

# EXHIBIT 1

## CONSTRUCTION PHASE ENGINEERING ESCROW AGREEMENT

THIS CONSTRUCTION PHASE ENGINEERING ESCROW AGREEMENT is entered into with an effective date of \_\_\_\_\_, 2018, by and between Plum Creek Water Reclamation Authority ("PCWRA"), and the Town of Castle Rock (the "Town").

### WITNESSETH:

WHEREAS, the Town and PCWRA intend to enter into an agreement ("Expansion Agreement") to implement a construction project to expand PCWRA's wastewater treatment facilities (the "Project") in accordance with the provisions of Article VII, Section 4, of the PCWRA Establishing Agreement of December 14, 1989 ("Establishing Agreement"), and other provisions of the Establishing Agreement that govern plant expansions; and

WHEREAS, PCWRA has retained Burns and McDonnell Engineering Company, Inc. (the "Design Engineer") to design the Project and the Project design is nearing completion; and

WHEREAS, PCWRA has retained a general contractor to perform construction services for the Project and construction has begun; and

WHEREAS, the complexity of the Project requires Construction Phase Engineering Services to ensure that the Project is constructed in accordance with the design documents and can be successfully operated as intended by the design; and

WHEREAS, PCWRA intends to engage the Design Engineer to provide Construction Phase Engineering Services and has solicited a proposal from the Design Engineer (see Exhibit A); and

WHEREAS, the Design Engineer will submit to PCWRA from time to time, but no more frequently than monthly, a payment application ("Application") which will contain a description of the work completed since the last payment and the amount claimed due for such work; and

WHEREAS, the Town has agreed to deposit funds into an Escrow Account to be maintained by PCWRA in trust and without compensation to pay for the costs of the Construction Phase Engineering Services pending execution of the Expansion Agreement; and

WHEREAS, the funds to be held by PCWRA in trust shall be disbursed by PCWRA for payment of the Construction Phase Engineering costs in accordance with procedures hereinafter set forth in this Construction Phase Engineering Escrow Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and

other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are acknowledged to be true and correct, and are incorporated herein by reference.

Upon the date hereof, the Town shall deposit with PCWRA funds in the amount One Million Seventy Eight Thousand Three Hundred and Twenty Three Dollars (\$1,078,323) to be administered by PCWRA in accordance with this Construction Phase Engineering Escrow Agreement, but not to be construed as revenues of PCWRA. Such funds deposited with PCWRA will be held in a separate "Escrow Account" in the Colorado Local Government Liquid Asset Trust aka ColoTrust. The funds on deposit in the Escrow Account shall bear interest to the extent available consistent with the disbursement requirements set forth herein.

2. PCWRA shall provide to the Town copies of the monthly statements for the Escrow Account showing deposits and disbursements including cumulative itemized accounting of all deposits and disbursements to date. Such statements shall include a brief description of the Construction Phase Engineering work associated with each disbursement from the Escrow Account as well as identify any variances from the Design Engineer's proposed Construction Phase Engineering costs.

3. The funds held in the Escrow Account shall be released for payment of the Construction Phase Engineering costs upon delivery of each Application, subject to the following:

a. Submittal of Payment Application: From time to time, but no more frequently than monthly, the Design Engineer shall provide to PCWRA a payment application (the "Application") which shall contain a description of the work completed since the last payment and the amount claimed due for such work.

b. Application Review: PCWRA's Manager or designee and a designated representative of the Town shall review each Application, and sign approval of the same no later than ten (10) business days after receipt; provided, however, that the Application will not be approved for payment, or may be approved for payment of a lesser amount, if either PCWRA or the Town identifies in writing a legitimate concern about the amount of the Application or the work upon which the Application is based.

c. Disbursement of Funds: If both PCWRA and the Town approve the Application, PCWRA shall cause funds to be disbursed from the Escrow Account in accordance with the amount listed in the Application or in such lesser amount as may be approved by PCWRA and the Town.

d. Insufficient Funds: If the Escrow Account does not contain sufficient funds to cover the amount listed in the Application, PCWRA shall immediately notify the Town of such insufficiency, and PCWRA shall not process the Application until sufficient funds are deposited into the Escrow Account to cover the funds requested in the Application.

4. Once the Expansion Agreement has been executed, PCWRA shall thereupon transfer any and all funds held in the Escrow Account, together with accrued interest thereon, if any, into the Expansion Fund established pursuant to the Expansion Agreement, and thereafter all Project costs, including Construction Phase Engineering costs and other professional service costs during construction, shall be paid from the Expansion Fund. At that time PCWRA shall provide a final accounting of the Escrow Account to the Town and a statement of the funds transferred to the Expansion Fund from the Escrow Account.

5. The Parties agree that the funds deposited into the Escrow Account shall be held by PCWRA exclusively for the payment of the Design Engineer pursuant to Applications as hereinabove set forth, and other Construction Phase Engineering-related costs authorized by mutual agreement of the Parties, and for no other purpose, until the Expansion Agreement is signed as provided in Section 5. above.

6. PCWRA undertakes to perform only such duties as are expressly set forth herein and no other duties shall be implied. PCWRA shall not be liable for any action taken or omitted by it in good faith.

7. This Construction Phase Engineering Escrow Agreement may be executed in any number of counterparts each of which shall be deemed an original and of which shall together constitute one and the same Construction Phase Engineering Escrow Agreement. The Parties may execute and deliver this Construction Phase Engineering Escrow Agreement by forwarding (by facsimile, electronic transmission in PDF format or other means) copies thereof showing execution by the Parties.

8. The terms of this Construction Phase Engineering Escrow Agreement shall be binding upon the Parties hereto and their respective Board and Council members, agents, employees, successors and assigns.

9. Nothing in this Construction Phase Engineering Escrow Agreement shall be construed to benefit any person or entity not a Party hereto.

SIGNED and dated as above written.

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

\_\_\_\_\_  
Jennifer Green, Town Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Robert J. Slentz, Town Attorney

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Mark Marlowe, Director of Castle Rock Water

**ATTEST:**

**PLUM CREEK WATER RECLAMATION  
AUTHORITY**

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Shauna Nolte, Administrative Assistant

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Weston Martin, Manager

**Approved as to form:**

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Darryl L. Farrington, Attorney

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