

WASTEWATER CAPACITY RESERVATION AGREEMENT

This WASTEWATER CAPACITY RESERVATION AGREEMENT (hereinafter “this Agreement”) is made this ____ day of ____, 2020, between the Town of Castle Rock, Douglas County, Colorado, a municipal corporation and political subdivision of the State of Colorado (“the Town”), and the Silver Heights Water and Sanitation District, a special district of the State of Colorado (“the District”).

RECITALS

This Agreement is made with respect to the following facts (initially capitalized terms used below are defined in Section 1):

A. The District is a Special District organized under Title 32, Colorado Revised Statutes, for the purpose of providing water and sanitation services to residential and commercial entities located within its Service Area.

B. The Town is a member of the Plum Creek Water Reclamation Authority pursuant to the Plum Creek Water Reclamation Authority Establishing Agreement dated December 14, 1989, by and among the Town, Castle Pines Metropolitan District, and Castle Pines North Metropolitan District.

C. As a member of the Authority, the Town is entitled to wastewater treatment services on a volume basis at the Plum Creek Wastewater Treatment Plant.

D. The District receives wastewater treatment services on a volume basis from the Authority pursuant to a Special Connector’s Agreement dated July 23, 1991, and an Agreement Concerning Wastewater Treatment with the Town and Castle Pines Holdings, Inc. dated July 26, 1991 (collectively, “Plum Creek Agreements”).

E. Under the Plum Creek Agreements, the Plum Creek Wastewater Treatment Plant is the exclusive provider of wastewater treatment services to the District.

F. The District is currently entitled to 45,000 gallons per day capacity in the Town’s collection system and Authority’s Plum Creek Wastewater Treatment Plant.

G. The District currently uses an average of 26,000 gallons per day.

H. Bridgewater Castle Rock ALF, LLC, a Delaware limited liability company, wishes to develop a new senior living facility within the District’s Service Area (“Development”).

I. Bridgewater has requested that the District provide water and sanitation services for the Development.

J. The volume of wastewater treatment capacity allocated to the District by the Plum Creek Agreements is insufficient to serve the Development’s entire anticipated demand for wastewater treatment services.

K. The Town has unused wastewater treatment capacity in the Plum Creek Wastewater Treatment Plant that it desires to reserve for later sale to the District to serve the Development.

L. In accordance with the terms of the Water and Sewage Service Development Agreement Between Silver Heights Water and Sanitation District and Bridgewater Castle Rock ALF, LLC (“Development Agreement”), the District has agreed to initiate formal negotiations with the Town and the Authority to acquire the additional capacity necessary to meet the Development’s anticipated demand for water and sanitation services.

M. The Town agrees to reserve a portion of its unused wastewater treatment capacity in the Plum Creek Wastewater Treatment Plant for future sale to the District in accordance with the terms of this Agreement.

AGREEMENT

The District and the Town hereby enter this Agreement for the above-described purpose, subject to the terms, conditions, and agreements set forth herein.

1. Definitions. In this Agreement, the following defined terms have the meanings indicated:

1.1. “Additional Capacity” means the wastewater treatment capacity needed to serve the Development in excess of the District’s Current Allocation that the District has agreed to acquire subject to the terms and conditions of the Development Agreement. At this time, the amount of Additional Capacity is estimated to be approximately 3,740 gallons per day of conveyance and treatment capacity, or 17 EQRs (Equivalent Residential Unit), where one EQR equals 220 gallons per day (average day generation rate), subject to adjustment in accordance with paragraph 3.1 of this Agreement.

1.2. “Authority” means the Plum Creek Water Reclamation Authority (formerly known as the Plum Creek Wastewater Authority).

1.3. “Current Allocation” means the wastewater treatment capacity of 45,000 gallons per day allocated to the District under the Special Connector’s Agreement dated July 23, 1991, between the District and the Plum Creek Wastewater Authority (now known as the Plum Creek Water Reclamation Authority) as specified on Exhibit A thereto.

1.4. “Effective Date” means the date on which this Agreement has been executed by both parties.

1.5. “Initial Reservation Period” means the period of time during which the Town will reserve the Additional Capacity. The Initial Reservation Period is two years commencing on the Effective Date.

1.6. “Plum Creek Agreements” means the Special Connector’s Agreement between the District and the Authority dated July 23, 1991, and the Agreement Concerning Wastewater Treatment between the District, the Town, and Castle Pines Holdings, Inc. dated July 26, 1991.

2. Reservation of Additional Capacity. The Town agrees to reserve the Additional Capacity for an initial period of two years from the Effective Date of this Agreement. Within 30 days of expiration of the Initial Reservation Period, either party may terminate this Agreement upon written notice to the other party. Otherwise, this Agreement will automatically renew for additional six-month terms until Closing on the Additional Capacity or written notice of termination by either Party.

2.1. Amount of Additional Capacity. The Additional Capacity is currently estimated to be approximately 3,740 gallons per day of conveyance and treatment capacity, or 17 EQRs, where one EQR equals 220 gallons per day (average day generation rate). The amount of Additional Capacity may increase if the District's demand for wastewater treatment services increases prior to Closing on the Additional Capacity. The District will provide written notice to the Town of any anticipated increase in the amount of Additional Capacity.

2.1.1. Immaterial Increase. If the anticipated increase is equal to or less than 3 EQRs, the increase will be deemed immaterial. The Town will not object to an Immaterial Increase in amount.

2.1.2. Material Increase. If the anticipated increase is greater than 3 EQRs, the increase will be deemed material and will be subject to written approval by the Town. The Town will provide its decision to approve or disapprove the material increase within 60 days of receipt of notice from the District. In the event the Town disapproves a Material Increase, this Agreement will nonetheless remain effective as to the original amount of Additional Capacity as identified in paragraphs 1.1 and 2.1 of this Agreement (17 EQRs).

3. Payment for Additional Capacity. Payment for the Additional Capacity shall occur before the Development is connected to the District's water and sewer infrastructure. If Closing occurs within the Initial Reservation Period, the purchase price for the Additional Capacity will be based on Castle Rock Water's 2020 System Development Fee for wastewater, or \$4,023/EQR, plus a 25% surcharge for extraterritorial service for a total of \$85,488.75 (17 EQR x \$4,023 x 1.25). If Closing does not occur within the Initial Reservation Period, the purchase price for the Additional Capacity will be based on the System Development Fee in effect at the time of the Closing, plus a 25% surcharge for extraterritorial service.

4. Operations and Maintenance Cost. Wastewater from the District must travel through the Town's wastewater collection system in order to reach the Plum Creek Wastewater Treatment Plant. There are significant costs to the Town associated with operating and maintaining the Town's wastewater collection system. The Town charges its customers for wastewater service using the Wastewater Volumetric Rate set forth in the Town's annual Utility Administrative Fee Schedule. A portion of the Wastewater Volumetric Rate contributes to the cost of operation, maintenance, and capital replacements for the Town's wastewater collection system (hereinafter, "Town Operations and Maintenance Cost").

4.1. Conveyance of Additional Capacity in Town's Wastewater Collection System. As a condition of the Town's agreement to reserve and sell the Additional Capacity to the District to meet the increase in demand caused by the Development, the District agrees to charge the

Development the Town Operations and Maintenance Cost for the volume of wastewater generated by the Development in addition to any charges, rates or fees collected by the District. If necessary, the District agrees to use shut-off of water service as a means to ensure that the Town Operations and Maintenance Costs are paid timely by the Development.

4.2. Annual Rate. The Town Operations and Maintenance Cost will be based on the Wastewater Volumetric Rate established annually by the Town. As of the date of this Agreement, the Town's Wastewater Volumetric Rate is \$6.39 (per 1,000 gallons), of which approximately \$2.80 (or 44%) is the Town Operations and Maintenance Cost. The Wastewater Volumetric Rate is adjusted annually based on the Town's annual rates and fees study and Town Council direction. Subject to annual confirmation of amount, the Town Operations and Maintenance Cost will be calculated annually as approximately 44% of the Town's then-current Wastewater Volumetric Rate.

4.3. Billing and Amount. The monthly Town Operations and Maintenance Cost will be determined according to an average winter median consumption (AWMC) established each year by averaging the Development's water usage during December through February. The AWMC is used as the monthly charge for one year until a new AWMC is established the next year. The Town Operations and Maintenance Cost will be collected by the District on a monthly basis and paid to the Town as a condition of continued wastewater service to the Development.

5. Conditions Precedent to Closing.

5.1. Performance of Development Agreement by Bridgewater. The Town acknowledges that the District is entering this Agreement for the sole purpose of meeting the anticipated increase in demand created by the Development; that the District's obligation to acquire the Additional Capacity is subject to the terms and conditions of the Development Agreement; that the District has no need for or obligation to acquire the Additional Capacity but for the Development Agreement; and that Bridgewater is responsible for the cost of the Additional Capacity under the terms of the Development Agreement. Accordingly, performance of the Development Agreement by Bridgewater (including payment to the District for the cost of the Additional Capacity) shall be a condition precedent to Closing and termination of the Development Agreement will likewise result in termination of this Agreement. The District will provide prompt written notice to the Town in the event the Development Agreement is terminated. Such notice will automatically result in termination of this Agreement and the parties will have no further rights or obligations under this Agreement.

5.2. Amendment of Special Connector's Agreement. The Special Connector's Agreement must be amended to account for the District's acquisition of the Additional Capacity. Accordingly, an Amendment to Special Connector's Agreement in the form attached hereto as Exhibit A (or substantially similar thereto) shall be executed by the Authority at or before Closing. The Town agrees to support the District's request for approval of the Amendment to the Special Connector's Agreement from the Authority's Board of Directors at the first regularly scheduled Board Meeting following execution of this Agreement by the parties.

6. Closing. At the Closing, the District will pay the Town for the Additional Capacity; the Town will deliver a Bill of Sale transferring the Additional Capacity to the District; and the Authority will deliver to the District the Amendment to Special Connector's Agreement.

7. Notices. Any notices required or allowed to be delivered hereunder shall be in writing and addressed to a party as set forth below:

Town of Castle Rock

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

Town of Castle Rock
c/o Michael Hyman, Town Attorney
100 Wilcox Street
Castle Rock, Colorado 80104
Phone:
Email: mhyman@crgov.com

Silver Heights Water & Sanitation District

c/o Rich Rasmussen, President
1027 Harvey Street
Castle Rock, Colorado 80104
(303) 688 5597
Email: rtrasmussen@comcast.net

With a copy to:

Mason H. Brown
Katrina B. Fiscella
Carlson, Hammond & Paddock, LLC
1900 Grant Street, Suite 1200
Denver, Colorado 80203
(303) 861-9000
Email: mbrown@chp-law.com ; kfiscella@chp-law.com

IN WITNESS WHEREOF, the parties hereto have caused their respective representatives to execute this Agreement on their behalf, on the dates set forth below.

Silver Heights Water & Sanitation District

By: _____

Date: _____

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Dir. of Castle Rock Water