



Town of Castle Rock

Agenda Memorandum

Agenda Date: 4/20/2021

Item #: 19. **File #:** TMP 2021-335

To: Honorable Mayor and Members of Town Council

Through: David L. Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, P.E. Water Resources Manager
Angie Brown, Water Resources Program Analyst

Ordinance Approving the Fifth Amendment to the Intergovernmental Agreement Between the Town of Castle Rock and Dominion Water & Sanitation District for the Option to Purchase and Right of First Refusal Regarding Ground Water Rights, Easements and Related Improvements [*Cherokee Ranch, Douglas County, CO*]

Executive Summary

The purpose of this memorandum is to request Town Council approval on first reading of an Ordinance (**Attachment A**) being the Fifth Amendment to the Intergovernmental Agreement between the Town of Castle Rock and Dominion Water and Sanitation District for the Option to Purchase and the First Right of Refusal Regarding Groundwater Rights, Easements and Related Improvements (Agreement).

This amendment will allow for the exchange of some of Dominion's WISE infrastructure capacity for a portion of the Town's Cherokee groundwater rights and option payment sums addressed under the current agreement. Dominion has decided to let the remainder of their option to purchase the remaining groundwater rights lapse, meaning they will not pay their option payment in 2021 and 2022.

A summary of the exchange is as follows:

Dominion agrees to trade its WISE system excess capacity for the following Cherokee Ranch groundwater takedown and the resulting option payment:

- Arapahoe Aquifer: 347 acre feet (AF), valued at \$1,084,600
- Denver Aquifer: 107 AF, valued at \$210,790
- Laramie Fox Hills: 53 AF, valued at \$104,410
- Total value of trade: \$1,399,800

The resulting WISE core and Binney connection capacity that Dominion will convey to Castle Rock:

- 0.65 million gallons per day (MGD) in the Western Pipeline

- 0.23 MGD in the Binney Connection
- 0.29 MGD in State Land Board Line
- 1.36% ownership in the DIA connection
- Total value of trade: \$1,399,800

History of Past Town Council, Boards & Commissions, or Other Discussions

Staff discussed the proposed purchase option agreement with the Castle Rock Water Commission on May 23, 2018. Castle Rock Water Commission unanimously recommended that Council approve the agreement.

On Feb 5, 2019, Town Council approved Ordinance 2019-003 for the IGA for the Option to Purchase and First Right of Refusal Regarding Groundwater Rights, Easements and Related Improvements between the Town of Castle Rock and Dominion Water and Sanitation District, Acting in its Capacity as a Water Activity Enterprise.

On March 5, 2019, Town Council approved Resolution 2019-036 for the Tri-Party Agreement between the Town of Castle Rock, Dominion Water & Sanitation District, and Cherokee Ranch & Castle Foundation.

In a letter dated May 31, 2019, Dominion Water & Sanitation Districted requested a closing extension from the original agreement to August 2, 2019.

On June 18, 2019, Town Council approved the First Amendment to the IGA, extending the closing of the first block of water rights to August 2, 2019.

On August 2, 2019, Dominion closed on 300 acre feet of non-tributary Arapahoe Aquifer groundwater as part of the IGA.

On June 2, 2020, Town Council unanimously approved Resolution 2020-053 approving the Second Amendment to the IGA for the Option to Purchase and First Right of Refusal Regarding Groundwater Rights, Easements and Related Improvements between the Town of Castle Rock and Dominion Water and Sanitation District which provided the Town and Dominion until September 3, 2020, to develop an amendment to the agreement that would address a potential exchange of WISE infrastructure for groundwater and option payments addressed in the original agreement.

On August 18, 2020, Town Council unanimously approved Resolution 2020-071 approving the Third Amendment to the IGA for the Option to Purchase and First Right of Refusal Regarding Groundwater Rights, Easements and Related Improvements between the Town of Castle Rock and Dominion Water and Sanitation District which provided the Town and Dominion until October 15, 2020, to develop an amendment to the agreement that would address a potential exchange of WISE infrastructure for groundwater and option payments addressed in the original agreement.

On September 1, 2020, Town Council approved by a vote of 6 to 0 the First Reading of Ordinance 2020-018 approving the Fourth Amendment to the Intergovernmental Agreement for the Option to Purchase and Right of First Refusal Regarding Ground Water Rights, Easements, and Related

Improvements, which conveyed Cherokee Ranch ground water rights to Dominion Water and Sanitation District in exchange for conveyance of additional capacity in WISE infrastructure components to the Town.

On September 15, 2020, Town Council unanimously approved the Second Reading of Ordinance 2020-018 approving the Fourth Amendment to the Intergovernmental Agreement for the Option to Purchase and Right of First Refusal Regarding Ground Water Rights, Easements, and Related Improvements, which conveyed Cherokee Ranch ground water rights to Dominion Water and Sanitation District in exchange for conveyance of additional capacity in WISE infrastructure components to the Town.

Discussion

On March 5, 2019, the Town and Dominion Water and Sanitation District (Dominion) entered into an IGA whereby Dominion has the option to purchase the groundwater and easements that the Town owns under the Cherokee Ranch and Castle Foundation Property (Property). This groundwater and the associated easements were obtained as a part of the much broader purchase of water assets from United Water and Sanitation District, which the Town completed in 2017.

The Town is focused on using its scarce resources to develop renewable water, and as such, this non-tributary groundwater under the Property was available for sale to Dominion to allow Castle Rock to generate more revenue for renewable water investments. Dominion closed on the first 300 acre-foot (AF) tranche of this groundwater on August 2, 2019. To continue to maintain the IGA, Dominion is required to deliver an option payment to the Town on the remaining groundwater. This option payment is in the amount of \$181,460 and per the Agreement is due on June 3, 2021. However, Dominion has decided to let the option on the remaining groundwater rights lapse, meaning they will not make the remaining option payments to the Town in 2021 and 2022. The Town will retain the remaining Cherokee Ranch groundwater which totals 1,307 acre feet in the Denver aquifer, and 308 acre feet in the Laramie-Fox Hills aquifer.

Dominion has determined that they have excess capacity in various portions of the WISE infrastructure and have provided a table (Attachment B) indicating the value of this infrastructure. Likewise, Castle Rock will need to acquire additional capacity in the WISE infrastructure over time, and this exchange agreement provides a way that the Town can acquire some of this infrastructure without a capital outlay. In exchange for this capacity, Dominion will be taking down some of the Cherokee Ranch groundwater it has under option, specifically:

- Arapahoe Aquifer: 347 AF, valued at \$1,084,600
- Denver Aquifer: 107 AF, valued at \$210,790
- Laramie Fox Hills: 53 AF, valued at \$104,410
- Dominion will let the option to purchase all remaining groundwater rights lapse which includes 1,367 AF in the Denver aquifer and 356 AF in the Laramie Fox-Hills aquifer.

The total value of the trade equates to \$1,399,800 and Castle Rock would receive at closing:

- 0.65 MGD of capacity in the Western Pipeline

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- 0.23 MGD of capacity in the Binney Connection
- 0.29 MGD of capacity in State Land Board Line
- 1.36% ownership in the DIA connection

Upon closing, Castle Rock will have the following capacities in the various portions of the WISE infrastructure:

	Capacity Needed	Current Capacity	Capacity from Dominion Exchange	Capacity After Dominion Exchange
*State Land Board Line (MGD)	NA	2.54	0.29	2.83
Binney Connection (MGD)	6	5.06	0.23	5.29
Western Pipeline (MGD)	9	7.13	0.65	7.78
Ridgegate Pipeline (MGD)	9	4.00	0.00	4.00
**DIA Connection (percent ownership)	NA	22.03%	1.36%	23.39%

**The State Land Board Line is the pipeline currently used for WISE deliveries and will only be utilized until the Binney Connection is completed. After such time, this pipeline will only be used for emergency flows or flows in excess of 30 MGD from Aurora. ** The DIA connection does not have a planned capacity at this time so the sale was conducted by percent ownership.*

Budget Impact

Since Dominion and the Town are conducting an exchange of WISE infrastructure capacity for the non-tributary groundwater rights, the Water Resources Fund will need to make the Water Fund whole by transferring the equivalent dollar value of the groundwater into the Water Fund (\$1,399,800.00) [account no. 210-4290-442.91-55 Water Fund - Transfers Division Revenues - Water Resources Fund]. The Water Resources Fund has the capacity for this transfer.

Staff Recommendation

Staff recommends that Town Council approve the Fifth Amendment to the aforementioned IGA with Dominion Water and Sanitation District on First Reading.

Proposed Motion

"I move to approve the Ordinance on First Reading as introduced by title"

Attachments

Attachment A: Ordinance
Exhibit 1: Fifth Amendment to the IGA
Attachment B: Dominion's WISE Infrastructure Capacity and Value Table

ORDINANCE NO. 2021-__**AN ORDINANCE APPROVING THE FIFTH AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK AND DOMINION WATER & SANITATION DISTRICT FOR THE OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL REGARDING GROUND WATER RIGHTS, EASEMENTS AND RELATED IMPROVEMENTS**

WHEREAS, in conjunction with the acquisition of the Plum Creek Diversion Facility, the Town of Castle Rock (the “Town”) acquired certain nontributary and not nontributary water rights underlying the Cherokee Ranch & Castle Foundation property located in unincorporated Douglas County, Colorado (“Cherokee Water”); and

WHEREAS, the Town has determined that development of the Cherokee Water is uneconomical to incorporate into its water system and the sale of the Cherokee Water would recoup a portion of the costs incurred with the Plum Creek Diversion acquisition; and

WHEREAS, the Town has entered into an Intergovernmental Agreement for the Option to Purchase and Right of First Refusal Regarding Ground Water Rights, Easements, and Related Improvements (the “IGA”) with Dominion Water and Sanitation District (“Dominion”) whereby Dominion has the right to exercise an option to purchase Cherokee Water; and

WHEREAS, in accordance with the IGA, Dominion has requested an option to purchase the Cherokee Water, and the Town and Dominion have reached agreement on the terms and conditions of the option to purchase; and

WHEREAS, pursuant to 14.02.040.B of the Castle Rock Municipal Code, any property which is not (i) within Town limits, (ii) contiguous with the Town boundary, and (iii) currently utilized or planned for use in providing municipal services may be conveyed by ordinance; and

WHEREAS, Dominion owns excess capacity in certain infrastructure within which WISE water can be delivered; and

WHEREAS, the Town has a need for additional WISE infrastructure capacity; and

WHEREAS, the Town and Dominion have determined the value of Dominion’s excess WISE infrastructure capacity;

WHEREAS, the Town and Dominion desire to exchange WISE infrastructure capacity for an equivalent portion of the Cherokee Water; and

WHEREAS, the Town and Dominion have agreed to set forth the terms and conditions of this exchange in a Fifth Amendment to the IGA.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO:

Section 1. Approval. The Fifth Amendment to the Intergovernmental Agreement for the Option to Purchase and Right of First Refusal Regarding Ground Water, Easements and Related Improvements (“Amendment”), in the form attached as ***Exhibit 1*** is hereby approved.

Section 2. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 3. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this ____ day of April 2021, by a vote of ____ for and ____ against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this ____ day of May 2021, by the Town Council of the Town of Castle Rock by a vote of ____ for and ____ against.

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, Director of Castle Rock Water

**FIFTH AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT FOR THE
OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL REGARDING GROUND
WATER RIGHTS, EASEMENTS AND RELATED IMPROVEMENTS**

This FIFTH AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT FOR THE OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL REGARDING GROUND WATER RIGHTS, EASEMENTS AND RELATED IMPROVEMENTS ("Fifth Amendment") is made and entered into this ____ day of _____, 2021 by and between the Town of Castle Rock, a Colorado home rule municipal corporation by and through the Town of Castle Rock Water Enterprise (the "Town" or "Seller") and Dominion Water & Sanitation District, acting in its capacity as a Water Activity Enterprise ("Dominion" or "Buyer"), (jointly "Parties").

RECITALS

A. Dominion and the Town are parties to an Intergovernmental Agreement for the Option to Purchase and Right of First Refusal Regarding Ground Water Rights, Easement and Related Improvements dated March 5, 2019, as amended by the First Amendment thereto dated June 18, 2019, the Second Amendment thereto dated June 2, 2020, the Third Amendment thereto dated August 18, 2020, and the Fourth Amendment thereto dated September 15, 2020, (the "Cherokee Option Agreement") whereby Dominion has the right to exercise its option to purchase certain water rights, easements and appurtenances underlying the Cherokee Ranch & Castle Foundation property in Douglas County, Colorado; and .

B. Dominion and the Town are parties to the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement ("Organizational Agreement") the primary purpose of which is to create the South Metro WISE Authority ("Authority") to facilitate the WISE Project and define certain Authority assets in the WISE project, including Core WISE Infrastructure. Both Dominion and the Town are Members of the South Metro WISE Authority.

C. Dominion and the Town are parties to the Amended and Restated WISE Partnership-Water Delivery Agreement between Denver Water, the City of Aurora, acting by and through its Utility Enterprise, and the South Metro WISE Authority dated December 31, 2013.

D. Dominion and the Town are parties to the Second Amendment to the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement dated January 1, 2020, which, inter alia, identifies the subscription amounts and pro rata share of each Member to the Core WISE Infrastructure.

E. As a Member of the Authority, the Town agrees that it has reviewed and is familiar with each and every agreement pertaining to a Member's benefits and obligations regarding the Core WISE Infrastructure, regardless of whether such agreement is specifically identified above (collectively, the "Core WISE Agreements"); and

F. The Authority is a party to that certain Amended and Restated WISE Partnership-Water Delivery Agreement effective October 21, 2014 (the "WDA"), that certain Agreement for the Operation of Shared Infrastructure dated October 21, 2014 (the "OSI"), that certain Modification Agreement effective October 21, 2014 ("Mod Agreement"), and other agreements, which collectively set for the benefits and obligations of Authority Members regarding the Binney Water Purification Facility (the "Binney Plant") located north of Aurora Reservoir and the associated Binney Plant Connection; and

G. As a Member of the Authority, the Town agrees that it has reviewed and is familiar with each and every agreement pertaining to a Member's benefits and obligations regarding the Binney Plant and Binney Plant Connection, regardless of whether such agreement is specifically identified above (collectively, the "Binney Agreements"); and

H. Pursuant to Section 14 of the Organizational Agreement, Members of the Authority are authorized to sell and convey their rights in the WISE Project to one or more Authority Members without restriction; and

I. Dominion owns the right to 14.1% of the capacity in the Core WISE Infrastructure, which includes the Western Pipeline and State Land Board Line ("Dominion Core WISE Capacity"). Dominion has determined that it has Core WISE Capacity in excess to its requirements; and

J. Dominion owns the right to 15.1% of the capacity in the future Binney Plant and Binney Plant Connection ("Dominion Binney Capacity"). Dominion has determined that it has Binney Capacity in excess of its requirements; and

K. Dominion owns the right to 11.22% of the capacity in the DIA Connection. Dominion has determined that it has DIA Connection Capacity in excess of its requirements; and

L. Dominion desires to convey to the Town 1.78% of the Core WISE Capacity, 0.75% of the Binney Capacity, and 1.36% of the DIA Connection Capacity.

M. In exchange, the Town desires to convey the following Cherokee Ranch water rights to Dominion: 374 acre feet per year of the Arapahoe aquifer, 107 acre feet per year of the

Denver aquifer and 53 acre feet per year of the Laramie Fox Hills aquifer, subject to the terms and conditions contained herein and;

N. The Parties desire to amend the Cherokee Option Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in the Cherokee Option Agreement and in this Fifth Amendment thereto, the Town and Dominion agree as follows:

1. Definitions. All capitalized terms in this Fifth Amendment not otherwise defined herein shall have the same meaning as defined in the Core WISE Agreements, the Binney Agreements and/or the Cherokee Option Agreement, as the case may be.
2. Conveyance of Dominion Capacity. Subject to the terms of this Fifth Amendment, Dominion agrees to convey to the Town a portion of its WISE Core capacity, a portion of its excess Binney Capacity, and a portion of its DIA Connection capacity each as described in **Exhibit A** (the “Transferred Shares”) and to transfer to the Town all rights and responsibilities of Dominion associated with the Transferred Shares pursuant to the Core WISE Agreements and the Binney Agreements.
3. Conveyance of Cherokee Water. In exchange for the Transferred Shares and subject to the terms of this Fifth Amendment, the Town agrees to convey 374 a.f./year of the Arapahoe Water Right, 107 a.f./year of the Denver Water Right, and 53 a.f./year of the LFH Water Right to Dominion. Dominion shall not be obligated to pay the Purchase Price described in Section 1.2 of the Cherokee Option Agreement for the water rights conveyed pursuant to this Fifth Amendment.
4. Closing
 - a. The Closing shall take place a mutually agreeable time and place, within 30 days after the date of this Fifth Amendment.
 - b. Delivery of Transferred Shares. At the Closing, Dominion shall deliver to the Town an executed Bill of Sale (the “Bill of Sale”) in the form attached hereto as **Exhibit B**. Upon delivery of the Bill of Sale, the Town shall have full use of the Transferred Shares and shall be fully responsible for the costs allocated to the Members that are based on the Core WISE Infrastructure Capacity, the Binney Capacity, and the DIA Connection Capacity attributable to the Transferred Shares, pursuant to Section 6 of the Organizational Agreement and the Binney Agreements, respectively. The Town and Dominion shall notify the Authority of the new allocation of their respective Members Capacity resulting from this Agreement.

c. Delivery of Cherokee Water. At the Closing, the Town shall deliver to Dominion an executed special warranty deed in the form attached hereto as **Exhibit C**.

5. General Provisions. The following provisions shall apply with respect to this Fifth Amendment:

a. Except as modified herein, the Cherokee Option Agreement is in full force and effect and is hereby ratified by the Town and Dominion.

b. Capitalized terms not defined herein shall have the same meaning as set forth in the Cherokee Option Agreement.

c. In the event of any conflict between the Agreement and this Fifth Amendment, the terms and conditions of this Fifth Amendment shall control.

d. This Fifth Amendment may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties shall be deemed an original, but all of which when taken together shall constitute one agreement. Executed copies hereof may be delivered by telecopier or electronic mail and upon receipt shall be deemed originals and binding upon the parties hereto, and actual originals shall be promptly delivered thereafter.

NOW, THEREFORE, the Parties hereto have executed this Fifth Amendment as of the date indicated above.

**DOMINION WATER & SANITATION
DISTRICT, acting by and through its
Water Enterprise**

Jeffrey LaForte , President

ATTEST:

Secretary

**TOWN OF CASTLE ROCK, acting by
and through its Water Enterprise**

Jason Gray, Mayor

ATTEST:

Lisa Anderson, Town Clerk

Approved as to form:

Michael J. Hyman, Town Attorney

Approved as to content:

Mark Marlowe, Director of Castle Rock
Water

Exhibit A

Dominion Capacity as of 3/18/2021

Component	Capacity Owned	Percentage Ownership
WISE CORE Infrastructure		
State Land Board Line	2.26	14.1%
Western Pipeline	5.34	14.1%
Binney Connection	4.53	15.1%
CORE Infrastructure O&M	Varies	Varies
DIA Connection	--	11.22%

Capacity Available and Purchase Price

Component	Total Cost to Date	Value (\$/MGD or \$/% Capacity for DIA Connection)	Capacity Available (MGD)	Purchase Price for Capacity Available	Notes
WISE CORE Infrastructure	\$ 8,033,689	\$ 1,308,418	1.24	\$ 1,622,439	
Binney Connection	\$ 6,517,314	\$ 1,343,776	0.43	\$ 577,824	
CORE Infrastructure O&M	\$ 1,950,959	\$ 317,746	See note	\$ 394,005	September 2020 Purchase Price for O&M reimbursement.
DIA Connection	\$ 826,266	\$ 62,360	see note	\$ 77,326	Capacity transferred by percentage for DIA Connection since final capacity is currently undetermined. Purchase price is based on Dominion's September 2020 Purchase Price and transfer value of 1.36% to the Town of Castle Rock for proportional reduction in WISE CORE Infrastructure.
Total Purchase Price for Capacity Available				\$ 2,671,593	
Value of Cherokee Water (GW)				\$ 1,399,800	
Total Value of Trade				\$ 1,399,800	
GW Value as percentage of Capacity Purchase Price				52.40%	

Capacity after Conveyance of Cherokee Arapahoe Water (GW)

Component	Capacity to Convey for GW (MGD)	Dominion New Capacity Owned (MGD)	Dominion Percentage Ownership	Remaining Excess Capacity (MGD)
WISE CORE Infrastructure		4.69	12.4%	0.59
State Land Board Line	0.285	1.98	12.4%	1.98
Western Pipeline	0.650	4.69	12.4%	0.59
Binney Connection	0.225	4.30	14.3%	0.20
CORE Infrastructure O&M	Varies	Varies	Varies	Varies
DIA Connection	--	--	9.86%	--

**Exhibit B to Fifth Amendment to the
Intergovernmental Agreement for the Option to
Purchase and Right of First Refusal Regarding
Ground Water Rights, Easement and Related Improvements**

**BILL OF SALE
WATER SYSTEM CAPACITY IN CORE WISE INFRASTRUCTURE
AND BINNEY CONNECTION INFRASTRUCTURE**

KNOW ALL PERSONS BY THESE PRESENTS that Dominion Water and Sanitation District, acting by and through its Water Enterprise, a quasi-municipal corporation and political subdivision of the State of Colorado (“**Dominion**”) in consideration of good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, transferred and delivered and by these presents does bargain, sell, grant, convey, transfer and deliver unto Town of Castle Rock, a Home Rule Municipality and political subdivision of the State of Colorado by and through Castle Rock Water enterprise (“**Castle Rock**”) the following goods, rights and interests herein set forth (capitalized terms used herein, if not separately defined in this Bill of Sale, will have the same meanings ascribed to them in that certain Fifth Amendment to the Intergovernmental Agreement for the Option to Purchase and Right of First Refusal Regarding Ground Water Rights, Easements and Related Improvements dated _____, 2021):

- 1.78% of the Core WISE Capacity
- 0.75% of the Binney Capacity
- 1.36% of the DIA Connection Capacity

as more specifically set forth in Exhibit A attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same unto Castle Rock and its assigns and successors forever, and Dominion does covenant and agree to and with Castle Rock to warrant and defend the rights in Dominion hereby conveyed against all and every person and persons whomsoever claiming the whole or any part thereof, by, through or under Dominion, subject to the terms, conditions, covenants and agreements set forth in that certain Fifth Amendment to the Intergovernmental Agreement for the Option to Purchase and Right of First Refusal Regarding Ground Water Rights, Easements and Related Improvements dated _____ 2021.

The parties agree to recognize signatures of this Bill of Sale transmitted by telecopy or email as if they were originals.

IN WITNESS WHEREOF, Dominion has executed this Bill of Sale, effective _____, 2021.

ATTEST:

**DOMINION WATER & SANITATION
DISTRICT, acting by and through its
Water Enterprise**

Secretary

Jeff LaForte, President

**Exhibit C to Fifth Amendment to Intergovernmental Agreement
For the Option to Purchase and Right of First Refusal Regarding
Ground Water Rights, Easements and Related Improvements**

**SPECIAL WARRANTY DEED
WATER RIGHTS**

THIS DEED is made to be effective as of this _____ day of _____, 2021, by the TOWN OF CASTLE ROCK, a Colorado home rule municipality, acting by and through the CASTLE ROCK WATER ENTERPRISE (“Grantor”) for the benefit of DOMINION WATER AND SANITATION DISTRICT acting in its capacity as a Water Activity Enterprise (“Grantee”).

WITNESSETH, that the Grantor, in consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed and by the presents does grant, bargain, sell, convey and confirm unto the Grantee, its successors and assigns forever, all of Grantor’s right, title and interest in and to the following water, water rights, and rights to water in the County of Douglas, State of Colorado:

- A. 374 acre feet per year of the non-tributary groundwater originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Arapahoe formation, including banked water as determined on a pro rata basis pursuant to the water banking provision of the 98CW219 decree, all of which groundwater underlies that real property more particularly described in **Exhibit A** attached to this Deed, EXCEPT FOR:
 - 1. One hundred (100) acre feet per year of Arapahoe formation non-tributary groundwater, which was reserved to the Cherokee Ranch and Castle Foundation by Special Warranty Deed recorded on November 21, 2002 at Reception No. 2002126810, Douglas County Clerk and Recorder;
 - 2. Sixty (60) acre feet per year of Arapahoe formation non-tributary groundwater, which was conveyed to the Cherokee Ranch and Castle Foundation by Special Warranty Deed for Water Rights recorded March 10, 2008 at Reception No. 2008016986, Douglas County Clerk and Recorder;
 - 3. Any right, title, interest or claim to use the underground storage capacity resulting from withdrawal of any water described herein, which was reserved to the Cherokee Ranch and Castle Foundation by Special Warranty Deed recorded November 21, 2002 at Reception No. 2002126810; Special Warranty Deed for Water Rights recorded on March 10, 2008 at Reception No. 2008016984 and by Special Warranty Deed for Water Rights recorded on March 10, 2008 at Reception No. 2008016985, Douglas County Clerk and Recorder.
- B. 107 acre feet per year of the not non-tributary ground water originally decreed by the Division No. 1 Water Court in Case NO. 98CW219, as modified by Case No. 03CW117, in the Denver formation, including banked water as determined on a pro rata basis pursuant to the water banking provision of the 98CW219 decree, all of which ground water

C. 53 acre feet per year of the non-tributary ground water originally decreed by the Division No. 1 Water Court in Case NO. 98CW219, as modified by Case No. 03CW117, in the Laramie Fox Hills formation, including banked water as determined on a pro rata basis pursuant to the water banking provision of the 98CW219 decree, all of which ground water underlies that real property more particularly described in **Exhibit A** attached to this Deed

TO HAVE AND TO HOLD the said water, water rights, and rights to water with the hereditaments and appurtenances thereto, unto the Grantee, its successors and assigns forever. The Grantor, for itself, its successors and assigns, does covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above-bargained and described water, water rights, and rights to water, with the hereditaments and appurtenances thereto, in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person and persons claiming the whole or any part thereof, by, through or under the Grantor.

**GRANTOR: TOWN OF CASTLE ROCK,
acting by and through the CASTLE
ROCK WATER ENTERPRISE**

[illegible]

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EXHIBIT A to Special Warranty Deed

A parcel of land located in Sections 5, 6, 7, 8, 17, 18, & 19 of Township 7 South, Range 67 West and in Sections 12, 13, 14 & 24 of Township 7 South, Range 68 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, and being more particularly described as follows:

BEGINNING at the NE corner of Section 19, Township 7 South, Range 67 West of the Sixth Principal Meridian;

THENCE along the East line of the NE $\frac{1}{4}$ of said Section 19, S 00°23'17" W, a distance of 1612.27 feet to the Northerly right of way line of State Highway No. 85;

THENCE along said Northerly right of way line the following fifteen (15) courses:

- 1) N 74°01'07" W, a distance of 442.12 feet;
- 2) N 70°56'17" W, a distance of 269.96 feet;
- 3) N 66°37'01" W, a distance of 813.47 feet;
- 4) N 78°26'56" W, a distance of 1581.82 feet;
- 5) N 73°42'23" W, a distance of 211.93 feet;
- 6) N 71°13'27" W, a distance of 281.07 feet;
- 7) N 67°40'00" W, a distance of 562.02 feet;
- 8) N 75°53'08" W, a distance of 346.26 feet;
- 9) N 80°38'47" W, a distance of 969.60 feet to a point from which the NW corner of said Section 19 bears N 05°30'46" W, a distance of 28.00 feet;
- 10) N 82°57'44" W, a distance of 1053.89 feet;
- 11) N 80°27'38" W, a distance of 584.58 feet;
- 12) N 71°01'17" W, a distance of 471.19 feet;
- 13) N 70°58'10" W, a distance of 2093.66 feet;
- 14) N 71°05'24" W, a distance of 1147.32 feet;
- 15) N 69°36'49" W, a distance of 2074.89 feet to the Southeasterly corner of a parcel of land described in deed recorded in the land records of Douglas County in Book 358 at Page 833;

THENCE along the Easterly line of said parcel the following seven (7) courses:

- 1) N 08°37'34" E, a distance of 172.03 feet;
- 2) N 31°37'52" E, a distance of 442.82 feet;
- 3) N 53°35'59" E, a distance of 194.24 feet;
- 4) N 73°28'44" E, a distance of 264.63 feet;
- 5) N 51°18'55" E, a distance of 177.71 feet;
- 6) N 38°08'20" E, a distance of 487.64 feet;
- 7) N 00°26'53" E, a distance of 391.26 feet to the Northeasterly corner of said parcel;

THENCE along the Northerly line of said parcel, S 89°41'36" W, a distance of 1438.25 feet to the Northwesterly corner of said parcel;

THENCE along the Westerly line extended of said parcel, N 00°01'02" E, a distance of 213.47 feet;

THENCE N 89°41'57" E, a distance of 1979.77 feet to the North 1/16 corner between Sections 13 and 14 of T7S, R68W;

THENCE along the West line of the NW $\frac{1}{4}$ of said Section 13, N 00°11'10" W, a distance of 1319.99 feet to the SW corner of said Section 12;

THENCE along the West line of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 12, N 00°09'51" W, a distance of 1309.82 feet to the South 1/16 corner of Sections 11 & 12;

THENCE along the W line of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 12, N 00°13'35" W, a distance of 1310.61 feet to the W $\frac{1}{4}$ corner of said Section 12;

THENCE along the West line of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 12, N 00°09'43" W, a distance of 1309.48 feet to the N 1/16 corner of Sections 11 & 12;

THENCE along the West line of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 12, N 00° 13'44" W, a distance of 1310.95 feet to the NW corner of said Section 12;

THENCE along the North line of the NW $\frac{1}{4}$ of said Section 12, N 89°58'04" E, a distance of 2683.10 feet to the N $\frac{1}{4}$ corner of said Section 12;

THENCE along the North line of the NE $\frac{1}{4}$ of said Section 12, N 89°49'52" E, a distance of 2752.86 feet to the NE corner of said Section 12, also being the NW corner of Section 7, T7S, R67W;

THENCE along the North line of the NW $\frac{1}{4}$ of said Section 7, N 89°55'53" E, a distance of 2633.78 feet to the N $\frac{1}{4}$ corner of said Section 7;

THENCE N 00°05'26" W, a distance of 43.58 feet to an existing fence corner;

THENCE along an existing fence line as described in a boundary agreement between Cherokee Ranch and Castle Foundation, Sanctuary, Inc. and Paul V. and Bonnie G. Grenney, recorded in the land records of Douglas County on Nov. 3, 1997 at Reception No. 9761904 the following five (5) courses:

- 1) N 89°06'35" E, a distance of 2599.66 feet to a point at an existing fence corner from which the NE corner of said Section 7 bears S 08°34'17" W, a distance of 41.11 feet;
- 2) N 00°03'38" W, a distance of 1256.34 feet;
- 3) N 89°59'09" E, a distance of 588.75 feet;
- 4) N 87°01'25" E, a distance of 1332.82 feet;
- 5) N 85°17'08" E, a distance of 767.69 feet to a point on the Westerly right of way line of Daniels Park Road;

THENCE along said right of way line as described in Deed recorded in the land records of Douglas County in Book 541 at Page 29 the following four (4) courses:

- 1) S 11°05'24" E, a distance of 306.86 feet;
- 2) Along the arc of a curve to the right 280.45 feet, having a radius of 598.90 feet, a central angle of 26°49'49" and a chord bearing and distance of S 02°19'30" W, 277.90 feet;
- 3) S 15°44'25" W, a distance of 418.21 feet;
- 4) Along the arc of a curve to the left 307.26 feet, having a radius of 362.65 feet, a central angle of 48°32'39" and a chord bearing and distance of S 08°31'55" E, 298.15 feet to the Northeasterly corner of a parcel of land described in deed recorded in the land records of Douglas County in Book 1073 at Page 260;

THENCE along the boundary of said parcel the following seven (7) courses:

- 1) S 88°46'02" W, a distance of 399.06 feet;
- 2) N 51°04'40" W, a distance of 243.10 feet;
- 3) S 30°09'50" W, a distance of 399.37 feet;
- 4) S 87°35'11" W, a distance of 559.55 feet;
- 5) S 51°13'16" W, a distance of 336.12 feet;
- 6) S 14°44'13" W, a distance of 1028.18 feet;
- 7) N 89°40'54" E, a distance of 2019.95 feet to a point on the Westerly right of way line of Daniels Park Road, (determined to be 60 feet Westerly from the monumented Easterly right of way line shown on the plat of Castle Pines Village Filing 8-A, at Reception #9211515);

THENCE along said Westerly right of way line the following nineteen (19) courses:

- 1) S 01°18'44" E, a distance of 440.02 feet;
- 2) Along the arc of a curve to the right 183.64 feet, having a radius of 419.04 feet, a central angle of 25°06'33" and a chord bearing and distance of S 11°14'32" W, 182.17 feet;
- 3) S 23°47'49" W, a distance of 205.18 feet;
- 4) Along the arc of a curve to the left 327.65 feet, having a radius of 836.68 feet, a central

angle of 22°26'14" and a chord bearing and distance of S 12°34'42" W, 325.56 feet;

5) S 01°21'31" W, a distance of 185.15 feet;

6) S 01°16'36" W, a distance of 657.56 feet;

7) Along the arc of a curve to the left 76.61 feet, having a radius of 1378.34 feet, a central angle of 03°11'05" and a chord bearing and distance of S 00°12'27" E, 76.60 feet;

8) S 01°48'06" E, a distance of 349.28 feet;

9) Along the arc of a curve to the right 253.68 feet, having a radius of 1711.45 feet, a central angle of 08°29'34" and a chord bearing and distance of S 02°26'41" W, 253.45 feet;

10) Along the arc of a compound curve to the right 167.76 feet, having a radius of 345.00 feet, a central angle of 27°51'39" and a chord bearing and distance of S 20°37'18" W, 166.11 feet;

11) S 34°31'24" W, a distance of 576.43 feet;

12) Along the arc of a curve to the left 272.42 feet, having a radius of 390.00 feet, a central angle of 40°01'18" and a chord bearing and distance of S 14°31'00" W, 266.91 feet;

13) S 05°31'06" E, a distance of 168.88 feet;

14) Along the arc of a curve to the left 177.15 feet, having a radius of 998.35 feet, a central angle of 10°10'01" and a chord bearing and distance of S 10°34'30" E, 176.92 feet;

15) S 15°39'30" E, a distance of 621.49 feet;

16) Along the arc of a curve to the left 139.59 feet, having a radius of 871.13 feet, a central angle of 09°10'51" and a chord bearing and distance of S 20°13'15" E, 139.44 feet;

17) S 24°48'40" E, a distance of 236.86 feet;

18) Along the arc of a curve to the right 345.51 feet, having a radius of 770.23 feet, a central angle of 25°42'05" and a chord bearing and distance of S 11°57'38" E, 342.62 feet;

19) S 00°51'27" W, a distance of 1342.16 feet to the Northeasterly corner of Lot 1, Block One of Hockaday Heights Subdivision, recorded in the land records of Douglas County at Reception #139949;

THENCE along the Northerly line of Hockaday Heights Subdivision, also being the South line of the NW¼ of said Section 17, S 87°46'51" W, a distance of 2513.82 feet to the W¼ corner of said Section 17;

THENCE along the Westerly line of Hockaday Heights Subdivision, also being the East line of the SE¼ of said Section 18, S 00°21'26" W, a distance of 2595.77 feet to the POINT OF BEGINNING; CONTAINING 3,140.54 acres of land, more or less.

Exhibit A

Dominion Capacity as of 3/18/2021

Component	Capacity Owned	Percentage Ownership
WISE CORE Infrastructure		
State Land Board Line	2.26	14.1%
Western Pipeline	5.34	14.1%
Binney Connection	4.53	15.1%
CORE Infrastructure O&M	Varies	Varies
DIA Connection	--	11.22%

Capacity Available and Purchase Price

Component	Total Cost to Date	Value (\$/MGD or \$/% Capacity for DIA Connection)	Capacity Available (MGD)	Purchase Price for Capacity Available	Notes
WISE CORE Infrastructure	\$ 8,033,689	\$ 1,308,418	1.24	\$ 1,622,439	
Binney Connection	\$ 6,517,314	\$ 1,343,776	0.43	\$ 577,824	
CORE Infrastructure O&M	\$ 1,950,959	\$ 317,746	See note	\$ 394,005	September 2020 Purchase Price for O&M reimbursement.
DIA Connection	\$ 826,266	\$ 62,360	see note	\$ 77,326	Capacity transferred by percentage for DIA Connection since final capacity is currently undetermined. Purchase price is based on Dominion's September 2020 Purchase Price and transfer value of 1.36% to the Town of Castle Rock for proportional reduction in WISE CORE Infrastructure.
Total Purchase Price for Capacity Available				\$ 2,671,593	
Value of Cherokee Water (GW)				\$ 1,399,800	
Total Value of Trade				\$ 1,399,800	
GW Value as percentage of Capacity Purchase Price				52.40%	

Capacity after Conveyance of Cherokee Arapahoe Water (GW)

Component	Capacity to Convey for GW (MGD)	Dominion New Capacity Owned (MGD)	Dominion Percentage Ownership	Remaining Excess Capacity (MGD)
WISE CORE Infrastructure		4.69	12.4%	0.59
State Land Board Line	0.285	1.98	12.4%	1.98
Western Pipeline	0.650	4.69	12.4%	0.59
Binney Connection	0.225	4.30	14.3%	0.20
CORE Infrastructure O&M	Varies	Varies	Varies	Varies
DIA Connection	--	--	9.86%	--