

# ATTACHMENT B

## INTERGOVERNMENTAL AGREEMENT BETWEEN DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT D/B/A PINERY WATER AND WASTEWATER DISTRICT AND THE TOWN OF CASTLE ROCK

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) dated \_\_\_\_\_, 2020, by and between DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT d/b/a PINERY WATER AND WASTEWATER DISTRICT (“District”), a political subdivision of the State of Colorado, and the TOWN OF CASTLE ROCK acting by and through the CASTLE ROCK WATER ENTERPRISE (“Town”), a Colorado municipal corporation.

### RECITALS

A. WHEREAS, the Town and the Crowfoot Valley Metropolitan Districts Nos. 1-2 (the “Crowfoot Districts”) have concurrently entered into the Extra-territorial Wastewater Service Intergovernmental Agreement (the “Wastewater Service IGA”) by which the Town will provide wastewater collection, transmission and treatment for the Canyons South planned development of 968 residential uses and associated amenities (the “Canyons South Service Area”) as further described on the attached *Exhibit A*;

B. WHEREAS, the District owns and operates a wastewater treatment plant and other wastewater facilities known as the Pinery Wastewater Treatment Plant (“Plant”);

C. WHEREAS, the District has committed to maintain 973 single family units of wastewater treatment capacity for the purpose of treating wastewater flows from anticipated development in the Canyons South Service Area (the “Treatment Capacity”), as set forth in a separate agreement entitled Denver Southeast Suburban and Sanitation District Service Agreement (The Canyons) (the “Service Agreement”), by and between the District and HT Canyons South Development LP, a Delaware limited partnership, as successor in interest to Mississippi Partnership, a Colorado general partnership, recorded in the real property records of Douglas County, Colorado at Reception No. 2005000493 on January 3, 2005, as amended by that certain Second Amendment, recorded in the real property records of Douglas County, Colorado at Reception No. 2016086230 on November 29, 2016, and that certain Third Amendment, recorded in the real property records of Douglas County, Colorado at Reception No. 2017050688 on July 26, 2017, and by that certain Assignment of and Fourth Amendment, recorded in the real property records of Douglas County, Colorado at Reception No. \_\_\_\_\_ on \_\_\_\_\_, 2020 (the “Fourth Amendment to Service Agreement”) (the Service Agreement and all amendments thereto are collectively referred to herein as the “Service Agreement”);

D. WHEREAS, pursuant to the Fourth Amendment to Service Agreement, Crowfoot District No. 1 assumed certain rights and obligations relating to the Treatment Capacity;

**Commented [JK1]:** 2<sup>nd</sup> Amendment: Additional 5 taps purchased? (968+5)

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E. WHEREAS, the Wastewater Service IGA provides for the assignment of the Treatment Capacity from the Crowfoot Districts to the Town;

F. WHEREAS, the Town expressly acknowledges that the rights in the Treatment Capacity are not absolute until such time as physical connection is made to the District's service lines and facilities and is contingent upon ongoing payment by the Developer of Service Charges (as defined in the Service Agreement).

F. WHEREAS, the purpose of this Agreement is to specify the financial and other terms and conditions by which the District will treat wastewater at the Plant utilizing the Treatment Capacity to enable the Town to provide wastewater services pursuant to the Wastewater Service IGA;

E. WHEREAS, the District and the Town have the power and authority to enter into agreements and contracts affecting their affairs and have the management, control and supervision of all their respective business, including construction, installation, operation and maintenance of wastewater facilities, and also have power and authority to provide services and facilities outside their boundaries;

F. WHEREAS, the District has adopted Rules and Regulations ("Regulations"), which are hereby incorporated herein by reference, as they may be amended from time to time, which the Town acknowledges to be applicable and binding upon the Town as further provided in this Agreement;

G. WHEREAS, the District has adopted a schedule of fees attached as *Exhibit B* ("Fee Schedule") which may be amended from time to time by the District subject to the terms and conditions of this Agreement;

H. WHEREAS, it is the desire of the Town to utilize the Treatment Capacity and the facilities owned by the District for the treatment of wastewater, and the Town acknowledges that the District is entitled to impose charges for providing such wastewater treatment services outside of the boundaries of the District in amounts which exceed the District's actual cost of providing such services;

I. WHEREAS, the District is willing to provide wastewater treatment to the Town under the specific conditions set forth in this Agreement, in consideration of the fees and charges authorized under this Agreement; and

J. WHEREAS, in further consideration of the District's agreement to enter into this agreement the Town has agreed to adopt and enforce the District's Groundwater Protection Rules in that portion of the Town which lies in the Cherry Creek Stream Basin.

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NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and stipulations hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the Town agree as follows:

## **INTRODUCTORY ARTICLE** **AMENDMENT AND RESTATEMENT**

**0.01.** The foregoing recitals are hereby incorporated into the Agreement by this reference.

## **ARTICLE 1** **CONNECTION TO THE PLANT**

**1.01** The Town shall construct (or cause others to construct), at no cost to the District, the interceptor (the “Canyons South Interceptor”) required to connect the points of individual discharge within the Canyons South Service Area to the “District Line”, as the District Line is described in the attached *Exhibit C*. Town shall own and maintain that portion of the Canyons South Interceptor between the points of individual discharge and the Canyons South Flow Metering Station referenced in Section 2.02, below. The District shall own and maintain all lines and appurtenances from and including the Canyons South Flow Metering Station to the Plant.

## **ARTICLE II** **WASTEWATER TREATMENT**

**2.01** The District agrees to treat up to 0.24 million gallons per day average annual flow of wastewater, but not more than 0.27 million gallons per day monthly average flow of wastewater discharged from the Canyons South Service Area (the “Canyons South Service Commitment”). Nothing contained in this Agreement shall be construed to require the District to provide treatment capacity exceeding the Canyons South Service Commitment or servicing property outside the Canyons South Service Area without the express written consent of the District. Wastewater flows treated by the District in excess of the Canyons South Service Commitment shall be subject to a surcharge of 25% of the standard service charge authorized under this Agreement.

**2.02** Town shall construct (or cause others to construct), at no cost to District, a flow metering station to measure the wastewater flows from the Canyons South Service Area (“Canyons South Flow Metering Station” or “CSFMS”) in conjunction with the construction and connection of the Canyons South Interceptor. The CSFMS shall be equipped with an approved radio telemetry device, and reference to CSFMS in this Section includes radio telemetry approved by the District. The design of the CSFMS shall be subject to approval by the District. As of the date of this Agreement, the parties have not identified the appropriate location of the CSFMS. If the CSFMS is subsequently located within the boundaries of the Canyons South Service Area, the Town shall obtain a suitable site for the CSFMS (the “Site”) at no cost to the District, and, at the discretion of the District, Town shall convey (or cause others to convey) title to the Site to District, or otherwise provide District with suitable access and use rights to the Site to allow the District to monitor and

**Commented [JK2]:** These numbers are from original agreement. Doesn't include the additional 5 taps from the 2<sup>nd</sup> amendment. Need to determine whether additional 5 taps were actually purchased.

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maintain the CSFMS. Installation of the CSFMS in accordance with this Section shall be a condition to the District's Canyons South Service Commitment. After installation of the CSFMS by Town and acceptance by the District, the District shall operate and maintain the CSFMS, and keep the CSFMS calibrated accurately. If and when deemed necessary by the District in the exercise of reasonable technical judgment, the District may repair, replace, or recalibrate the CSFMS, at the District's expense. The Town shall not have any right of ownership in the physical facilities of the Plant, or any physical facility between the CSFMS and the Plant. The District shall recover its cost in maintaining and replacing the CSFMS through the Service Charges the District is authorized to impose under Article III.

**2.03 Cherry Creek Basin Authority Phosphorus Allocation.** The District has been granted an allocation permitting the discharge of a certain quantity of phosphorus to Cherry Creek by the Cherry Creek Basin Authority ("Authority"). At this time the District has a phosphorous allocation sufficient to meet the service needs. In the future, if additional phosphorous allocations are unavailable the District may have to treat to a more stringent standard, or find an alternate form of treatment. Costs associated with achieving new treatment standards will be recovered through such increases in the fees charged for service as are determined to be necessary by the District in its sole discretion to meet such treatment standards as they are amended from time to time; provided that said costs are allocated between the Canyons South Service Area and all other District users and connectors in a fair and equitable pro-rata basis.

**2.04** The Regulations, the Colorado Discharge Permits for the Plant ("Discharge Permits") issued to any facilities owned or operated by the District, and Resolutions as adopted by the District from time to time, are specifically incorporated herein by reference, as they or any of them may be amended from time to time, and are made binding upon the Canyons South Service Area. Nothing herein shall be construed so as to conflict with, negate, or cause a violation of the provisions of these documents. All applicable Regulations, including amendments thereto during the term of this Agreement, shall govern and be the minimum standards for that portion of the Town's system within the Canyons South Service Area. The Town agrees to abide by the Resolutions of the District, as well as all applicable state and federal laws, rules, regulations, or permits, including those of the Environmental Protection Agency (EPA) and the State of Colorado Department of Public Health and Environment, Water Quality Control Division, as they become effective or implemented. The Regulations do not now contain, and no amendments to the Regulations will be adopted, that will impose stricter standards, discharge limitations, or prohibitions upon the Town than apply to the District users. The Town shall inform all users, contractors, and subcontractors of such standards, rules and regulations upon inquiry from such persons, and shall not furnish any inconsistent information. It shall be the responsibility of the Town to be informed of the applicable requirements, and to enforce the same with regard to all of its users.

**2.05** Costs incurred by the District resulting from any amendments to any applicable rule, regulation or permit which requires physical improvement to the Plant, the interceptor or any other physical facility ("Compliance Costs") may be allocated to the Town through surcharge to tap or service charges in the manner otherwise authorized by this Agreement, provided the Compliance

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Costs are allocated between the Town and all other District users and connectors, in a fair and equitable manner based upon Plant utilization. If any activity of the Town results in or contributes to the imposition of a fine or other penalty upon the District by any agency of applicable jurisdiction, the Town will promptly pay such fine, or ratable portion thereof, or reimburse the District in the event of such payment by the District. Alternatively, the District, at the Town's request and expense, shall invoke such administrative appeal rights as may be afforded the District to contest such fine. The Town shall promptly pay the fine, if any, as finally assessed after such appeal or protest is concluded.

## **ARTICLE III** **FEES AND CHARGES**

**3.01** On or before the 10th day of each month, the Town shall forward to District a list of residential tap connections made in the Canyons South Service Area for the preceding month, including information regarding the location of each tap. As set forth in the

**3.02** The District will impose and collect wholesale user charges for the services provided by the District under this Agreement (the "Service Charges") as set forth in the Fee Schedule. The Service Charges shall be based upon the wastewater flows measured at the Canyons South Flow Metering Station, applying the schedule of rates set forth in the Fee Schedule. From time to time, the District may revise the Fee Schedule, provided that the District concurrently imposes a proportionate increase in Service Charges to users in the District and other connectors, if any. Any change in the Fee Schedule shall take effect on the following January 1. The District shall give Town 90 days' prior notice of an increase in the rate of Service Charges. In addition to the regular Service Charges, the District shall be entitled to impose the surcharge referred to in Section 2.01, above, if so authorized under 2.01.

The District shall bill the Service Charges (and any applicable surcharges imposed pursuant to Section 2.01, above) to the Town monthly. The Town shall have thirty (30) days from the date of such invoice to make full payment to the District. If any payments required by this Agreement are not made by the Town by the due date, interest on the unpaid amount shall be assessed at a monthly rate of 1.0 percent per month, and the District shall have the remedies set forth in Article V, below. No other service charges or monthly fees in lieu of service charges will be imposed pursuant to the provisions of this Article.

**3.03** All discharge limitations and prohibitions in the Regulations, as the same may be amended from time to time, are incorporated herein as though set forth verbatim. The District shall not be required to treat any wastewater containing any prohibited constituent, nor any other constituent that may adversely affect the treatment capability of the Plant, or beneficial use of its biosolids, as reasonably determined by the District. If it is determined that a constituent or constituents are present that would adversely affect the Plant, or its ability to treat wastewater in accordance with the terms of any Discharge Permit, and if the District demonstrates by evidence obtained at the Flow Metering Station that such constituent is present in wastewater flow generated within the Town, the Town shall promptly proceed to rectify such condition. The Town is

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prohibited from discharging any substances into the Plant, which are prohibited by the Regulations. The Town shall make reasonable and diligent efforts to prevent all such prohibited discharges by its customers or users. To the extent permitted by law, the Town shall indemnify and hold harmless the District from and in respect to any and all loss, liability, claim, penalty, fine or obligation arising from or in connection with any prohibited discharge by the Town or its customers or users, or the discharge of any other constituent that would adversely affect the Plant or its ability to treat wastewater in accordance with the terms of any Discharge Permit.

The parties acknowledge that certain types of discharges may subject users to the Federal Pretreatment Regulations (the “FPR”). In the event any user within the Town discharges wastewater requiring pretreatment pursuant to the FPR, the Town will require such user to meet all applicable provisions of the FPR as contained in 40 C.F.R. §403. 40 C.F.R. §403 shall refer to that section included in Title 40 Code of Federal Regulations Part 403, Environmental Protection Agency General Pretreatment Regulations as authorized by the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.), or such regulations and statutes as may from time to time be amended.

## **ARTICLE IV** **RETURN FLOW CREDITS**

**4.01** Town retains the absolute ownership and control over the Town’s treated wastewater flows discharged from the Plant pursuant to this Agreement, including the right to use and reuse such effluent to extinction and to sell, lease or transfer such effluent to third parties: provided, however, prior to such sale, lease or transfer, District shall have the first right of refusal. District shall have 30 days from the date of notice of such proposed transaction, to notify Town of its desire to enter into the transaction with the Town on identical terms. In the event District does not give Town timely notice of its election to proceed with the transaction and fully perform the transaction, Town may conclude the transaction with the third party. By facilitating the discharge of the treated effluent attributable to the Town’s wastewater flows to Cherry Creek, District does not acquire any return flow credits or other water right entitlement. District acknowledges that the Town, at its sole expense, may capture such effluent for transmission and application within the Town. The District may not transfer any interest or use rights in the Town return flows to third parties.

## **ARTICLE V** **ENFORCEMENT AND REMEDIES FOR BREACH**

**5.01** Failure of either party to comply with any obligation or requirement contained in this Agreement shall constitute a default under this Agreement. In the event of such default, the non-defaulting party shall send notice of the default (the “Default Notice”) and the defaulting party shall have 10 days from the date of the default notice to cure such default. In the event a timely cure is not effected, the non-defaulting party shall have the right to legal and equitable relief, including damages and/or injunctive relief. In addition to the general remedies afforded the parties under this Section 6.01, the specific remedies and consequences set forth in the text of this

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Agreement shall be enforceable by appropriate judicial judgment or order. In any judicial action commenced to enforce this Agreement, the prevailing party shall be entitled to judgment for its reasonable attorney's fees and costs.

**5.02** In the event that the District obtains a Court order authorizing termination of the Canyons South Service Commitment, the District shall have the right to go upon the property or easements of the Town, and to perform the physical disconnection of the Town's facilities from any line, interceptor or conduit delivering effluent to the Plant, provided that the Town is first given any advance notice mandated by the Court. The Town shall reimburse the costs of such disconnection to the District.

**5.03** The District shall have the right to refuse to serve a user or potential user, disconnect the service of any user pursuant to appropriate law, or take other appropriate action in the event of violation or non-compliance by such user with the Regulations or any applicable law, rule, permit or regulation of the County of Douglas, State of Colorado, or the United States.

**5.04** The Town agrees to police any and all of its facilities in order to protect and prevent any unauthorized connections thereto. Further, the Town agrees upon detection to cause the disconnection of any unauthorized wastewater taps. In the event an unauthorized tap is discovered by the Town, the District and the Town shall cooperate and take all necessary actions to collect any and all tap fees, service charges and penalties set forth herein.

## **ARTICLE VI** **MISCELLANEOUS PROVISIONS**

**6.01** Each of the parties warrants that it has full right, power and authority to enter into and perform this Agreement.

**6.02** The Town and the District covenant that they will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such acts, instruments and transfers as may reasonably be required for the performance of their obligations hereunder.

**6.03** Upon the execution by both parties, this Agreement shall be in full force and effect, and shall be legally binding upon the parties. This agreement shall continue in perpetuity until terminated by mutual written agreement of the parties hereto, or as provided elsewhere herein.

**6.04** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or give to, any person other than the parties, any right, remedy or claim under or by reason of this Agreement or any covenants, terms, conditions and provisions hereof, and all the covenants, terms, conditions and provisions hereof shall be for the sole and exclusive benefit of the parties hereto which shall inure to and be binding upon the successors and assigns of the parties.

**6.05** This Agreement may not be assigned by the parties without the prior written mutual consent of the parties.

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**6.06** None of the obligations of the parties hereunder shall impair the credit of the other party.

**6.07** All notices, billings and payments required to be given or made under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, to the following addressees:

DISTRICT: Denver Southeast Suburban Water and Sanitation District  
d/b/a Pinery Water and Wastewater District  
P.O. Box 1660  
Parker, CO 80134

With a copy to: Folkestad Fazekas Barrick & Patoile  
18 S. Wilcox St., Suite 200  
Castle Rock, CO 80104  
Attn: Joe Kinlaw, General Counsel

TOWN: Town of Castle Rock  
100 North Wilcox Street  
Castle Rock, CO 80104

All notices will be deemed effective one (1) day after hand delivery, or, if mailed, upon receipt. Either party, by written notice so provided, may change the address to which future notices shall be sent.

**6.08** If any covenant, term, condition or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term or condition shall not affect any other provision contained herein, the intention of the parties being that all provisions hereof are severable.

**6.09** This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, and all prior negotiations, representations, writing, contracts, understandings, or agreements pertaining to such matters are superseded by this Agreement.

**6.10** The District shall have no responsibility, liability or authority concerning any wastewater treatment facilities belonging to the Town, and the Town does, to the extent permitted by law, hereby indemnify and hold harmless the District from and against any and all claims, liability, causes of action, obligation or undertaking arising from or in connection with such other facilities.

**6.11** It is understood that the District is providing only wastewater treatment service, in accordance with the terms hereof. This Agreement does not offer, and shall not be construed as offering, wastewater treatment service or any other service to the public generally.



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**6.12** Any disputes arising between the parties hereto shall be resolved through mandatory arbitration in accordance with the applicable procedure and rules of the American Arbitration Association.

**6.13** Whenever the District or the Town is named or referred to herein, such provision shall be deemed to include the duly constituted and authorized successors of the District or the Town, respectively.

**6.14.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**[SIGNATURE PAGES FOLLOW]**

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement in their respective signatures, intending that this Agreement shall become effective as of the date first above written.

**DISTRICT:**

**DENVER SOUTHEAST SUBURBAN WATER  
AND WASTEWATER DISTRICT, D/B/A  
PINERY WATER AND WASTEWATER  
DISTRICT**

By: \_\_\_\_\_  
Walter E. Partridge, Chairman

ATTEST:

\_\_\_\_\_  
Heidi A. Tackett, Secretary

STATE OF COLORADO     )  
  )     ss.  
COUNTY OF DOUGLAS     )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by  
\_\_\_\_\_, Chairman, and \_\_\_\_\_, Secretary for Denver  
Southeast Suburban Water and Sanitation District, d/b/a Pinery Water and Wastewater District.

Witness my hand and official seal.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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**ATTEST:**

**TOWN OF CASTLE ROCK**

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

\_\_\_\_\_  
Jason Gray, Mayor

Approved as to form:

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

STATE OF COLORADO     )  
                                      )  
COUNTY OF DOUGLAS    )

ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by  
Lisa Anderson as Town Clerk and Jason Gray as Mayor of the Town of Castle Rock, Colorado.

Witness my hand and official seal.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

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## EXHIBIT LIST

EXHIBIT A	Canyons South Service Area
EXHIBIT B	Fee Schedule
EXHIBIT C	District Line Description

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## EXHIBIT A CANYONS SOUTH SERVICE AREA

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## EXHIBIT B FEE SCHEDULE

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## EXHIBIT C DISTRICT LINE

