

AGREEMENT FOR PURCHASE AND SALE OF WESTERN PIPELINE AND RIDGEGATE PIPELINE CAPACITY

This Agreement for Purchase and Sale of Western Pipeline Capacity (“Agreement”) is made and entered into this 16th day of April, 2019, and is by and between Town of Castle Rock, a Home Rule Municipality and political subdivision of the State of Colorado (“Castle Rock”) by and through Castle Rock Water Enterprise and Denver Southeast Suburban Water & Sanitation District d/b/a Pinery Water & Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado (“Pinery”).

RECITALS

A. Pinery and Castle Rock are parties to the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement, (“Organizational Agreement”) the primary purpose of which is to create the South Metro WISE Authority (“Authority”) to facilitate the WISE Project; and

B. Pursuant to Section 14 of the Organizational Agreement, Members of the Authority are authorized to sell and convey their rights in the WISE Project to one or more other Authority Members without restriction; and

C. The Authority is a party to the Purchase Agreement effective September 18, 2014 (“Purchase Agreement”) for the East Cherry Creek Valley Western Pipeline (the “Western Pipeline”) and the State Land Board Line (the “SLB Pipeline”) which defines assets purchased by the WISE Authority; and

D. Pinery holds a right to capacity in the Western Pipeline as described in **Exhibit A** attached hereto (“Members Pipeline Capacity”) and desires to sell to Castle Rock a portion of its respective Members Pipeline Capacity in exclusively the Western Pipeline (including appurtenant capacity in the Smoky Hill Tank and other improvements); and

E. Castle Rock desires to purchase a portion of Pinery’s Members Pipeline Capacity in the Western Pipeline subject to the terms and conditions contained herein; and

F. Pinery does not intend to sell, and Castle Rock does not intend to purchase, Pinery’s Members Pipeline Capacity in the SLB Pipelines or related appurtenances; and

G. The Authority is a party to that certain Amended and Restated WISE Partnership-Water Delivery Agreement effective October 21, 2014 (the “WDA”), that certain Agreement for the Operation of Shared Infrastructure (the “OSI”) dated October 21, 2014, that certain Modifications Agreement effective October 21, 2014 (“Mods Agreement”), and other agreements, which collectively set forth the benefits and obligations of Authority Members regarding the Binney Water Purification Facility (the “Binney Plant”) located north of the Aurora Reservoir and the associated Binney Plant Connection; and

H. As a Member of the Authority, Castle Rock agrees that it has reviewed and is familiar with each and every agreement pertaining to a Member’s benefits and obligations regarding the Binney Plant and Binney Plant Connection, regardless of whether such agreement is specifically identified above (collectively, the “Binney Agreements”); and

I. Pinery holds a right to capacity in the future Binney Plant and Binney Plant Connection as described in **Exhibit A** attached hereto (“Members Binney Capacity”); and

J. Castle Rock desires to purchase a portion of the Pinery’s Members Binney Capacity in the Binney Plant and Binney Plant Connection; and

K. Castle Rock and Pinery are party to the Intergovernmental Water Infrastructure Cost Sharing, Construction and Capacity Allocation Agreement (the “Ridgeway Construction Agreement”) dated June 6, 2016, and other agreements, which collectively set forth the benefits and obligations of Ridgeway Members regarding the Ridgeway Pipeline, collectively, “the Ridgeway Agreements”; and

L. Pursuant to Section 4 of the Ridgeway Construction Agreement, Parties are authorized to sell and convey their rights in the Ridgeway Pipeline to one or more other Parties without restriction; and

M. Pinery holds a right to capacity in the Ridgeway Pipeline as described in **Exhibit A** attached hereto (“Members Ridgeway Pipeline Capacity”) and desires to sell to Castle Rock a portion of its respective Members Ridgeway Pipeline Capacity in exclusively the Ridgeway Pipeline; and

N. Castle Rock desires to purchase a portion of the Pinery’s capacity in the Ridgeway Pipeline.

Castle Rock and Pinery intend that this Agreement set forth their entire understanding and agreement regarding the terms and conditions upon which Pinery is selling a portion of its respective Members Pipeline Capacity in the Western Pipeline, its respective Members Binney Capacity, and its respective capacity in the Ridgeway Pipeline. It is the intention of the parties that all prior negotiations, discussions, offers and agreements between them regarding the purchase of such rights be merged and incorporated in this Agreement, except as otherwise stated. For purposes of this Agreement, “Members Pipeline Capacity”, “Members Binney Capacity”, and “Members Ridgeway Pipeline Capacity” are sometimes jointly referred to herein as “Members Capacity”.

AGREEMENT

In consideration of the mutual promises and covenants herein contained, and the recitals set forth above which are hereby incorporated, Castle Rock and Pinery agree as follows:

1. Definitions. All capitalized terms in this Agreement not otherwise defined herein shall have the meaning as defined in the Organizational Agreement, the WDA, the OSI, the Mods Agreement, and/or the Ridgeway Construction Agreement as the case may be.

2. Sale of Members Capacity. Subject to the terms of this Agreement, Pinery agrees to sell to Castle Rock a portion of its respective Members Pipeline Capacity, its respective Members Binney Capacity, and its respective Ridgeway Pipeline capacity, each as described in **Exhibit A** (the “Purchased Shares”) and transfer to Castle Rock all rights and responsibilities of Pinery associated with the Purchased Shares pursuant to the Organizational Agreement, the Binney Agreements, and the Ridgeway Agreements.

3. Purchase Price and Terms. The total purchase price for the Purchased Shares is Two Million Two Hundred Eighty Seven Thousand Nine Hundred Sixty Six and 50/100 Dollars (\$2,287,966.50) (the “Purchase Price”). The Purchase Price shall be paid in full on or before May 1, 2019 and shall be made in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller’s check and cashier’s check (“Good Funds”) delivered as instructed by Pinery.

4. Delivery of Purchased Shares. Upon receipt of the Purchase Price, Pinery shall deliver to Castle Rock an executed Bill of Sale (the “Bill of Sale”) in the form attached hereto as **Exhibit B**. Upon delivery of the Bill of Sale, Castle Rock shall have full use of the Purchased Shares and shall be fully responsible for the costs allocated to the Members that are based on the Members Pipeline Capacity, Members Binney Capacity, and the Ridgeway Pipeline Capacity attributable to the Purchased Shares, pursuant to Section 6 of the Organizational Agreement, the Binney Agreements, and the Ridgeway Agreements respectively. Castle Rock and Pinery shall notify the Authority of the new allocation of their respective Members Capacity resulting from this Agreement as set forth in **Exhibit A**.

5. Representations, Covenants, and Agreements of Pinery. Pinery represents and covenants as follows:

a. Pinery is a political subdivision duly organized and existing under the Constitution and laws of the State of Colorado. Pinery has taken all necessary actions and is duly authorized to enter into this Agreement and to carry out its obligations hereunder.

b. There is no litigation or proceeding pending or, to the best of Pinery’s knowledge, threatened against Pinery affecting the right of Pinery to execute this Agreement or the ability of Pinery to take the actions required hereunder or to otherwise comply with the obligations contained herein.

c. Pinery covenants and agrees to comply with any applicable covenants and requirements set forth in the Organizational Agreement, the Binney Agreements, and the Ridgeway Agreements and to take such actions as necessary to facilitate the transfer of the Purchased Shares pursuant to the terms thereof.

6. Representations and Covenants of Castle Rock. Castle Rock represents and covenants as follows:

a. Castle Rock is a political subdivision of the State of Colorado which has the lawful authority to acquire the Purchased Shares from Pinery.

b. Castle Rock shall not pledge or assign its right, title and interest in and to: (1) this Agreement; or (2) the Purchased Shares and attendant rights and obligations that may be derived under this Agreement or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to and under this Agreement or the Purchased Shares until such time as the Purchase Price has been delivered to Pinery.

c. There is no litigation or proceeding pending against Castle Rock affecting the right of Castle Rock to enter into this Agreement and perform its obligations hereunder or thereunder.

d. Castle Rock shall be responsible for applying for, obtaining, and complying with any and all necessary requirements for Castle Rock’s use of the Purchased Shares under the Organizational Agreement, the Binney Agreements, and the Ridgeway Agreements and to take all actions necessary to facilitate the transfer of the Purchased Shares pursuant thereto.

7. Future Cooperation. Pinery and Castle Rock, for themselves, their respective agents, representatives and assigns, agree to provide to each other and the Authority, its agents, representatives, experts and attorneys, such information and documentation as may be reasonably necessary to implement this Agreement.

8. Notices. Notices under this Agreement and other mailings to the parties shall be sent to the parties at the address for notifications on file with the Authority and a copy of any notices hereunder shall be sent to the Authority.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

10. Anti-Merger Clause. This Agreement shall not merge with either the Organizational Agreement, the Binney Agreements, or the Ridgeway Agreements referenced herein.

11. Execution. This Agreement may be executed in duplicate originals as of the date first above written. When each party has executed a copy thereof, such copies taken together shall be deemed a full and complete agreement between the parties. The date last signed by either party shall be the execution date.

12. Agents. Castle Rock and Pinery each warrant that neither has retained any real estate broker or real estate agent who would be due a commission or other fee as a result of the closing of this transaction.

13. Modification of Agreement. No subsequent modification of any of the terms of this Agreement shall be valid or enforceable unless made in writing and signed by both parties hereto.

14. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Castle Rock and Pinery, and their respective successors and assigns, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of Castle Rock and Pinery that any person other than Castle Rock or Pinery receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

16. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

17. Non-Waiver of Governmental Immunity. The parties, their directors, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, C.R.S §§ 24-10-101, *et. seq.*, as the same may be amended.

18. Entire Agreement. This Agreement constitutes the entire understanding between the parties relating to the subject thereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, Castle Rock and Pinery have executed this Agreement as of the date first set forth above.

PINERY:

**Denver Southeast Suburban Water and
Sanitation District d/b/a Pinery Water
and Wastewater District**

By: Walter Partridge, Chairman

ATTEST:

Heidi Tackett, Secretary

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water

EXHIBIT A

Pinery Costs and Capacity as of 2/25/19				
		Cost to Date	Capacity Owned (mgd)	Percentage Ownership
State Land Board Line		\$ 235,395.07	0.85	6.10%
Western Pipeline		\$2,090,201.15	1.57	4.13%
Water Treatment Plant		\$ 428,814.52	-	6.47%
Binney Connection		\$ 167,009.51	1.08	3.60%
DIA Connection		\$ 315,814.58	-	6.47%
Core Infrastructure O&M		\$ 230,922.85	-	varies
Subscription O&M		\$ 362,300.00	-	6.47%
WISE Water Purchase		\$ 169,897.60		500 AF
Ridgegate Pipeline		\$1,817,467.78	1.50	10.00%
Parker Wheeling IGA		\$ 828,151.00	1.0	-
Local Connection		\$ 168,425.62	2.5	100.00%
TOTAL		\$ 6,814,399.68		

Additional Capacity Available		
Capacity Available (mgd)	Purchase Price (per mgd)	Total Purchase Price
1.07	\$ 901,578.32	\$ 964,688.80
0.58	\$ 91,247.07	\$ 52,923.30
varies	\$ 54,868.42	\$ 58,709.21
		*
1.00	\$ 1,211,645.19	\$ 1,211,645.19
		\$ 2,287,966.50

* Will be based on Western Pipeline Capacity purchase

If sale of all available			
Purchase Price	Capacity Owned (mgd)	Percentage Ownership	
-	0.85	6.10%	
\$ 964,688.80	0.50	1.32%	
-	-	6.47%	
\$ 52,923.30	0.50	1.67%	
-	-	6.47%	
\$ 58,709.21	Varies	Varies	
-	-	6.47%	
	500 AF	6.47%	
\$1,211,645.19	0.50	3.33%	
-	1.0	-	
-	2.5	100.00%	
\$2,287,966.50			

EXHIBIT B
[FORM OF BILL OF SALE]

**EXHIBIT B TO AGREEMENT FOR PURCHASE AND SALE
OF WESTERN PIPELINE AND RIDGEGATE PIPELINE CAPACITY**

**BILL OF SALE
WATER SYSTEM CAPACITY**

KNOW ALL PERSONS BY THESE PRESENTS that the Denver Southeast Suburban Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado d/b/a Pinery Water and Wastewater District (the “Pinery”) (individually a “Party” and collectively, the “Parties”) in consideration of the receipt of the sum of Two Million Two Hundred Eighty-Seven Thousand Nine Hundred Sixty-Six and 50/100 Dollars (\$2,287,966.50), the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, transferred and delivered and by these presents does bargain, sell, grant, convey, transfer and deliver unto Town of Castle Rock, a Home Rule Municipality and political subdivision of the State of Colorado by and through Castle Rock Water Enterprise (“Castle Rock”) the following goods, rights and interests here set forth (capitalized terms used herein, if not separately defined in this Bill of Sale, will have the same meanings ascribed to them in that certain Agreement for Purchase and Sale of Western Pipeline and Ridgeway Pipeline Capacity dated _____, 2019, by and between Castle Rock and Pinery):

Members Pipeline Capacity in the Western Pipeline (which includes the Smoky Hill Tank and other improvements); and Members Binney Capacity in the future Binney Connection and Binney Pump Station; and Members Ridgeway Pipeline Capacity in the Ridgeway Pipeline, each as more specifically set forth on **Exhibit 1**, attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same unto Castle Rock and its assigns and successors forever, and the Pinery does covenant and agree to and with Castle Rock to warrant and defend the rights in the Pinery hereby conveyed against all and every person and persons whomsoever, subject to the terms, conditions, covenants, and agreements set forth in that certain Agreement for Purchase and Sale of Western Pipeline and Ridgeway Pipeline Capacity dated _____, 2019, by and between Castle Rock and Pinery.

1. Nothing herein shall be construed as conveying any interest in the Pinery’s holdings in the State Land Board Line.
2. This Bill of Sale may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Bill of Sale. In addition, the parties agree to recognize signatures of this Bill of Sale transmitted by telecopy or email as if they were original signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, the Pinery and Castle Rock have executed this Bill of Sale, effective _____, 2019

Denver Southeast Suburban Water and Sanitation District d/b/a Pinery Water and Wastewater District

By: Walter Partridge, Chairman

ATTEST:

Heidi Tackett, Secretary

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe,
Director of Castle Rock Water

EXHIBIT 1

Asset	WISE Asset Capacity to be Purchased by Castle Rock (MGD)	Cost of WISE Asset Capacity to be Purchased (USD)	Pinery WISE Asset Capacity Prior to Castle Rock Purchase (MGD)	Pinery WISE Asset Capacity After Castle Rock Purchase (MGD)
Western Pipeline	1.07	\$ 964,688.80	1.57	0.50
Future Binney Pump Station and Pipeline Connection	0.58	\$ 52,923.30	1.07	0.50
Ridgegate Pipeline	1.00	\$ 1,211,645.19	1.50	0.50
Reimbursement of Operations Expenses	N/A	\$ 58,709.21	N/A	N/A
Total		\$ 2,287,966.50		