

**EXTRA-TERRITORIAL
WASTEWATER SERVICE
INTERGOVERNMENTAL AGREEMENT**

DATE: _____, 2020.

PARTIES: **TOWN OF CASTLE ROCK**, a home rule municipal corporation, acting by and through the **CASTLE ROCK WASTEWATER ENTERPRISE**, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

CROWFOOT VALLEY RANCH METROPOLITAN DISTRICT NOS. 1 and 2, quasi-municipal corporations and political subdivisions of the State of Colorado, (141 Union Boulevard, Suite 150, Lakewood, Colorado 80228) (“Districts”).

RECITALS:

- A. Initially capitalized words and phrases used in this IGA have the meanings stated in Article I, or as indicated elsewhere in the Agreement.
- B. The Districts are organized to provide public improvements, facilities and services within their service area, which is generally coextensive with the property in unincorporated Douglas County in development as Canyons South, more particularly described in the attached *Exhibit 1* (“Property”). The Town will provide water service to the Property in accordance with the Water Service Agreement, as defined below.
- C. The Town and Districts have determined it is mutually beneficial for the Town to provide wastewater service to the Property on the terms and conditions prescribed in this IGA.
- D. Pursuant to the Canyons Service Agreement between District No. 1, HT Canyons South Development LP (the “Developer”) and the Denver Southeast Suburban Water and Sanitation District d/b/a Pinery Water and Wastewater District (the “Pinery”), District No. 1 has the contractual right to acquire wastewater treatment capacity at the Pinery wastewater plant sufficient to accommodate the treatment of the wastewater flows from the Property at full development.
- E. Pursuant to the Pinery Treatment IGA between Town and the Pinery, Town has acquired the right to treatment of the wastewater flows from the Property, subject to the District’s acquisition of sufficient treatment capacity under the Canyons Service Agreement.

- F. Pursuant to this IGA, the Property will receive wastewater service from the Town in the same manner and to a similar service standard as properties within the municipal limits of the Town, subject to a twenty-five percent (25%) surcharge on all Service Charges.
- G. The Town's provision of wastewater service to the Districts is premised on the Districts' commitment to adopt and enforce the Town's comprehensive wastewater service and management regulations as the regulations of the Districts, such that the residents and other customers of the Districts have the same privileges and responsibilities as Town residents and customers. Accordingly, the Districts will adopt changes and additions to Town Regulations imposed by the Town within its municipal service area from time to time to maintain a consistent regulatory scheme.
- H. Under the terms of the Consolidated Service Plan for the Districts, District No. 1 has the primary responsibility for developing infrastructure and maintaining public services for the Property. District No. 2 is primarily a financing entity.
- I. The constitution and laws of the State of Colorado permit and encourage cooperative efforts by local governments to make the most efficient and effective use of their powers, responsibilities and resources and to enter into cooperative agreements on such matters as are addressed in this IGA.

COVENANTS:

THEREFORE, in reliance on the matters set forth above and in consideration of the mutual promises contained in this IGA, the parties agree and covenant as follows:

ARTICLE I DEFINITIONS

1.01 Defined Terms. The following words, when capitalized in the text shall have the meanings indicated:

Board: the Board of Directors of District No. 1 or District No. 2, as applicable.

Canyons Service Agreement: Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons) dated December 23, 2004, recorded in the Records on January 3, 2005 at Reception No. 2005000493, as amended by that certain Amendment to Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons) dated May 29, 2009 recorded in the Records on June 2, 2009 at Reception No. 2009041897, and as amended by that certain Second Amendment to Denver Southeast

Suburban Water and Sanitation District Service Agreement (The Canyons) dated November 16, 2016, recorded in the Records on November 29, 2016 at Reception No. 2016086230, and as amended by that certain Third Amendment to Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons) dated July 19, 2017, recorded in the Records on July 26, 2017 at Reception No. 2017050688, and as amended by that certain Assignment of and Fourth Amendment to Denver Southeast Suburban Water and Sanitation District Service Agreement (The Canyons) dated _____, 2020, recorded in the Records on _____, 2020 at Reception No. 2010_____.

Charter: the Home Rule Charter of the Town, as amended.

Code: the Castle Rock Municipal Code, as amended.

C.R.S.: the Colorado Revised Statutes, as amended.

Council: the Castle Rock Town Council, the governing body of the Town.

Development Plan: the land use development plans and regulations approved for the Property by Douglas County.

District or District No. 1: the Crowfoot Valley Ranch Metropolitan District No. 1.

District No. 2: the Crowfoot Valley Ranch Metropolitan District No. 2.

Districts: Crowfoot Valley Ranch Metropolitan District Nos. 1 and 2.

District Facilities: those collection and transmission lines and associated appurtenances to be constructed by the Districts, conveyed to and maintained by the Town.

District Fees: those fees and charges imposed by the Districts, independent of this IGA.

District Regulations: the Wastewater Regulations adopted by the District.

Equipment Surcharge: \$412 per connection to the wastewater system collected as condition to connection to the Town's wastewater system for the purpose of Town funding equipment necessary to meet the Service Commitment.

Facilities: the wastewater collection infrastructure required to serve the Property.

Facilities Plan: the plan attached as *Exhibit 2* depicting the location of necessary District Facilities.

IGA: this Extraterritorial Wastewater Service Intergovernmental Agreement and any amendments and supplements to it.

Owner: the record owner(s) of the Property. As of the date of this IGA, the Owner is HT Canyons South Development LP.

Owner's Consent: the document attached as *Exhibit 3* containing the acceptance and consent of the Owner to this IGA.

Pinery Treatment IGA: Intergovernmental Agreement between Denver Southeast Suburban Water and Sanitation District D/B/A Pinery Water and Wastewater District and the Town of Castle Rock dated _____, 2020, recorded in the Records on _____, 2020 at Reception No. 2020_____.

Plans: the plans, documents, drawings, and specifications prepared by or for the Districts and approved by the Town for construction, installation or acquisition of any of the Facilities.

Property: the real property that is subject to this IGA and is described in the attached *Exhibit 1*.

Records: the public records maintained by the Douglas County Clerk and Recorder.

Service Charges: the periodic charges for Wastewater Service in accordance with Section 4.01 of this IGA.

Town: the Town of Castle Rock, a home rule municipal corporation.

Town Regulations: the Charter, ordinances, resolutions, rules and regulations of the Town, including the Code and the provisions of all public works and building codes, as the same may be amended from time to time. Reference to Town Regulations shall mean the Town Regulations in effect at the time of application of the term under this IGA.

Water Service: the provision of potable water service for domestic use, inclusive of fire flows, in accordance with the terms of the Water Service IGA.

Water Service IGA: Castle Rock / Canyons South Water Service Intergovernmental Agreement dated June 14, 2005, recorded in the Records on September 7, 2005 at Reception No. 2005085039.

Wastewater Regulations: the comprehensive regulatory scheme in the Town Regulations governing all aspects of the provision of municipal wastewater service, including Service Charges, public works regulations inclusive of the infrastructure permitting, construction,

inspection and acceptance. Reference to the Wastewater Regulations shall mean the Wastewater Regulations in effect at the time of application under this IGA.

Wastewater Service: the collection and treatment of wastewater from the Property in accordance with the terms of this IGA

Water Regulations: the comprehensive regulatory scheme in the Town Regulations governing all aspects of the provision of municipal water service, including Fees, Service Charges, public works regulations inclusive of the infrastructure permitting, construction, inspection and acceptance, backflow prevention, water use management practices and Conservation Regulations. Reference to the Water Regulations shall mean the Water Regulations in effect at the time of application under the Water Service IGA.

Certain other terms are defined in the text of this IGA and shall have the meaning indicated.

1.02 Cross-Reference. Any reference in the text to a section or article number, without further description shall mean such section or article in this IGA.

ARTICLE II GENERAL PROVISIONS

2.01 Interpretation and Construction. This IGA shall be applied and interpreted to further the following fundamental concepts, unless expressly provided to the contrary in the text:

- A. The Property is to receive Wastewater Service to the same standards and subject to the same requirements as properties and customers within the municipal limits of the Town;
- B. The provision of Wastewater Service will be governed by the Wastewater Regulations as they evolve during the term of this IGA, so long as the Wastewater Regulations are applied to the Property and properties within the municipal limits of the Town in a non-discriminatory manner; and
- C. The Districts will promptly adopt and enforce the Wastewater Regulations on the Property as the separate regulations of the District.

2.02 Intended Beneficiary. This IGA is entered into for the express and intended purpose of permitting the development of the Property in accordance with the Development Plan. In reliance upon and to enable the Town's Wastewater Service commitment to the Property ("Service Commitment"), Owner and its successors in interest to ownership of the Property are entitled to all rights and benefits afforded Districts under this IGA, including the contractual right

to obtain enforcement of this IGA as provided in Article VII. Owner has acknowledged that the Property is subject to the provisions of this IGA by execution of the Owner's Consent.

2.03 Third Party Performance. Any non-governmental obligation imposed on the Districts by this IGA may be assumed and discharged by Owner, a Property developer, a homebuilder, or other Property owner. However, such assumption by a third party shall not release the Districts from its underlying obligation.

2.04 Reservation of Powers. Except as provided in this IGA or as necessary to give effect to the intent and purpose of this IGA, Town and Districts reserve all of their respective powers and authority as independent governmental entities. Nothing in this IGA shall preclude or impair the Districts from imposing District Fees, provided that the Districts shall not impose District Fees such that the Town's right of enforcement or collection of the Equipment Surcharge and Service Charges is in any manner impaired or subordinated.

2.05 Limited Purpose. This IGA is limited to the Service Commitment and the Property is subject only to the Wastewater Regulations and Water Regulations pursuant to the Water Service IGA, as components of the Town Regulations. Except for fire and emergency medical service provided by the Town on behalf of the Castle Rock Fire Protection District and the Water Service commitment under the Water Service IGA, the Town does not currently provide other municipal services to the Property, nor are the Districts or owner currently subject to other Town Regulations or the payment of other fees, charges and exactions the Town imposes on development within its municipal limits.

2.06 Joint Responsibility. District No. 1 is assigned primary responsibility for performance and compliance with this IGA. However, to the extent that District No. 2's approval or authorization is necessary to enable District 1 to fully perform this IGA, District No. 2 shall be so obligated. Should District No. 1 be dissolved as part of a consolidation into District No. 2, references in this IGA to District shall mean District No. 2. Subject to these qualifications, references to District shall mean District No. 1.

ARTICLE III FACILITIES DEVELOPMENT AND MAINTENANCE

3.01 Wastewater Treatment Capacity. District No. 1 hereby assigns its rights to the wastewater treatment capacity in the Plant (as defined in the Canyons Service Agreement) to Taps

(as defined in the Canyons Service Agreement) (the “Capacity”) to the Town and the Town acknowledges that the rights to the Capacity is not absolute until such time as physical connection of a Tap is made to the Plant and the Tap is deemed a Utilized Tap (as defined in the Canyons Service Agreement). The Town acknowledges that only at such time as a Tap is deemed a Utilized Tap, shall the Town have the right to access the Capacity related to such Tap. The Town further acknowledges that until such time, its rights to the Capacity related to Unutilized Taps (as defined in the Canyons Service Agreement) are contingent upon ongoing payment of Service Charges (as defined in the Canyons Service Agreement) related to Unutilized Taps by the Developer to the Pinery pursuant to the Canyons Service Agreement and the Pinery will continue to have the right to lien properties for unpaid Service Charges related to such Unutilized Taps.

3.02 Wastewater Treatment. Town shall have no obligation to develop or fund Facilities. However, Town shall keep in force and effect the right to wastewater treatment through the Pinery Treatment IGA, provided the Districts acquire sufficient treatment capacity pursuant to the Canyons Service Agreement.

3.03 District Facilities. Town shall have no obligation to construct or finance the Facilities except as required under the Town’s maintenance obligation of the Facilities. District No. 1 shall construct the District Facilities the sole expense of the Districts. The District Facilities will connect to the existing facilities of the Pinery as depicted on the Facilities Plan. District Facilities shall be permitted through the Town in the same manner as similar infrastructure is permitted in the Town. District Facilities shall be constructed to the public works standards and other applicable provisions of the Wastewater Regulations and District Regulations not in conflict with the Wastewater Regulations and the approved Plans. Town shall provide Plan review, public works inspection and acceptance services in consideration of the payment of public works permit fees.

Upon substantial completion of the District Facilities, good and marketable title to the District Facilities shall be conveyed to the Town by warranty bill of sale substantially in the form attached as ***Exhibit 4***. In the event District Facilities are not constructed within a public right of way or easement that runs to the benefit of the Town, the Districts shall concurrently cause to be conveyed to Town suitable easements to permit Town’s ongoing operation and maintenance of such District Facilities. The requirements for the quality of title and title insurance for such easements shall be the same as those prescribed for Property Interests in 3.05.

During the applicable warranty period under the District Regulations, District No. 1 will diligently address warranty items and apply, as necessary, the financial surety posted during the warranty period.

The Town's obligation to provide Wastewater Service to any particular developing area of the Property is dependent and conditioned upon the District's substantial and good faith compliance with the standards and requirements set forth in this section 3.03 in the development of the District Facilities servicing such area.

3.04 Operation and Maintenance. Town shall operate, maintain and repair the District Facilities and all aspects of the wastewater system servicing the Property to the same service level standards as the Town maintains within the Town. After final acceptance of the District Facilities, the Districts shall have no obligation to fund operation and maintenance of the District Facilities.

3.05 Property Interests. If required by the Town in the future, the Districts shall cause to be conveyed to Town, at no cost to Town, necessary sites and easements on the Property to permit the reconfiguration, replacement or maintenance of the Facilities ("Property Interests"). The standards for the scope of the Property Interests generally shall be of a size and configuration for public works constructed in the Town. Additional Property Interests shall be conveyed with marketable title, free of liens, encumbrances, taxes and restrictive covenants (including typical CCR's for new communities). Town shall be provided title insurance at District's expense in amounts reflecting fair market value of the respective Property Interests.

ARTICLE IV

SERVICE CHARGES AND EQUIPMENT SURCHARGE

4.01 Extraterritorial Fees and Charges. All Service Charges shall be imposed at the rate of 125% of the amount that is imposed under the Wastewater Regulations for wastewater service within the Town limits. All references in this IGA to Service Charges applicable to the Property shall be inclusive of this 25% extraterritorial surcharge. The Districts shall impose the Equipment Surcharge and Service Charges within the Property through the District Regulations, as provided in this Article IV.

4.02 District Adoption of Wastewater Regulations. At all times during the term of this IGA, Districts shall maintain in force the Wastewater Regulations as the independent overlapping regulations of the Districts. The District Regulations must at all times reflect the

Wastewater Regulations in all aspects. The Districts hereby delegate to Town the authority to collect and enforce payment of the Equipment Surcharge and Service Charges in accordance with this IGA. A joint resolution of the Districts' Boards adopting the District Regulations effective with approval of this IGA is attached as *Exhibit 5*.

Periodically, as the Town revises the Wastewater Regulations ("Revisions") it shall give the Districts' Boards reasonable prior notice of the Revisions such that the District's Boards may take necessary legislative and administrative actions to incorporate the Revisions into the District Regulations ("District Revisions"). The effective date of the District Revisions shall coincide with the effective date of the Revisions. Reasonable prior notice shall mean the public notice of the Revisions the Town in fact gave its citizens prior to adoption of the Revisions. Provided further, the Town shall make concerted efforts to involve the District's Boards and customers of the Districts in the informal Town processes preceding formal notice of the proposed Revisions, such that there is adequate opportunity for the District's Boards and residents of the Districts to become apprised of the proposed Revisions and give input to the Town prior to final action on the Revisions.

Failure of the Districts to timely adopt the District Revisions in strict compliance with the provisions of this section, entitles the Town to pursue its remedies under Article V, including termination of the Service Commitment under section 5.03. Nothing in this section shall preclude the Town from adopting Revisions under its emergency powers for the immediate preservation of the public health, safety and welfare.

4.03 District Certifications. Annually, not later than January 15th, the Districts shall certify to the Town that as of the commencement of that calendar year, the District Regulations lawfully impose a schedule of Service Charges in compliance with this IGA. Failure of the Districts to conform the District Regulations to the Revisions, including specifically changes or additions to the Service Charges shall constitute a Default under section 5.01 and trigger application of the termination provisions of 5.03. In addition to such annual certification, the Districts shall promptly respond to Town requests for periodic certification of compliance of the District Regulations with this IGA.

4.04 Payment of Equipment Surcharge. The Equipment Surcharge shall be paid directly to the Town concurrently with payment of the Fees as set forth in Section 4.04 of the Water Service Agreement, at which time Town will issue a certificate of payment to the permittee

(“Payment Certificate”). As part of the review and process preceding issuance of the Payment Certificate, the Town shall determine compliance with applicable Wastewater Regulations in the same manner if the Town were issuing a building permit for the subject improvement.

Town will provide a level of customer service in the review of permit applications equivalent to the customer service provided to applicants for building permits in the Town. Payment of the applicable Equipment Surcharge and tender of a Payment Certificate shall be a condition of issuance of the building permit by Douglas County. Prior to the issuance of the first Payment Certificate, Town and Districts shall establish a written protocol with Douglas County which implements the process for collection of the Equipment Surcharge and issuance of Payment Certificates prescribed by this Section.

4.05 Service Charges. Service Charges shall be billed and collected directly by Town to customers in the same manner as the Town administers the billing and collection of Service Charges within its municipal limits, provided that the billing shall reflect that the billing is issued under the concurrent authority of the Districts. All collection and delinquency processes and charges in the Wastewater Regulations shall apply to Wastewater Service to the Property by virtue of the District Regulations. The Districts shall assist the Town in enforcing collection of Service Charges.

ARTICLE V DEFAULT AND TERMINATION

5.01 Default Notice and Cure Rights. In the event either party alleges that the other is in default of this IGA (“Default”), the non-defaulting party shall first notify the defaulting party in writing of the Default (“Default Notice”) and specify the exact nature of the Default in the Default Notice. The defaulting party shall have 60 days from receipt of the Default Notice within which to cure the Default (“Cure Period”) before the non-defaulting party may exercise its remedies.

5.02 Mutual Remedies. If a Default is not cured within the Cure Period, and in addition to any specific remedies or consequences provided elsewhere in this IGA, the non-defaulting party shall have the right to take whatever action at law or in equity that is necessary or desirable to enforce the performance and observation of this IGA by the defaulting party, including equitable remedies afforded under Rule 106 CRCP.

5.03 Termination of Service Commitment. In the event that: (i) the uncured Default is the failure of the District(s) to comply with the obligations to enact and enforce the District Regulations and/or District Revisions, in accordance with 4.02, or (ii) there is a final judicial disposition of litigation commenced by the Town under 5.02 that encompasses both of the following elements, or (iii) the District(s) is dissolved or vacancies on the Board(s) preclude the maintenance of a quorum of the Board(s) for a period of time longer than 60 days, or (iv) the District(s) seek relief under Chapter 9 of the United States Bankruptcy Code, (each of the foregoing constituting a “Terminable Event”) the Town may terminate the Service Commitment in accordance with the further provisions of this section:

- A. The District(s)’ independent governmental powers and/or public policy preclude the judicial enforcement or the mandated cure of the Default or the grant of the other equitable relief sought by the Town against the District(s) and/or its Board(s); and
- B. There is no concurrent finding that the underlying Wastewater Regulation upon which the Town seeks District(s) performance is invalid or was not lawfully adopted or enacted by the Town.

Upon commencement of a Terminable Event, the Town may give notice to the Districts of termination of the Service Commitment (“Termination Notice”). Alternatively, the Town may seek judicial relief. Absent supplemental agreement between Town and District(s), District(s) shall have 180 days from the date of the Termination Notice to acquire alternative wastewater service from other wastewater service providers (“Termination”). In conjunction with Termination, the assumption of wastewater service to the Property by a third party, the Town shall convey its interest in the District Facilities and related easements necessary for the new wastewater provider to facilitate the assumption of ownership and maintenance responsibilities by such provider.

Upon Termination, the Town shall retain ownership and interest in the Equipment Surcharges and Service Charges imposed through the date of Termination.

5.04 Cure Rights under Pinery Treatment IGA. Districts shall have the right, but not the obligation to cure a default by the Town under the Pinery Treatment IGA so as to maintain the ability to continue wastewater treatment by the Pinery. In that event, Districts shall have the right to seek recoupment of its expenditures incurred in curing the Town default.

**ARTICLE VI
MISCELLANEOUS**

6.01 Notice. All notices or other communications shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Town: Castle Rock Water Enterprise
 Attn: Director of Castle Rock Water
 100 N. Wilcox Street
 Castle Rock, Colorado 80104

With copy to: Town Attorney
 Town of Castle Rock
 100 N. Wilcox Street
 Castle Rock, Colorado 80104

If to District No. 1 Crowfoot Valley Ranch Metropolitan District No. 1
 141 Union Boulevard, Suite 150
 Lakewood, Colorado 80228
 Attn: Ann Finn

With copy to: Crowfoot Valley Ranch Metropolitan District No. 1
 390 Union Boulevard, Suite 400
 Denver, Colorado 80228
 Attn: Matthew Ruhland

If to District No. 2 Crowfoot Valley Ranch Metropolitan District No. 2
 141 Union Boulevard, Suite 150
 Lakewood, Colorado 80228
 Attn: Ann Finn

With copy to: Crowfoot Valley Ranch Metropolitan District No. 2
 390 Union Boulevard, Suite 400
 Denver, Colorado 80228
 Attn: Matthew Ruhland

6.02 Notice of Meetings. The Districts shall submit a copy of a written notice of every regular or special meeting of the Districts to the Town Clerk at least three days prior to such meeting.

6.03 Assignment. No transfer or assignment of this IGA or of any rights hereunder shall be made by either party, other than Town may assign this IGA to another governmental entity as part of the transfer of all of the Town's water system to such entity. In the event of such transfer, the entity assuming responsibility for Wastewater Service to the Property shall expressly assume the Town's responsibility under this IGA.

6.04 Indemnification.

6.05 Amendments. This IGA may be amended only in writing upon the consent of the parties. Amendments shall be approved by resolution of the Council and resolution of the Board.

6.06 No Waiver. The waiver or delay of enforcement of one or more terms of this IGA shall not constitute a waiver of the remaining terms. The waiver or delay in enforcement regarding any breach of this IGA shall not constitute a waiver of any terms of this IGA.

6.07 TABOR Compliance. This IGA does not create indebtedness or any party within the meaning of any constitutional, home rule charter or statutory limitation or provision. The obligations of the parties under this IGA do not create a multiple fiscal year obligation under Article X, Section 20 of the Colorado Constitution.

6.08 Entire Agreement. This IGA contains the entire agreement of the parties concerning the subject matter and supersedes all prior conversations, proposals, negotiations, understandings and agreements, whether written or oral.

6.09 Recordation. This IGA shall be recorded in the Records.

6.10 Effective Date. This IGA shall become effective upon its mutual execution by Town and Districts.

ATTEST:

TOWN OF CASTLE ROCK acting by and
through the **CASTLE ROCK**
WASTEWATER ENTERPRISE

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

DISTRICTS: