

**AGREEMENT REGARDING PLUM CREEK STREAM GAGE**

1. **PARTIES.** This Agreement ("Agreement") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 ("Effective Date"), by and between **CASTLE PINES METROPOLITAN DISTRICT; CASTLE PINES NORTH METROPOLITAN DISTRICT; HIGHLANDS RANCH WATER AND SANITATION DISTRICT; DOMINION WATER AND SANITATION DISTRICT; and TOWN OF CASTLE ROCK, ACTING BY AND THROUGH THE CASTLE ROCK WATER ENTERPRISE** (collectively, the "Parties").

2. **RECITALS**

A. WHEREAS, the Parties generally own and operate water rights and/or carry reusable effluent return flows in Plum Creek in Douglas County, Colorado ("Water");

B. WHEREAS, the Parties' respective water court decrees for the Water and/or stream administration by the Division Engineer generally require or will require the Parties to operate a stream flow measuring device on Plum Creek, near the point where Plum Creek is crossed by Titan Road, generally located in the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , Sec. 18, T6S, R68W, 6<sup>th</sup> P.M., in Douglas County, Colorado;

C. WHEREAS, in order to record more accurate streamflow measurements, the Colorado Division of Water Resources (CDWR) installed a cantilever radar over existing grade controls within Plum Creek and developed a stage/discharge rating to measure streamflow in the creek at a location that is a short distance north of Titan Road ("Gage");

D. WHEREAS, the Gage is currently being operated on a temporary basis by CDWR, and additional steps are required to formalize the Parties' long-term ownership and use of the Gage, as further discussed herein;

E. WHEREAS, among other responsibilities of the Parties, the Gage requires on-going operation, maintenance, repair, and recalibration, and may in the future require replacement, removal, and other capital improvements ("Gage O&M");

F. WHEREAS, CDWR is willing to donate the Gage to the Parties, in exchange for the Parties' agreement to perform Gage O&M;

G. WHEREAS, there has been significant sediment deposition in the stream channel of Plum Creek at the Gage's location ("Stream Channel") making the Gage incapable of measuring stream flow;

H. WHEREAS, to restore functionality to the Gage, the Stream Channel must be dredged and reconstructed, requiring among other things: Section 404 permitting from the United States Army Corps of Engineer ("USACE"); and design, dredge and re-construction by a qualified stream restorationist (collectively "Stream Channel Restoration").

I. WHEREAS, after Stream Channel Restoration, among other responsibilities of the Parties, the Stream Channel will require on-going maintenance and repair ("Stream Channel O&M"); and

J. WHEREAS, the Parties have agreed to reimburse or contribute, on a pro-rata basis, towards costs for Gage O&M, Stream Channel Restoration and Stream Channel O&M in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the covenants stated herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

3. **CONDITIONS PRECEDENT.** This Agreement shall become effective upon the occurrence of all the following conditions precedent:

3.1. The Parties have cooperatively negotiated and executed a license agreement with the USACE ("USACE License") as the owner of a parcel known as State Parcel #2229-200-00-015, in Douglas County, Colorado ("Property") for the purpose of Gage O&M, Stream Channel Restoration and Stream Channel O&M.

3.2. The Parties have cooperatively negotiated and executed an agreement with Colorado Division of Parks and Wildlife, as lessee of the Property, ("CPW Agreement") for the purpose of Gage O&M, Stream Channel Restoration and Stream Channel O&M on the Property.

3.3. The Parties have contracted for the administration of the Gage with the State Engineer to operate and maintain the electronic data recorder and equipment on the Gage ("Administration Contract").

3.4. The Parties have requested and received written confirmation from CDWR that the use of the Gage at its current location will be sufficient to measure streamflow for compliance with any Party's decrees that specify the use of a gage on Plum Creek for determining the legal availability of water.

4. **OWNERSHIP OF THE GAGE.** The Parties own the Gage as undivided co-owners, based upon an estimate of their *pro rata* share of the average daily usage of Plum Creek to convey their respective interests in the Water. The current *pro rata* ownership is as follows:

Castle Rock Water - 50%;  
Highlands Ranch Water and Sanitation District - 26%;  
Castle Pines North Metro District - 11%;  
Castle Pines Metro District - 3%; and  
Dominion Water and Sanitation District - 10%.

(Each Party's *pro rata* ownership interest is generally referred to as its "Pro Rata Interest.") Should any Party's average daily usage of Plum Creek materially change as a result of any change in operations, adding one or more Parties pursuant to paragraph 13, or removing one or more Parties pursuant to paragraph 10, the Parties agree to negotiate in good faith an amendment to this Agreement to adjust the Parties' respective Pro Rata Interest.

5. **RESTORATION, MAINTENANCE AND REPAIR ACTIVITIES.** The Parties shall conduct Gage O&M, Stream Channel Restoration and Stream Channel O&M, such that the Gage measures the stream flow as accurately as is reasonably possible. To the extent possible, the Parties will conduct Gage O&M, Stream Channel Restoration and Stream Channel O&M activities during the non-irrigation season to avoid interference with operation and administration of the Water.
6. **STREAM CHANNEL RESTORATION.** The Parties will cooperatively negotiate and execute an agreement with FlyWater, Inc. or another qualified company to complete the Stream Channel Restoration ("Restoration Contract"). Upon completion of the Stream Channel Restoration, the Parties shall request and receive written confirmation from CDWR that the Gage is accurately measuring streamflow.
7. **OPERATING COMMITTEE.** The Parties will form an Operating Committee. The Operating Committee shall meet once each calendar year, on a date mutually agreed upon by the Parties prior to May 1, to approve Gage O&M and Stream Channel O&M items for the calendar year, allocate Gage O&M and Stream Channel O&M responsibilities, approve a budget, and address other matters that may arise. The Operating Committee may otherwise meet on an *ad hoc* basis as Gage O&M and Stream Channel O&M issues arise. Each Party shall attend Operating Committee meetings via a representative with authority to bind such Party, with each Party having one vote for any decisions made by the Operating Committee. Meetings may be held electronically, if agreed to by all Parties.
8. **EMERGENCY O&M.** In case of an emergency, which is defined as a situation that impacts the ability of the Parties to use the Gage to measure the Water when such Water is required to be measured by the Division Engineer or that presents an immediate threat to the public health or safety, any of the Parties may respond immediately to any Gage O&M and Stream Channel O&M need identified without prior written approval of the other Parties. Such Party will advise the other Parties of the emergency situation and its response as soon as practicable. Such notice may be made by telephone or email but must be followed by a written explanation of the emergency situation and work to the Operating Committee within 48 hours. If a Party performs such emergency work, and such emergency work is subsequently approved by the Operating Committee, each other Party will in accordance with each Party's Pro Rata Interest reimburse the Party that performed the work.
9. **PARTIES' PRO RATA CONTRIBUTIONS TO GAGE.** The Parties agree to contribute funds in accordance with their Pro Rata Interest for all Gage O&M, Stream Channel Restoration and Stream Channel O&M costs and any other costs approved by the Operating Committee and/or contemplated under the terms of this Agreement, inclusive of the costs arising under the Administration Contract, the USACE License Agreement, and any contractor hired to design, permit and construct the Stream Channel Restoration.
10. **TERMINATION BY A PARTY.** A Party may terminate its participation in this Agreement ("Terminating Party") upon 30 days advance written notice to the other Parties. Notwithstanding the foregoing, the Terminating Party will remain obligated to contribute funds pursuant to paragraph 9, above, to the extent necessary to fulfill its remaining financial obligations (if any) through the end of the then-current budget year in which the termination occurred. The Terminating Party agrees that its water rights shall not be administered by the Division Engineer at the Gage following the

end of the then-current budget year. This provision shall be enforceable by the Parties against the Terminating Party.

11. **DECREES.** The Parties acknowledge that the terms of each Party's water rights decrees may include terms pertaining to measurement and the determination of the legal and physical availability of Water in Plum Creek. Nothing in this Agreement modifies the Parties' water rights decrees. Streamflow in Plum Creek will be allocated pursuant to the Parties' water rights decrees and as administered by the CDWR, without regard to the Parties' Pro Rata Interests set forth in this Agreement.

12. **AGREEMENT TERMINATION.** Except as authorized pursuant to paragraph 10, above, this Agreement may be terminated in writing upon the mutual agreement of the Parties. Any such writing will allocate to the Parties any post-termination rights and obligations associated with the Gage in accordance with each Party's Pro Rata Interest.

13. **ADDITIONAL PARTIES.** The Parties agree to work together in good faith to: 1) obtain contribution from any third party that attempts, requests, or is required to utilize or utilizes the Gage for administration of their water rights on Plum Creek; 2) require all third parties to enter into an addendum to this Agreement setting forth the third party's rights and obligations related to the Gage; and 3) attempt to persuade the Division Engineer to condition its administration of a third party's water rights at the Gage on the third party's participation in this Agreement.

14. **FORCE MAJEURE.** If a flood or other natural disaster or force majeure event renders the Gage inoperable or prevents access to the Gage or Stream Channel, the Parties agree to take steps to mitigate any such damage, including conducting investigations into whether the current site is feasible for reconstruction. In no circumstance will any Party be liable to any other Party for the results of any force majeure event.

15. **WATER COURT PARTICIPATION.** Nothing herein waives any Party's right to fully participate in any water court proceeding of another Party, including any post-decree proceedings, or other proceedings pertaining to the administration of the Water.

16. **COSTS; NO WAIVER.** Each Party agrees to bear its own costs and expenses, including court costs and attorney fees, related to claims arising under this Agreement. The Parties agree that this Agreement will not to be construed as a contractual waiver of any immunities or defenses provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

17. **OTHER PROVISIONS.**

a. Unless sooner terminated in accordance with this Agreement, this Agreement and the covenants herein contained shall be perpetual unless this Agreement is modified by Court order or a signed written agreement of the Parties or their successors in title.

b. This Agreement shall be recorded in the real property records of Douglas County, Colorado, and shall be binding on any successors of the Parties to the License Agreement, including any amendments thereto. The failure to record all or portions of the attached

exhibits because of the size of the documents or the recording of a memorandum of this Agreement shall not affect this Agreement.

c. By virtue of entering into this Agreement, the Parties: (1) assume no additional responsibilities or obligations related to Gage, except as may be set forth in this Agreement; and (2) disclaim all liability or responsibility with regard to future or additional acts or activities associated with the Gage, except that each Party shall be responsible for any damages or injury caused by the Party's negligence or intentional acts.

d. Nothing in this Agreement is intended to or shall be deemed to: establish any partnership or joint venture between any of the Parties; make any Party the agent of another Party; or authorize any Party to make or enter into any commitments for or on behalf of any other Party.

e. The Parties agree to execute and deliver such further instruments and to take such further actions as may reasonably be requested by another Party in order to cure any defects in the execution and delivery of documents or to comply with or accomplish the covenants and agreements related to this Agreement.

f. In the event that any Party defaults in the performance of any of the requirements of this Agreement, the non-defaulting Party or Parties shall give the defaulting Party 30 days written notice of such default. If the defaulting Party fails, neglects or refuses for a period of more than 30 days thereafter to cure the default, then the defaulting Party shall not be entitled to measure its water at the Gage or take credit for its water measured at the Gage. Moreover, the non-defaulting Party or Parties, without further notice, may file an action for specific performance or damages or both. In such action, the prevailing Party or Parties shall be entitled to recover their attorneys' fees and costs from the defaulting Party.

g. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes upon (1) personal delivery, (2) three business days after the mailing of the same by registered or certified mail, return receipt requested, (3) when delivered (and receipted for) by an overnight delivery service, or (4) when delivered by email with automatic confirmation of receipt, addressed as follows:

**Town of Castle Rock**  
c/o Mark Marlowe  
Director of Castle Rock Water  
175 Kellogg Ct.  
Castle Rock, CO 80109  
Email: [MMarlowe@crgov.com](mailto:MMarlowe@crgov.com)

Copy to:  
Lyons Gaddis  
c/o Madoline Wallace-Gross  
950 Spruce St., Unit 1B  
Louisville, CO 80027  
Email: [mwg@lyonsgaddis.com](mailto:mwg@lyonsgaddis.com)

Town of Castle Rock

Michael Hyman, City Attorney  
100 N. Wilcox  
Castle Rock, CO 80109  
Email: [MHyman@crgov.com](mailto:MHyman@crgov.com)

**Castle Pines Metropolitan District**  
Attn: District Manager  
5880 Country Club Drive  
Castle Rock, CO 80108  
Email: [jshackelford@castlepinesmetro.com](mailto:jshackelford@castlepinesmetro.com)

Copy to:  
Spencer Fane LLP  
Attn: Tom George  
1700 Lincoln St., Suite 2000  
Denver, CO 80203  
Email: [tgeorge@spencerfane.com](mailto:tgeorge@spencerfane.com)

**Castle Pines North Metropolitan District**  
Attn: District Manager  
7404 Yorkshire Dr.  
Castle Pines, CO 80108  
Email: [nathan@cpnmd.org](mailto:nathan@cpnmd.org)

Copy to:  
Seter, Vander Wall & Mielke, P.C.  
7400 E. Orchard Road, Suite 3300  
Greenwood Village, Colorado 80111  
Email: [ppolito@svwpc.com](mailto:ppolito@svwpc.com)

**Dominion Water and Sanitation District**  
Attn: District Manager  
9250 E. Costilla Ave., Suite 400  
Greenwood Village, CO 80112  
Email: [andrea.cole@dominionwsd.com](mailto:andrea.cole@dominionwsd.com)

Copy to:  
Welborn Sullivan Meck & Tooley, P.C.  
Attn: Carolyn Burr  
1401 Lawrence Street, Suite 1800  
Denver, CO 80202  
Email: [cburr@wsmtlaw.com](mailto:cburr@wsmtlaw.com)

**Highlands Ranch Water and Sanitation District**  
c/o Sam Calkins  
General Manager  
62 Plaza Drive  
Highlands Ranch, CO 80129  
Email: [scalkins@cwsdhrmd.org](mailto:scalkins@cwsdhrmd.org)

Copy to:  
Bushong & Holleman PC  
c/o Fritz Holleman  
1966 13<sup>th</sup> Street, Suite 270  
Boulder, CO 80302  
Email: [fholleman@BH-Lawyers.com](mailto:fholleman@BH-Lawyers.com)

h. The waiver by any Party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

i. This Agreement constitutes the entire agreement between the Parties. It supersedes any prior agreements or understandings between the Parties related to the Gage. This Agreement shall be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by both Parties.

j. All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.

k. This Agreement may be executed in several counterparts and, as so executed, shall constitute one Agreement, which is binding on all the Parties even though all the Parties have not signed the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages, which altogether contain the signatures of all the Parties, shall be deemed a fully executed instrument for all purposes.

l. There are no third-party beneficiaries of this Agreement. No third party has any right to enforce this Agreement. In the event of litigation by any third party concerning this Agreement, and to the extent permitted by law, the Parties agree to jointly defend any such third-party action.

m. This Agreement shall never constitute a general obligation or other indebtedness of the Parties, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Parties within the meaning of the Constitution, laws of the State of Colorado, or any of the Parties' municipal codes, rules, regulations, or other applicable authorities. Any and all financial obligations of the Parties under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by each Party's respective governing bodies for purposes of this Agreement.

n. Each Party represents that this Agreement has been duly authorized, executed and delivered by the Party and constitutes a valid and legally binding obligation of the Party, enforceable against the Party in accordance with the terms hereof.

o. Nothing contained in this Agreement shall be deemed to waive any of the immunities, protections, limitations or defenses afforded each Party under the Colorado Governmental Immunity Act, as the Act now exists or may hereafter be amended from time to time.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.**

TOWN OF CASTLE ROCK, ACTING BY AND THROUGH THE CASTLE ROCK WATER ENTERPRISE

By \_\_\_\_\_  
Mark Marlowe

Dated \_\_\_\_\_

ATTEST:

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

**CASTLE PINES METROPOLITAN DISTRICT**

By \_\_\_\_\_  
President

Dated \_\_\_\_\_

ATTEST:

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

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.**

CASTLE PINES NORTH METROPOLITAN DISTRICT

By\_\_\_\_\_

Dated\_\_\_\_\_

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

**DOMINION WATER AND SANITATION DISTRICT**

By \_\_\_\_\_  
\_\_\_\_\_, President

Dated \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.**

HIGHLANDS RANCH WATER AND SANITATION DISTRICT

By \_\_\_\_\_  
\_\_\_\_\_, President

Dated \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.