

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE DOUGLAS COUNTY SCHOOL DISTRICT AND THE TOWN OF CASTLE ROCK,
STATE OF COLORADO, REGARDING AN MS4 PARTICIPATION AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this day of _____, 2021, by and between the Douglas County School District (District), and the Town of Castle Rock, a Colorado home rule corporation, by and through the Town of Castle Rock Storm Water Enterprise, (the "Town"), hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the District and the Town desire to continue their partnership as documented in this MS4 Participation Agreement; and

WHEREAS, the Town was issued a Colorado Discharge Permit System (CDPS) General Permit COR080012 for Stormwater Discharges Associated with Municipal Separate Storm Sewer System (MS4) that Discharge to the Cherry Creek Reservoir Drainage Basin from the Colorado Department of Public Health and Environment (CDPHE) effective on April 15, 2016, expiring June 30, 2021, and administratively extended, hereinafter referred to as the "Standard Permit"; and

WHEREAS, the District was issued a CDPS General Permit for Stormwater Discharges Associated with MS4 from the CDPHE, hereinafter referred to as the "Non-standard Permit", located partially within the Town of Castle Rock; and

WHEREAS, the Town must implement, enforce, and administer the Standard Permit requirements within the associated jurisdictional boundary and the District must implement, enforce, and administer the Non-standard Permit requirements within the associated jurisdictional boundary, hereinafter collectively referred to as the "MS4 Permits"; and

WHEREAS, both the Town and the District are required to develop Program Description Documents and supporting documents to describe how the permittee will comply with their MS4 Permit requirements; and

WHEREAS, the Town has adopted the Temporary Erosion, and Sediment Control (TESC) Manual in June of 2019, and as may be amended from time-to-time, in accordance with the Town's Standard Permit; and

WHEREAS, the Town adopted the Storm Drainage Design and Technical Criteria Manual, most notably Chapter 14, "Stormwater Quality", in 2007, most recently amended in June of 2019, and as may be further amended from time-to-time, in accordance with the Town's Standard Permit; and

WHEREAS, previously the Town and the Local Agency have partnered to implement the Construction and Post-construction program requirements within the District's Non-standard Permit area in the Town; and

WHEREAS, the District Non-standard Permit requires that the District enter into an agreement with the Local MS4 Agency in this case the Town whereby the District is excluded from the Non-standard Permit requirements for applicable Construction and Post-construction activities and allows the Standard Permittee full authority to implement its Construction and Post-construction programs within the Non-standard Permittee's jurisdictional boundary in accordance with the

Standard permit requirements; and

WHEREAS, all properties owned by the District within the Town that are excluded from the Non-Standard Permit and therefore not within the permitted jurisdictional boundary of the District shall be under the full authority of the Town's Standard Permit, including enforcement authority.

WHEREAS, the Parties acknowledge that the activities that will be conducted by the Town do not constitute full compliance with all requirements of the District's Non-standard Permit.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

1. **Services.**

a. The Town agrees to allow the District to rely on the Town's Construction and Post-construction program requirements of the Town's Standard Permit for the portion of the District's Non-standard Permit located within the jurisdiction of the Town.

b. In accordance with applicable development fees paid by the District, the Town agrees to provide plan review and approval, permitting, inspection, and acceptance consistent with all applicable Town regulations for the District's Non-standard Permit jurisdictional boundary within the Town as provided for in this Agreement. These services will be in accordance with the Town's standards for the Construction and Post-construction program documents of the Town's Standard Permit. All fees payable by the District shall be in accordance with the Town's Development Fee Schedule, as amended.

c. The District, their contractors, or assigns, agree to follow the Town's Land Use process consistent with all applicable Town regulations, and the Town will forward applicable records and documentation to the District within forty-five (45) days of any request by the District for the recordkeeping requirements of the Non-standard Permit and annual report to CDPHE.

d. The District hereby grants, bargains, and conveys to the Town and its agents, employees, and contractors the right to access and utilize property owned by the District for access from public rights-of-way, abutting private roadway, and/or private driveway, including all other rights the District possesses to access their Property, for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing Post-construction stormwater facilities as may be necessary in accordance with the Standard Permit program requirements. The District is responsible for maintenance of all stormwater facilities on their property. If the District fails to maintain a facility, the Town has the right to complete maintenance and charge the District at 1.25 times the cost of maintenance.

e. The Town will not provide support for any of the District's Non-standard Permit requirements related to Public Education and Outreach, Illicit Discharge Detection and Elimination, Pollution Prevention/Good Housekeeping for

Permittee's Operations, or other sections of the District's Non-standard Permit not specified above.

f. The District agrees to pay monthly stormwater charges for all District properties in accordance with the Town Municipal Code, as amended and as charged through applicable water billing accounts for each property.

g. The District agrees to delegate authority, including enforcement authority, to the Town for compliance under the Town's Standard Permit all District properties within the Town that are excluded from the Non-Standard Permit due to size or other limiting factors.

2. **Standard of Performance.** The Town agrees to use its best efforts to comply with the Town's Standard Permit but cannot guarantee that all activities will comply with the District's Non-standard Permit. The Town assumes no responsibility for compliance with the District's Non-standard Permit. The District acknowledges that the Town Standard Permit program requirements may be more stringent than the Non-standard Permit requirements, and if so, the District will be subject to those requirements for the Construction and Post-construction programs as applicable in this agreement.

3. **Enforcement.** The District agrees to comply with the Town's Standard Permit Construction and Post-construction programs and to allow for the Town to fully enforce the Town's Standard Permit programs consistent with the Town's Standard Permit for all applicable construction activities in the District's Non-standard Permit jurisdictional boundary within the Town for which the District owns, operates or has implementation authority over.

4. **Geographic Area Applicability.** This Agreement will only apply to District owned properties within the geographical area defined by the Town's jurisdictional boundary, or as otherwise amended and agreed upon by both parties, in accordance with MS4 Permit requirements.

5. **Responsibility/Liability.** Each Party to this Agreement shall be responsible for that Party's own performance under this Agreement and each Party shall be responsible for its own defense in connection with any claims made against such Party by reason of that Party's performance of the matters covered by this Agreement.

6. **Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

District:

_____, Colorado 8_____
Attention: _____
With an electric copy to _____

Town of Castle Rock: Town of Castle Rock
100 N. Wilcox St.
Castle Rock, Colorado 80104
Attention: David Van Dellen, Stormwater Manager
With an electronic copy to Legal@CRgov.com

7. **Additional Documents.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

8. **Colorado Law.** The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.

9. **Separate Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

10. **No Third-Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

11. **No Waiver of Governmental Immunity Act.** The Parties hereto understand and agree that this Agreement is relying on, and in no way is intended to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S., or otherwise available to the Parties.

12. **Amendment.** This Agreement may only be amended in writing signed by the parties hereto.

13. **Effect of Invalidity.** Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance, shall not result in the termination of this Agreement.

14. **Term.** This Agreement shall remain in full force and effect until terminated by either Party. Either Party may terminate this Agreement upon providing one hundred eighty (180) days written notice to the other Party.

15. **Previous Agreements.** This Agreement supersedes any previous agreement between the Parties regarding shared MS4 responsibilities making those previous agreements, or portions thereof that dealt with MS4 responsibilities, null and void.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

District

Date: _____

By: _____
Name: _____
Title: _____

ATTEST:

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST

TOWN OF CASTLE ROCK, by and through
the Town of Castle Rock Storm Water Enterprise

Lisa Anderson, Town Clerk

David L. Corliss, Town Manager

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director of Castle Rock Water