

**PURCHASE AND SALE AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK, COLORADO BY
AND THROUGH ITS WATER ACTIVITY ENTERPRISE
AND THE ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY
RELATED TO THE CHERRY CREEK PROJECT WATER AUTHORITY**

This Purchase and Sale Agreement ("Agreement") is dated this _____ day of _____, 2020, by and among the **TOWN OF CASTLE ROCK, COLORADO**, a Colorado home rule municipality, **BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE** ("Buyer") and **ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY**, a Colorado water authority ("Seller"). The date on which Buyer and Seller have both executed this Agreement shall be the "Mutual Execution Date."

1. RECITALS

1.1. Pursuant to the *First Amended and Restated Water Project Agreement and Formation of the Cherry Creek Project Water Authority* dated August 20, 2008 ("Formation Agreement"), Inverness Water and Sanitation District ("Inverness"), Denver Southeast Suburban Water and Sanitation District ("Pinery"), Cottonwood Water and Sanitation District ("Cottonwood") and Seller formed the Cherry Creek Project Water Authority ("Authority").

1.2. The Authority owns assets, including but not limited to water rights, decrees and real property.

1.3. As specified in ¶ 2.1 of the Formation Agreement, Seller owns forty-one and twenty-five hundredths percent (41.25%) of the Authority.

1.4. Seller's 41.25% interest in the Authority is subject to a first right of refusal, pursuant to ¶ 3.1.7 of the Formation Agreement.

1.5. Seller desires to sell and Buyer desires to purchase Seller's 41.25% interest in the Authority for the consideration and on the terms set forth in this Agreement.

2. CONDITIONS PRECEDENT. Unless otherwise specified, this Agreement shall not be effective until Seller:

2.1. Provides written notice to Buyer that Seller has completed the first right of refusal procedure outlined in ¶ 3.1.7 of the Formation Agreement without Inverness, Pinery and/or Cottonwood purchasing all or any portion of Seller's 41.25% interest in the Authority; OR

2.2. Provides written waivers of the first right of refusal procedure outlined in ¶ 3.1.7 of the Formation Agreement from Inverness, Pinery and Cottonwood; AND

2.3. Provides written consent to the purchase of Seller's 41.25% interest by Buyer from Inverness, Pinery and Cottonwood, in a form attached hereto as **EXHIBIT A**.

2.4. Provides Buyer with an Agreement re Condition Precedent signed by Buyer, Inverness, Pinery, Cottonwood and the Authority, in the form attached hereto as

EXHIBIT B.

The date on which Seller completes the actions in ¶ 2.1 or ¶ 2.2 and ¶ 2.3 and ¶ 2.4 shall be the "Effective Date" of this Agreement.

3. **ASSETS TO BE SOLD.** At the Closing, Seller shall sell to Buyer and Buyer shall purchase from Seller, free and clear of any encumbrances, all of Seller's right, title and interest in and to the Authority and the Authority's property and assets, real, personal or mixed, tangible and intangible, of every kind and description to the extent allocated to Seller pursuant to the Formation Agreement and as existing as of the Effective Date, except the Excluded Assets described in ¶4, including but not limited to the following:

- 3.1. All real property and real property interests, including easements and minerals (collectively "Real Property");
- 3.2. All water rights, including tributary, nontributary and not nontributary water rights (collectively "Water Rights");
- 3.3. All personal property;
- 3.4. All accounts receivable;
- 3.5. All contracts, including the Formation Agreement;
- 3.6. All Water Court decrees and well permits;
- 3.7. All governmental authorizations and all pending applications or renewals;
- 3.8. All data and records related to the Authority;
- 3.9. All insurance policies and rights thereunder;
- 3.10. All claims against third parties, whether choate or inchoate, known or unknown, contingent or noncontingent;
- 3.11. All deposits and prepaid expenses, claims for refunds, and rights to offset;
- 3.12. All revenues;
- 3.13. All cash, cash equivalents, interest income and investments; and
- 3.14. All minute books, records and seals.

All of Seller's interest in the Authority and the Authority's property and assets to be transferred to Buyer under this Agreement shall be referred to collectively as the "Assets."

4. **EXCLUDED ASSETS.** On May 31, 2018, the Authority sold real property referred to as the "Vessel Property" for seven million two hundred and fifty thousand dollars

(\$7,250,000.00) to Meritage Homes of Colorado, Inc. Seller's 41.25% interest in the proceeds from the sale is three million eighty-four thousand and sixty-six dollars and sixty-six cents (\$3,084,066.66). Notwithstanding anything to the contrary contained in ¶ 3 of this Agreement, Buyer agrees that three million eighty-four thousand and sixty-six dollars and sixty-six cents (\$3,084,066.66) either has been or will be distributed from the Authority to Seller prior to Closing and, thus, is not part of the sale and purchase contemplated hereunder ("Excluded Assets"). As a result, Buyer will not own a *pro rata* ownership interest in the remaining Vessel Proceeds in the ColoTrust investment account.

5. **CONSIDERATION.** The consideration for the Assets ("Purchase Price") will be four million five hundred thousand dollars (\$4,500,000.00) paid in good funds.

6. **CLOSING.** Subject to the satisfaction of the terms and conditions in this Agreement, the purchase and sale provided for in this Agreement ("Closing") will take place at _____TBD_____, unless otherwise agreed by Buyer and Seller. Subject to the satisfaction of the terms and conditions in this Agreement, Closing may occur within sixty (60) days of the end of the Due Diligence Period or after the Cure Period described in ¶ 12. At Closing, the following actions shall occur.

6.1. Seller shall deliver to Buyer an assignment of all of Seller's interest and ownership in the Authority, including Seller's interest in the Formation Agreement that includes Buyer's assumption of all responsibilities and any liabilities ("Formation Assignment and Assumption Agreement") executed by Seller, in a form attached hereto as **EXHIBIT C**;

6.2. Seller shall deliver to Buyer an Agreement re Condition of Closing executed by ACWWA, Inverness, Pinery, Cottonwood and the Authority, in a form attached hereto as **EXHIBIT D**;

6.3. Seller shall deliver to Buyer a statement of authority ("Statement"), in a form attached hereto as **EXHIBIT E**;

6.4. Seller shall deliver to Buyer an assignment and bill of sale, with no warranties, executed by Seller, for personal property ("Assignment and Bill of Sale") in a form attached hereto as **EXHIBIT F**;

6.5. Seller shall deliver to Buyer for each interest in Real Property and Water Rights a recordable bargain and sale deed, with no warranties ("Deed"), executed by Seller, in a form attached hereto as **EXHIBIT G**;

6.6. Seller shall deliver to Buyer such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer as may reasonably be requested by Buyer, executed by Seller, each in a form acceptable to Buyer and Seller;

6.7. Buyer shall deliver to Seller the Purchase Price by wire transfer;

6.8. Buyer shall deliver to Seller the Formation Assignment and Assumption

Agreement executed by Buyer; and

6.9. Buyer shall deliver to Seller a Statement, in a form attached hereto as **EXHIBIT E**.

7. **SELLER'S REPRESENTATIONS AND WARRANTIES.** As of the Effective Date of this Agreement and Closing, Seller represents and warrants as follows.

7.1. Seller is a water authority duly organized, validly existing and in good standing under the laws of Colorado.

7.2. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms.

7.3. Upon the execution and delivery by Seller of the documents described in ¶ 6.1 to ¶ 6.6 at Closing (collectively "Seller's Closing Documents"), each of Seller's Closing Documents will constitute the legal, valid and binding obligation of Seller enforceable in accordance with its terms.

7.4. Except as set forth in paragraph 2, Seller has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and Seller's Closing Documents and to perform its obligations under this Agreement and Seller's Closing Documents. Such action has been duly authorized by Seller's board of directors.

7.5. Neither the execution and delivery of this Agreement nor the execution and delivery of Seller's Closing Documents will directly or indirectly contravene, conflict with or result in a violation or breach of any of the terms or requirements of any contract, approval, permit or other legal document.

7.6. Except as set forth in ¶ 2, Seller is not required to give any notice to or obtain any consent from any person or entity in connection with the execution and delivery of this Agreement or Seller's Closing Documents.

7.7. The Formation Agreement is in full force and effect, and to Seller's knowledge no party, including Seller, is in breach of the Formation Agreement.

7.8. Seller owns a 41.25% interest in the Authority, free and clear of any liens or encumbrances.

7.9. To Seller's knowledge, the Authority owns good and marketable title to the Real Property and Water Rights, free and clear of any liens or encumbrances.

7.10. To Seller's knowledge, the Authority owns good and transferable title to all of the other property and assets free and clear of any liens or encumbrances.

7.11. To Seller's knowledge, there is no pending or threatened proceeding by or against Seller or the Authority that may affect the value, use of or title to the Assets.

7.12. Seller has not incurred any obligation or liability for brokerage or finders' fees in connection with the Assets.

8. **BUYER'S REPRESENTATIONS AND WARRANTIES.** As of the Effective Date of this Agreement and Closing, Buyer represents and warrants as follows.

8.1. Buyer is a home rule municipality duly organized, validly existing and in good standing under the laws of the State of Colorado.

8.2. This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

8.3. Upon the execution and delivery of the documents described in ¶6.9 to ¶6.10 by Buyer at Closing ("Buyer's Closing Documents"), Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable in accordance with their respective terms.

8.4. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and Buyer's Closing Documents and to perform its obligations under this Agreement and Buyer's Closing Documents. Such action has been duly authorized by all necessary actions.

8.5. Neither the execution and delivery of this Agreement by Buyer nor the execution and delivery of Buyer's Closing Documents will directly or indirectly contravene, conflict with or result in a violation or breach of any of the terms or requirements of any contract, approval, permit or other legal document.

8.6. Buyer is not required to give any notice to or obtain any consent from any person or entity in connection with the execution and delivery of this Agreement or Buyer's Closing Documents.

8.7. Buyer has not incurred any obligation or liability for brokerage or finders' fees in connection with the Assets.

9. **NOTIFICATION.** Between the Effective Date and Closing, each party shall promptly notify the other party in writing if it becomes aware of any fact or condition that causes or constitutes a breach of any representations and warranties made as of the Effective Date of this Agreement.

10. **ACCESS AND INVESTIGATION.** Between the Mutual Execution Date and Closing, upon reasonable advance notice received from Buyer, Seller shall:

10.1. Subject to two (2) business day's notice to the Authority, provide Buyer full and free access, during regular business hours, to the Seller's, records, documents and data related to the Authority in a manner that does not unreasonably interfere with Seller's operations.

10.2. Subject to two (2) business day's notice to the Authority, provide Buyer full and

free access, during regular business hours, to the Authority's personnel, properties (including subsurface testing), contracts, governmental authorizations, books, records and other documents and data in a manner that does not unreasonably interfere with the operations of the Authority.

10.3. Cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the Assets.

10.4. Allow Buyer to have the Real Property and personal property inspected, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of such property.

11. PRODUCTION OF DOCUMENTS. No later than forty-five (45) business days after the Mutual Execution of this Agreement or three (3) business days after the Effective Date, whichever is earlier, Seller shall furnish to Buyer or shall cause the Authority to furnish to Buyer, at Seller's expense:

11.1. For all Real Property:

11.1.1. An inventory of all Real Property owned by the Authority;

11.1.2. Any title commitments or title policies issued by a title insurer to insure title to all land, easements, improvements and/or insurable appurtenances;

11.1.3. Complete and legible copies of all deeds vesting title in the Authority and the recorded documents listed as Schedule B-1 on any title commitments.

11.1.4. Any unrecorded encumbrance documents;

11.1.5. Any surveys;

11.1.6. Any reports or studies conducted for the acquisition of the Real Property; and

11.1.7. Any reports or studies conducted for valuation of the Real Property.

11.2. For any interests in Water Rights:

11.2.1. An inventory of all Water Rights owned by the Authority;

11.2.2. Complete and legible copies of all deeds vesting title in the Authority and in the Authority's chain of title;

11.2.3. Any maps, surveys or aerials related to the Water Rights;

- 11.2.4. Any title opinion, abstract or due diligence report conducted for the sale to or the acquisition of the water rights by the Authority;
- 11.2.5. Any engineering studies, valuations, quantifications or other reports associated with the Water Rights;
- 11.2.6. Any decrees or well permits and well files; and
- 11.2.7. Any encumbrance documents.
- 11.3. For any personal property:
 - 11.3.1. An inventory of all personal property owned by the Authority;
 - 11.3.2. The bill of sale evidencing ownership of the personal property in the Authority; and
 - 11.3.3. Any engineering studies, valuations, or other reports associated with the personal property.
- 11.4. For the Authority:
 - 11.4.1. All formation documents, by-laws and rules and regulations of the Authority;
 - 11.4.2. All contracts and leases with third parties;
 - 11.4.3. All governmental authorizations;
 - 11.4.4. All meeting minutes for the past three years;
 - 11.4.5. All financial statements for the past three years; and
 - 11.4.6. All bank statements for the past one year.

12. DUE DILIGENCE. Buyer shall have ninety (90) days from the Effective Date of this Agreement to conduct a due diligence review of the Assets ("Diligence Period").

12.1. If, prior to the expiration of the Diligence Period, Buyer determines that any aspect of the Assets are not satisfactory to Buyer, in Buyer's sole discretion, Buyer may terminate this Agreement.

12.2. Notwithstanding ¶ 12.1, if Buyer discovers any title defects regarding the Assets, Buyer may provide written notice to Seller of those defects prior to the expiration of the Diligence Period. If such notice is given, then Seller shall have thirty (30) days in which to cure said title defects ("Cure Period").

12.2.1. If Seller is able to cure the title defects and provides evidence and written notice of such cure within the Cure Period, then Buyer shall have ten

(10) days from Seller's written notice of cure to accept such cure or to terminate the Agreement.

12.2.2. If Seller fails to or is unable to cure said title defects within the Cure Period, then Buyer shall have ten (10) days from Seller's written notice to waive the title defects or to terminate the Agreement.

12.2.3. Absent any notice of termination within the Diligence Period pursuant to ¶ 12.1, notice of title defect within the Diligence Period pursuant to ¶ 12.2 or notice of termination within ten (10) days of Seller's written notice pursuant to ¶¶ 12.2.1. or 12.2.2, Buyer shall be deemed to have accepted the status of Seller's title to the Assets.

13. TERMINATION EVENTS. This Agreement may be terminated as follows:

13.1. Automatically, if Seller fails to complete the conditions precedent described in ¶ 2 on or before March 15, 2020.

13.2. By Buyer in writing by a notice of termination pursuant to ¶ 12.1, during the Diligence Period;

13.3. By Buyer in writing by a notice of termination pursuant to ¶ 12.2.1 or ¶ 12.2.2, as a result of a title defect;

13.4. By Buyer if a breach of any provision of this Agreement has been committed by Seller and such breach has not been waived by Buyer;

13.5. By Seller if a breach of any provision of this Agreement has been committed by Buyer and such breach has not been waived by Seller; and

13.6. By mutual consent of Buyer and Seller in writing.

14. OPERATION OF THE AUTHORITY. Between the date of the Mutual Execution of this Agreement and Closing, in accordance with Seller's 41.25% interest, Seller shall use its best efforts to cause the Authority to:

14.1. Conduct its business only in the ordinary course of business;

14.2. Use its best efforts to preserve intact its current organization, keep available the services of its officers and agents, and maintain its relations and good will with entities with which it has business relationships;

14.3. Confer with Buyer prior to implementing operational or management decisions of a material nature, including but not limited to sale of any Assets; however, Seller shall not be obligated to share with Buyer any confidential information of the Authority discussed in executive session;

14.4. Maintain the Assets in a condition that is consistent with the requirements and

normal conduct of the Authority;

14.5. Comply with all contractual obligations applicable to the operations of the Authority;

14.6. Continue in full force and effect the insurance coverage or substantially equivalent policies;

14.7. Execute and deliver all documents, make all truthful oaths, and do all other acts that may be reasonably necessary or desirable in the opinion of Buyer to complete the purchase and sale, all without further consideration; and

14.8. Maintain all books and records of the Authority in the ordinary course of business.

15. **FURTHER ASSURANCES.** The parties shall cooperate reasonably with each other in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall: furnish upon request to each other such further information; execute and deliver to each other such other documents; and do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.

16. **SURVIVAL.** All representations, warranties, covenants and obligations in this Agreement and any other document delivered pursuant to this Agreement shall survive the Closing.

17. **GENERAL PROVISIONS.**

17.1. **Expenses.** Each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement, including all fees and expenses of their representatives.

17.2. **Notices.** All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by an overnight courier service (costs prepaid); (b) sent by e-mail with confirmation of transmission or acknowledgement; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, e-mail address or person as a party may designate by notice to the other parties):

To Seller: Arapahoe County Water And Wastewater Authority
c/o Steve Witter, General Manager

Phone: 303-790-4830
Email: switter@acwwa.com

With a Copy To: Spencer Fane LLP
c/o Ron Fano

Phone: 303-839-3820
Email: rfano@spencerfane.com

To Buyer: Town of Castle Rock
c/o Mark Marlowe, Director of Castle Rock Water
175 Kellogg Court
Castle Rock, Colorado 80109
Email: mmarlowe@crgov.com

With a Copy To: Town of Castle Rock
c/o Bob Slentz, Town Attorney
100 Wilcox Street
Castle Rock, Colorado 80104
Phone: 303-830-2500
Email: bslentz@crgov.com

With a Copy To: Lyons Gaddis
c/o Madoline Wallace-Gross
363 Centennial Parkway, Suite 100
Louisville, Colorado 80027
Email: mwg@lyonsgaddis.com

17.3. Jurisdiction. Any proceeding arising out of or relating to this Agreement may be brought in the courts of the State of Colorado, Douglas County. Each of the parties irrevocably submits to the exclusive jurisdiction of such courts.

17.4. Enforcement. Seller acknowledges and agrees that Buyer would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by Seller could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which Buyer may be entitled, at law or in equity, Buyer shall be entitled to enforce any provision of this Agreement by specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

17.5. Waiver; Remedies Cumulative. The rights and remedies of the parties to this

Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right. No claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party by a waiver or renunciation unless in writing signed by the other party. No waiver that may be given by a party will be applicable except in the specific instance for which it is given.

17.6. Entire Agreement and Modification. This Agreement supersedes all prior agreements, whether written or verbal, between the parties with respect to its subject matter (including any letter of intent) and constitutes (along with other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

17.7. Assignments, Successors and No Third-Party Rights. No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties.

17.8. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

17.9. Construction. The headings of paragraphs in this Agreement are provided for convenience only and will not affect its construction or interpretation.

17.10. Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

17.11. Governing Law. This Agreement will be governed by and construed under the laws of the State of Colorado.

17.12. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted electronically shall be deemed to be their original signatures for all purposes.

17.13. Recitals. This Parties agree that the Recitals in ¶ 1 are substantive parts of the Agreement and are enforceable for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SELLER:

**ARAPAHOE COUNTY WATER AND
WASTEWATER AUTHORITY**, a water authority
of the State of Colorado

ATTEST:

Secretary

BUYER:

**TOWN OF CASTLE ROCK, COLORADO, a
Colorado home rule municipality,
BY AND THROUGH ITS WATER ACTIVITY
ENTERPRISE**

By:

Jason Gray, Mayor

ATTEST:

By:

Lisa Anderson, Town Clerk

APPROVED AS TO FORM:

By:

Robert J. Slentz, Town Attorney

EXHIBIT LIST

- A. Consent to Sale of Interest
- B. Agreement regarding Condition Precedent
- C. Formation Assignment and Assumption Agreement
- D. Agreement Regarding Condition of Closing
- E. Statement of Authority
- F. Assignment and Bill of Sale
- G. Bargain and Sale Deed