

**AMENDED AND RESTATED**

**MASTER**

**INTERGOVERNMENTAL**

**AGREEMENT**

**TOWN OF CASTLE ROCK**

**AND**

**PROMENADE AT CASTLE ROCK  
METROPOLITAN DISTRICT NOS. 1-3**

**March 2, 2021**

**TOWN OF CASTLE ROCK/PROMENADE AT CASTLE ROCK  
METROPOLITAN DISTRICT NOS. 1- 3  
AMENDED AND RESTATED MASTER INTERGOVERNMENTAL AGREEMENT**

**DATE:** March 2, 2021.

**PARTIES:** **TOWN OF CASTLE ROCK** (Town), a home rule municipal corporation, 100 Wilcox Street, Castle Rock, Colorado 80104.

**PROMENADE AT CASTLE ROCK METROPOLITAN DISTRICT NOS. 1, 2 AND 3**, (Districts), quasi-municipal corporations and political subdivisions of the State of Colorado, c/o White Bear Ankele Tanaka & Waldron P.C., 2154 E. Commons Ave., Suite 2000, Centennial, CO 80122.

**RECITALS:**

A. The Districts were organized by order and decree of the Douglas County District Court for the purpose of developing infrastructure to support the planned Promenade at Castle Rock mixed use development.

B. As required by the Special District Act and Chapter 11.02 of the Castle Rock Municipal Code, the Districts have submitted an Amended and Restated Consolidated Service Plan which was approved by Resolution No. \_\_\_\_\_ of the Castle Rock Town Council on March 2, 2021 (Service Plan). Also on the same date, by Ordinance No. \_\_\_\_\_, the Castle Rock Town Council approved the Second Amended and Restated Public Finance Agreement by and among the Town, the Promenade at Castle Rock Metropolitan District No. 1, Promenade at Castle Rock Metropolitan District No. 2, Promenade at Castle Rock Metropolitan District No. 3, and Promenade Castle Rock, LLC, which is attached to and made a part of the Service Plan. The Service Plan reflects current capital development and financial projections for the Districts on a consolidated basis. The Council's approval of the Service Plan was conditioned on the Districts entering into this Master Intergovernmental Agreement, which sets forth, among other things, the parameters of the Districts' authority to finance and construct public improvements.

C. The constitution and laws of the State of Colorado permit and encourage cooperative efforts by local governmental entities to make the most efficient and effective use of their powers, responsibilities and resources. Due to the fact that the Districts' boundaries are entirely located within the Town limits, and the Town provides municipal services within the Districts' boundaries, the limitations and restrictions on the exercise by the Districts of the powers and duties granted it under the Special District Act are appropriate and necessary to protect the health, safety and welfare of the residents and citizens of the Town.

## COVENANTS:

**THEREFORE**, in consideration of these mutual promises, the parties agree and covenant as follows:

### ARTICLE I DEFINITIONS

**1.01 Defined Terms.** Unless the context expressly indicates to the contrary, the following words when capitalized in the text shall have the meanings indicated:

**Agreement:** this Amended and Restated Master Intergovernmental Agreement and any amendments and supplements to this Agreement.

**Approved Development Plan:** the final development plan or other process meeting the Town Requirements, as such term is defined in the Public Finance Agreement, which identifies, among other things, development and land use issues applicable to the Promenade at Castle Rock.

**Bonds:** has the meaning assigned to “District Bonds” in the Public Finance Agreement.

**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.

**Development Exactions:** the fees and charges imposed by Town under the Town Regulations on development, including per unit charges for capital plant investment, such as System Development Fees.

**Districts:** The Promenade at Castle Rock Metropolitan District Nos. 1, 2, and 3, the legal boundaries of which are described in the Service Plan.

**District Fees:** those fees to be imposed and collected by the Districts.

**Facilities:** the infrastructure prescribed by the Town Requirements necessary to furnish Municipal Services to the Promenade at Castle Rock, and any other public improvements permitted to be constructed by the Districts, as further identified in the Service Plan.

**Financial Plan:** the financing plan designated as Exhibit D to the Service Plan.

**Municipal Services:** police and fire protection, water and wastewater, stormwater drainage and detention, parks and recreation, transportation and street maintenance, general administrative services including code enforcement and any other service provided by Town within the municipality under its police powers.

**Promenade at Castle Rock:** the planned mixed use development to be constructed within the boundaries of the Districts.

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

**Public Finance Agreement:** the Second Amended and Restated Public Finance Agreement entered into by and among the Town, Promenade Castle Rock, LLC, and the Districts, in conjunction with the approval of the Service Plan by the Town, as amended.

**Records:** the public records of the Douglas County Clerk and Recorder.

**SDO:** the Special District Oversight ordinance codified in Chapter 11.02 of the Code.

**Service Charges:** the periodic charges imposed by the Town pursuant to Town Regulations, and billed to ultimate consumers of service provided by the Town to cover the costs of providing such services.

**Service Plan:** the Amended and Restated Consolidated Service Plan for the Districts, as approved by the Town Council, as amended.

**Special District Act:** Article 1, Title 32, C.R.S.

**System Development Fees:** the charges imposed by Town under Town Regulations as a condition to the right to connect to the municipal water and wastewater system, for the purpose of recovering Town's pro rata capital cost of water or wastewater facilities dedicated to allow such connection.

**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 zoning, subdivision, public works and building codes, as the same may be amended from time to time, applied on a Town-wide basis. Reference to Town Regulations shall mean the Town Regulations in effect at the time of application.

**Town Requirements:** collectively, (i) the Code, (ii) Town Regulations, and (iii) obligations imposed through the currently-approved Castle Pines Commercial

Planned Development (the “CPCPD”), as intended to be modified a PD amendment and/pr development agreement to allow for the uses, densities and site plans required for the Promenade at Castle Rock project.

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

**1.02 Cross-Reference.** Any reference to a section or article number, with or without further description, shall mean such section or article in this Agreement.

## **ARTICLE II FACILITIES DEVELOPMENT AND MAINTENANCE**

**2.01 Construction of Facilities.** Districts have the authority to construct and finance the Facilities. The Facilities shall be constructed pursuant to the standards and procedures set forth in the Service Plan, Public Finance Agreement, and the Town Requirements.

**2.02 Ownership and Maintenance.** The Districts shall dedicate the Public Improvements to the Town or other appropriate jurisdiction or owners association in a manner consistent with an Approved Development Plan, applicable provisions of the Town Code and the Public Finance Agreement, provided that nothing herein requires the Town to accept a dedication. The Districts are specifically authorized to operate and maintain any part, or all, of the Public Improvements not otherwise conveyed or dedicated to the Town or other entity. The Districts shall also be specifically authorized to conduct operations and maintenance functions related to the Public Improvements that are not provided by the Town or other entity, or to the extent that the proposed operational and maintenance functions include services or activities that exceed those provided by the Town or other entity. This Agreement shall not restrict or impair the Town from conveying Facilities to a regional authority or other governmental or quasi-governmental agency or authority, provided an equivalent level of maintenance and operation of such Facilities at an equivalent cost is guaranteed by Town, and the Town obtains an opinion of a bond attorney with a nationally-recognized expertise in the area of municipal bonds indicating that the conveyance will not adversely affect the tax-exempt status of any outstanding Bonds of the Districts. The

Districts shall be explicitly authorized to operate and maintain any Facilities not conveyed to and accepted by the Town.

**2.03 Surety.** In recognition of the quasi-municipal nature of the Districts and their financial and taxing powers, the Districts shall not be subject to any requirements under the Town Regulations for posting of financial guarantees to assure the construction and warranty obligations for Facilities constructed by the Districts.

### **ARTICLE III DEVELOPMENT FEES**

**3.01 Town Fees.** Town will impose and collect Development Exactions within the Districts in accordance with the Town Regulations.

**3.02 Charges by the Districts.** The Districts shall have the right to impose District Fees, provided that the imposition of District Fees shall not in any manner impair or limit the imposition or collection by Town of any Development Exactions or other revenue sources, except as provided for in the Public Finance Agreement. Nothing in this section shall preclude or impair the Districts' ability to collect *ad valorem* property taxes, or to collect and impose any other rate, fee, tax, penalty or charge or other source of revenue, which is identified for utilization and application in the Service Plan or Public Finance Agreement.

### **ARTICLE IV BOND ISSUANCE**

**4.01 Bonds.** The Districts shall only issue Bonds in accordance with the requirements of the Public Finance Agreement and applicable provisions and restrictions of the Service Plan, the Special District Act, and other applicable provisions of the laws of the State of Colorado.

### **ARTICLE V SERVICE PLAN COMPLIANCE**

**5.01 Generally.** The Service Plan contains certain responsibilities, restrictions and limitations on the Districts which may not be separately set forth in this Agreement. Performance of the Service Plan by the Districts is an implied covenant of this Agreement, for which the default and remedies of section 8.05 shall be applicable in the same manner as if

expressly set forth in this Agreement.

**5.02 Service Plan Amendment.** The authorization to the Districts under the terms of the Service Plan and this Agreement is given by Town on reliance upon certain development and financial assumptions and projections in the Service Plan and Public Finance Agreement. Although these projections and assumptions are based upon the best information available at this time, such assumptions and projections may prove to be materially inaccurate. Accordingly, a Service Plan amendment shall be submitted by Districts to Town for Town review and approval when required under the SDO and Special District Act.

**5.03 Town Review.** Annually, not later than the date Districts are required to submit the annual report under the SDO, the Districts shall furnish to Town an accounting of all actual revenues and expenses, and accumulated reserves for the preceding calendar year, in substantially the same format as the Financial Plan, such that Town can compare the experience of the Districts with the projections in the Financial Plan. Town shall have access to Districts' financial statements, accounting records and other supporting documentation, upon written demand, and at such reasonable times, for the purpose of auditing the financial reports submitted by Districts.

**5.04 Statutory Review.** The statutory review of Districts' applications for the quinquennial finding of reasonable diligence under the Special District Act shall be deemed completed in 2021 in conjunction with the approval of the Amended and Restated Service Plan for the Districts with the next quinquennial finding of reasonable diligence to take place in 2026 with completion not later than July 1, 2027.

## **ARTICLE VI LIMITATIONS ON DISTRICTS' POWERS**

**6.01 Restrictions on Expansion of Districts' Powers.** The parties acknowledge that the Districts were permitted by the Town to be organized solely for the purpose of providing, acquiring, constructing, installing and completing the Facilities and providing or causing to be provided the services authorized pursuant to this Agreement and described in the Service Plan, and for no other purpose. The Districts shall not engage in any activity, purpose, service or function except as stated in this Agreement and in the Service Plan or as

reasonably required for the Districts to accomplish such purposes, responsibilities and obligations. Town shall not interfere with the exercise by Districts of any of their lawful powers except as the exercise thereof is specifically limited by this Agreement and the Service Plan.

**6.02 Extraterritorial Authority.** Districts will not engage in any service or activity outside their boundaries (as the same may be modified, from time to time, in accordance with the Service Plan), except as such Facility, service or activity is described in the Service Plan or is necessary to the provision of Facilities or services within their boundaries, or where the Districts have obtained the Town's prior approval.

**6.03 Change of Districts Boundaries.** The Districts shall neither cause any additional territory outside the boundaries of the Service Area provided for in the Service Plan to be included within or excluded from the Districts' boundaries without first obtaining Town approval, or unless otherwise authorized in the Service Plan.

## **ARTICLE VII TOWN RESERVED POWERS**

**7.01 Generally.** As a general-purpose municipal corporation, the Town adopts and administers policies, rules and regulations, principally through the Town Regulations. The approval of the Service Plan or this Agreement shall in no manner restrict the Town Council from applying Town Regulations within the Promenade at Castle Rock (even though Town Regulations may have an effect of limiting or delaying development or making development more costly to the landowner and/or Districts), provided the Town Regulations are:

- (a) a lawful exercise of the Town's police powers; and
- (b) not in contravention of express covenants of the Town Requirements, the Service Plan, the Public Finance Agreement, or this Agreement.

**7.02 No Claims.** The Districts shall have no legal or equitable claim against Town as a result of the Town taking or imposing any of the following actions if otherwise a lawful exercise of the Town's powers:



- (a) imposing new Development Exactions or increasing (or decreasing) the levels of existing Development Exactions;
- (b) exercise of its right of eminent domain to acquire private properties in the Districts for public purposes upon the payment of just compensation therefore; and
- (c) acquisition of properties zoned for development in the Districts for park, recreation, open space or other public purpose, pursuant to agreement with the grantor.

## **ARTICLE VIII GENERAL PROVISIONS**

**8.01 Dissolution of Districts.** The Districts shall be dissolved as provided for in the Service Plan at such time as:

- (a) all Facilities contemplated under this Agreement, the Service Plan, and the Public Finance Agreement have been acquired, constructed, installed and completed;
- (b) final payment or discharge of all outstanding indebtedness of the Districts is completed as required pursuant to Colorado law; and
- (c) adequate provision is made for ongoing operation and maintenance of the Facilities.

**8.02 Additional Warranties.** The parties warrant that each has the full right, power and authority to enter into, perform, and observe this Agreement.

**8.03 Instruments of Further Assurance.** The Town and the Districts 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.

**8.04 Default and Remedies.** In the event either party alleges that the other is in default of this Agreement, the non-defaulting party shall first notify the defaulting party in writing of such default and specify the exact nature of the default in such notice. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder; provided that:

- (a) such default is capable of being cured;
- (b) the defaulting party has commenced such cure within said 20-day period; and
- (c) the defaulting party diligently prosecutes such cure to completion.

If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued. In addition to specific remedies provided elsewhere in the Agreement, upon default, the non-defaulting party shall have the right to take whatever action at law or in equity appears necessary or desirable to enforce the performance and observation of any obligation, agreement or covenant of the defaulting party under this Agreement, or to collect the monies then due and thereafter to become due. In any such legal action, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

**8.05 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Town:                      Town of Castle Rock  
    Attn: Town Attorney  
    100 Wilcox Street  
    Castle Rock, CO 80104

If to Districts:                Promenade at Castle Rock Metropolitan Districts Nos. 1-3  
    c/o White Bear Ankele Tanaka & Waldron, P.C.  
    2154 E. Commons Ave. Suite 2000  
    Centennial, CO 80122

**8.06 No Liability of Town.** Town shall have no obligation whatsoever to repay any debt or liability of the Districts, including the Bonds.

**8.07 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.

**8.08 Assignment.** No transfer or assignment of this Agreement or of any rights

hereunder shall be made by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

**8.09 Amendments.** This Agreement may be amended only in writing upon consent of the parties. Amendments shall be approved by resolution of the Town Council of the Town and the resolution of the Boards of Directors of the Districts.

**8.10 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

**8.12 Entire Agreement.** This Agreement 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.

**8.13 No Third Party Beneficiary.** This Agreement is made solely for the benefit of the parties and no other parties or persons are intended beneficiaries.

***[Signatures on Following Pages.]***

**ATTEST:**

**TOWN OF CASTLE ROCK**

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

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

**Approved as to form:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

**STATE OF COLORADO**           )  
  )**ss.**  
**COUNTY OF**                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2021 by Lisa Anderson as Town Clerk and Jason Gray as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: \_\_\_\_\_.

( S E A L )

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

**ATTEST:**

**PROMENADE AT CASTLE ROCK  
METROPOLITAN DISTRICT NOS. 1-3**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
General Counsel for the Districts

**STATE OF COLORADO**            )  
  ) **ss.**  
**COUNTY OF**                            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2021  
by \_\_\_\_\_ as President of the Promenade at Castle  
Rock Metropolitan District Nos. 1-3.

Witness my official hand and seal.

My commission expires: \_\_\_\_\_.

( S E A L )

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