

**INTERGOVERNMENTAL AGREEMENT BETWEEN
DENVER SOUTHEAST SUBURBAN WATER & SANITATION
DISTRICT D/B/A PINERY WATER & WASTEWATER DISTRICT AND
THE TOWN OF CASTLE ROCK
(CHERRY CREEK PROJECT WATER AUTHORITY WATER
DELIVERY AGREEMENT)**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____, 2022 (the “Effective Date”), by and between Denver Southeast Suburban Water & Sanitation District d/b/a Pinery Water & Wastewater District, a quasi-municipal corporation and political subdivision of the State of Colorado (“Pinery”) and the Town of Castle Rock, a home rule municipal corporation, acting by and through the Town of Castle Rock Water Enterprise (“Castle Rock”) (individually a “Party” and collectively, the “Parties”).

WITNESSETH:

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; and

WHEREAS, each of the Parties operates a water delivery system to provide water service to their customers; and

WHEREAS, the Parties are both members of the Cherry Creek Project Water Authority (the “Authority”), created pursuant to that certain Water Project Agreement and Establishing Contract of the Cherry Creek Project Water Authority, dated October 14, 2005, as amended by that certain First Amended and Restated Water Project Agreement and Establishing Contract dated August 20, 2008 (the “Amended and Restated Formation Agreement”).

WHEREAS, the Authority seeks to develop a conjunctive use yield from assets it owns which includes tributary water rights, non-tributary water rights, well facilities and storage reservoirs; and

WHEREAS, by virtue of the Amended and Restated Formation Agreement, each member of the Authority is entitled to receive a share of the conjunctive use yield developed by the Authority; and

WHEREAS, Castle Rock desires to receive a portion of its share of the Authority’s conjunctive use yield through a system interconnect with the Pinery.

NOW, THEREFORE, the Parties, in and for the consideration of the performance of the mutual promises set forth herein, the receipt and adequacy of which is hereby acknowledged, for themselves and their successors, do hereby agree as follows:

1. DEFINITIONS

The following terms, when capitalized, have the meanings indicated:

- A. "Authority" means the Cherry Creek Project Water Authority whose current members include the Town of Castle Rock, Denver Southeast Suburban Water and Sanitation District d/b/a Pinery Water and Wastewater District, Cottonwood Water and Sanitation District, and Inverness Water and Sanitation District.
- B. "Conjunctive Use" means the use of both surface water and groundwater supplies to optimize the water demand/supply balance.
- C. "Conjunctive Use Yield" means the amount of water developed by the Authority through conjunctive use.
- D. "Interconnect" means a pipeline connection between Castle Rock's service area and the Pinery's service area whereby potable water could be sent from one entity to the other.
- E. "MGD" means million gallons per day.
- F. "Project Water" means conjunctive use yield originating through the Authority's Cherry Creek project.

2. DESCRIPTION OF PROJECT. The Pinery and Castle Rock have a water system interconnect located near Mentha Drive and Carefree Trail along the Parties' service boundaries, which interconnect is more particularly described on the map identified as Exhibit A to this Agreement. As a member of the CCPWA, Castle Rock desires to have a portion of its Project Water treated by the Pinery and delivered through the interconnect. The Pinery may deliver to Castle Rock approximately 0.25 MGD of Project Water, not to exceed 1.0 MGD; provided that the Pinery shall retain the right to withhold such delivery upon notice to Castle Rock as provided in Paragraph 6.J. of this Agreement. Furthermore, the delivery of Project Water to Castle Rock shall only be guaranteed if Project Water or other water owned or leased by Castle Rock is available in Castle Rock's portion of its storage space in Walker Reservoir. As operator of the Project Water, Pinery shall manage the Project Water quantities in Walker Reservoir on behalf of Castle Rock.

3. QUALITY OF PROJECT WATER. All Project Water delivered from the Pinery to Castle Rock through the interconnect 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 Water Regulations (5 CCR 1002-1), as amended from time to time. If the Pinery becomes aware of any degradation in Project Water quality that falls below these regulatory requirements, it shall immediately notify Castle Rock of such fact and cease all deliveries of Project Water until such degradation is remedied.

4. ALLOCATION OF COSTS.

- A. A one-time capital buy-in fee of \$658,084 for 0.25 MGD of capacity in Pinery's water delivery system is due within 30 days of mutual execution of this agreement.

- B. For water deliveries to Castle Rock of up to 0.25 MGD, Castle Rock agrees to pay \$1.20 per 1,000 gallons (kgal).
- C. For water deliveries in excess of 0.25 MGD, Castle Rock agrees to pay \$1.92/kgal.
- D. The Pinery shall provide notice to Castle Rock by March 15 of each year of any changes in the water delivery rates as described in 4.A. and 4.B.
- E. The Pinery shall invoice Castle Rock monthly for water deliveries.

5. DEFAULT/REMEDIES. The failure of either Party (“Defaulting Party”) to perform any material covenant, agreement, obligation or provision of this Agreement shall constitute an event of default (“Default”). In the event that one Party deems the other Party to be in Default, it shall provide written notice indicating the Default. The Defaulting Party shall have thirty (30) days from the date of the notice to cure the Default or, if such Default is not capable of being cured within thirty (30) days, cure of such Default shall commence and be diligently pursued to completion. In no event shall the cure period exceed thirty (30) 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 fails to cure the Default in accordance with this Section, the non-Defaulting Party may pursue all available remedies at law or equity. In any legal action, to the extent allowed by law, the prevailing Party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other Party.

6. MISCELLANEOUS.

- A. Appropriations. Any monetary obligation under this Agreement shall be subject to annual appropriation by the governing body of each Party. A failure of either Party to appropriate any annual monies required under this Agreement shall result in the termination of this Agreement on December 31 of the last calendar year for which such monies were appropriated. In such event, each Party’s only financial obligation shall be the payment of fees and expenses incurred up to and including the effective date of termination. Nothing set forth herein shall make or constitute this Agreement as a multiple-year fiscal obligation of either Party, nor shall it constitute or create a debt on the part of either Party.
- B. 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.
- C. 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.
- D. Agreement Modification. The Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

- E. Counterpart Execution. The 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.

- F. 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.

- G. Assignability. This Agreement may be assigned, pledged or transferred, in whole or in part, by either Party, but only with the written consent of the other Party to this Agreement.

- H. 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.

- I. 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.

- J. 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 below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given three (3) days after deposit in the United States mail.

If to Castle Rock: Town of Castle Rock
 Attn: Director of Castle Rock Water
 175 Kellogg Court
 Castle Rock, CO 80109

with copy to: Town of Castle Rock
 Attn: Town Attorney
 100 N. Wilcox Street
 Castle Rock, CO 80104

If to Pinery: Pinery Water and Wastewater District
 Attn: District Manager

5242 Old Schoolhouse Rd
Parker, CO 80134

with copy to: Folkestad Fazekas Barrick & Patoile, P.C.
Attn.: Joe D. Kinlaw, General Counsel
18 S. Wilcox Street, Suite 200
Castle Rock, CO 80104

- K. 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 shall be recorded in the records of the Clerk and Recorder for Douglas County, Colorado.
- 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 Amended and Restated Formation 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. Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance shall not affect the validity of the remainder of this Agreement.
- P. Effect of Invalidity. If any provision of this Agreement is held illegal, invalid or unenforceable under present of future applicable law, such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision was not a part hereof.
- 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.

(Signature pages to follow)

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, Director Castle Rock Water

PINERY:

DENVER SOUTHEAST SUBURBAN WATER
AND SANITATION DISTRICT, D/B/A PINERY
WATER AND WASTEWATER DISTRICT,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Walter E. Partridge, Chairman

ATTEST:

By: _____
Jim McGannon, Secretary
