds shall be refunded to the Participants and the Authority pro-rata based upon the amount of funds each Participant and the Authority contributed.

SECTION 3. BILLING.

Each Participant agrees to pay the amount set forth in Exhibit B to PWSD within forty-five (45) days of the date of the invoice following the execution of this Agreement. Failure of a Participant to pay the amounts due under this Agreement shall be a breach of this Agreement. Upon completion of the design, the amounts paid by each shall be adjusted based upon the final estimated costs. If additional costs are agreed upon, each Participant shall pay their share as agreed upon.

SECTION 4. REMEDIES

- A. In the event the Authority or any Participant alleges either the Authority or any other Participant is in breach or default of this Agreement, the non-defaulting party shall first notify the defaulting party, the Authority, and other Participants in writing of such default and specify the exact nature of the alleged default in such notice. Except in the case of non-payment of amounts due, the defaulting party shall have thirty (30) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder, provided that: (i) such default is capable of being cured, (ii) the defaulting party has commenced such cure within said 30-day period, and (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such thirty (30) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued, but in no event shall the cure period exceed one hundred twenty (120) days. In the case of default for non-payment of amounts due, the defaulting party shall have seven (7) working days from receipt of such notice within which to cure such default before the non-defaulting party or the Authority may exercise any of its remedies hereunder.

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- B. All late payments shall be subject to a one-time late fee of 5% of the amount due.
- C. All amounts due but unpaid shall be subject to interest at 1.5% on the invoiced amount per month from the date that the payment was originally due.
- D. In the event of breach of any provision of this Agreement, in addition to contractual remedies, any party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other party to perform in accordance with the obligations set forth under this Agreement.
- E. All remedies set forth in this Agreement shall be cumulative.
- F. Nothing in this Agreement shall be deemed to constitute a waiver of immunity granted to the Participants and Authority under Colorado law.

SECTION 5. WITHDRAWAL OF A PARTICIPANT. Any Participant may withdraw from this Agreement upon ninety (90) days written notice to all other Participants. If, due to a Participant's withdrawal, the remaining Participants decide to reduce the size or capacity of any facility, the withdrawing Participant shall pay the costs of redesign to reduce infrastructure size or otherwise to accommodate the withdrawal. Except for the payments made per **Exhibit B** and the redesign cost, the withdrawing Participant shall have no further obligations or rights with respect to this Agreement. Additionally, no withdrawing Participant shall be refunded any amounts paid, pursuant to Section 3, prior to the withdrawal pursuant to this Agreement.

SECTION 6. MISCELLANEOUS

- A. Further Obligations: This Agreement does not obligate the Participants to participate in any future agreements or any amendment of this Agreement. Performance under this Agreement confers the right to participate in construction, operation, and shared capacity of the Pump Station Infrastructure, in accordance with the capacity allocations shown in **Exhibit B**, subject to future agreements or amendments to this Agreement.
- B. Notices: All notices, correspondence and other communications required or permitted by this Agreement shall be in writing and may be delivered by one of the following means:
 - 1) In person (by hand delivery or professional messenger service).
 - 2) By first class mail. Any such notice sent by mail shall be deemed to have been duly given and received three (3) business days after the same is mailed within the continental United States.
 - 3) By Express Mail of the U.S. Postal Service or Federal Express or any other courier service guaranteeing overnight delivery. Notices delivered by overnight

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service shall be deemed to have been given one (1) business day after delivery of the same to the U.S. Postal Service or private courier.

- 4) By facsimile transmission. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed given upon confirmation of transmission thereof.
- 5) By e-mail (preferred method). If any notice is transmitted by e-mail, the same shall be deemed given upon confirmation of receipt thereof.

All notices shall be addressed as set forth in Exhibit C or at other such addresses as the Participants/Authority may hereafter or from time to time designate by written notice to the other Participants/Authority.

- C. Annual Appropriation: All monetary obligations under this Agreement are subject to annual appropriation. This Agreement shall not be deemed to constitute a multi-fiscal year obligation or debt of any of the Participants or the Authority.
- D. Relationship of Participants. This Agreement does not and shall not be construed as creating a relationship of joint ventures, partners, or employer-employee between the Participants.
- E. Liability of Participants. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon each Participant nor the breach thereof, nor the issuance and sale of any bonds by a Participant, shall constitute or create an indebtedness of the other Participants within the meaning of any Colorado constitutional provision or statutory limitation. No Participant shall have any obligation whatsoever to repay any debt or liability of the other Participant.
- F. Assignment. Neither this Agreement, nor any of a Participant's rights, obligations, duties or authority hereunder may be assigned in whole or in part by such Participant without the prior written consent of a majority in number of the other Participants. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- G. Modification. This Agreement may be modified, amended, changed or terminated, in whole or in part, only by an agreement in writing duly authorized by all of the Participants. No consent of any third party shall be required for the negotiation and execution of any such agreement.
- H. Waiver. The waiver of a breach of any of the provisions of this Agreement by a Participant or the Authority shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

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- I. Integration. This Agreement contains the entire agreement between the Participants and no statement, promise or inducement made by a Participant or the agent of a Participant that is not contained in this Agreement shall be valid or binding.
- J. Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.
- K. Headings for Convenience Only. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.
- L. No Third Party Beneficiaries. There are no express or implied third party beneficiaries of this Agreement. No third party has any right to enforce this Agreement.
- M. Counterparts. This Agreement may be executed in counterparts, each of which, when combined, shall be deemed to be an original. Facsimile or scanned signatures shall be an acceptable form of execution of this Agreement.

[SIGNATURE PAGE(S) TO FOLLOW]

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APPROVED by the Participants and the Authority effective as of the date first set forth above.

TOWN OF CASTLE ROCK BY: _____	DOMINION WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, acting by and in its capacity as a water activity enterprise pursuant to Article 45.1, Title 37, C.R.S. BY: _____
PARKER WATER AND SANITATION DISTRICT BY: _____	SOUTH METRO WISE AUTHORITY BY: _____

EXHIBIT A
MAP OF PUMP STATION INFRASTRUCTURE

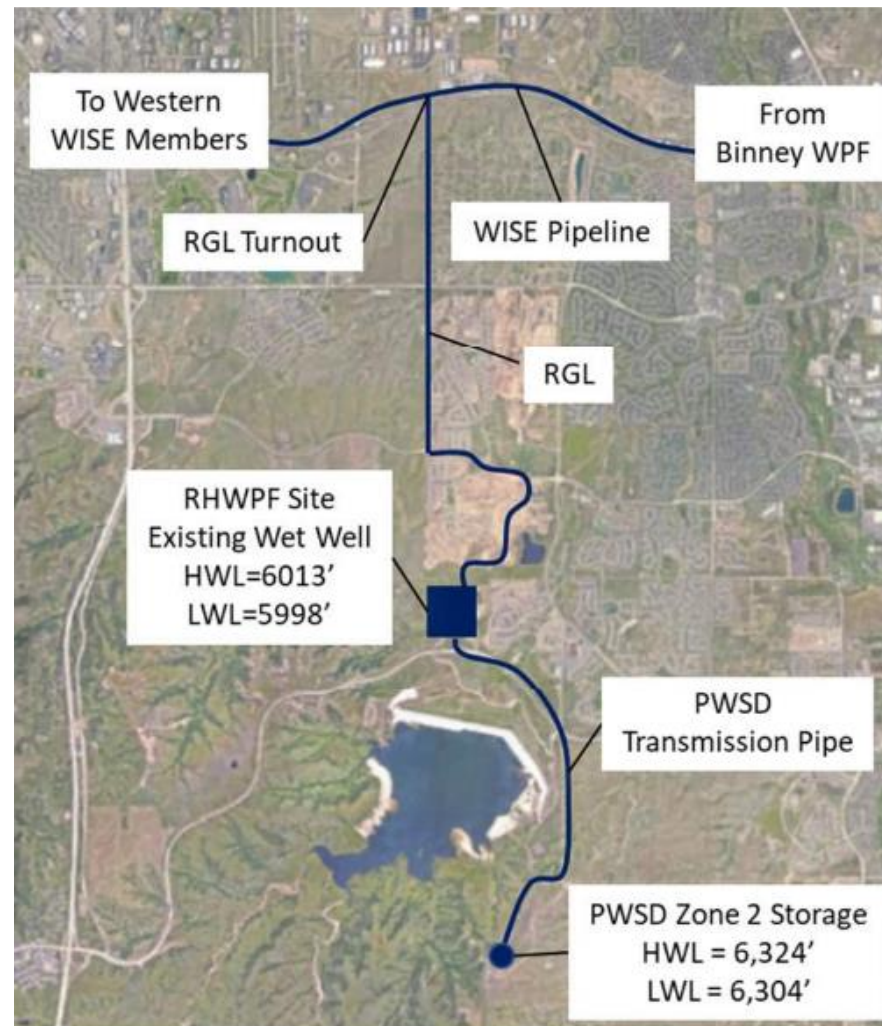


EXHIBIT B

PUMP STATION INFRASTRUCTURE ESTIMATED COSTS

Total Estimated Cost: \$ ____885,600_____

Partner	Current Allocation	Total	Current Pumping Capacity Ownership of 7.5 MGD	Additional pumping Capacity needed	Pro-Rata Share for additional pumping needed	Cost Share	Cost Share
	(RGL Split)	Capacity Need				No Contingency	Using CMAR Contingency
Castle Rock	4	9	1.49	7.5	54 %	\$ 444,793.11	\$ 477,118.19
Dominion	4.2	4.2	1.98	2.2	16 %	\$ 131,527.23	\$ 141,085.90
Parker	4.7	6	1.79	4.2	30 %	\$ 249,279.66	\$ 267,395.91
Pinery	0.5	0	0.75	0.0	0%	\$ -	\$ -
Stonegate	3	0	1.49	0	0 %	\$ -	\$ -
Total	16.4	19.7	7.5	13.9	100%	\$ 825,600	\$ 885,600

EXHIBIT C
PUMP STATION INFRASTRUCTURE
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CONTACT INFORMATION
FOR PARTICIPANTS AND AUTHORITY

Town of Castle Rock 175 Kellogg Court Castle Rock, CO 80109 Attn: Mark Marlowe Facsimile: 303-688-0437 E-mail: mmarlowe@crgov.com	Dominion Water & Sanitation District 9250 E. Costilla Avenue, Suite 315 Greenwood Village, CO 80112 Attn: Andrea Cole Facsimile: E-mail: andrea.cole@dominionwsd.com
South Metro Water Supply Authority 8400 E Prentice Avenue, Ste 315 Greenwood Village, CO 80111 Attn: Facsimile: E-mail: @southmetrowater.org	Parker Water and Sanitation District 18100 E. Woodman Drive Parker, CO 80134 Attn: Ron Redd Facsimile: (303) 901-0175 E-mail: rredd@pwsd.org