



STAFF REPORT

To: Honorable Mayor and Members of Town Council

Through: David L. Corliss, Town Manager

From: Mark Marlowe, P.E., Director of Castle Rock Water
Mark Henderson, P.E., Assistant Director Castle
Rock Water

Title: **Resolution Approving a Second Amendment to the Amended and Restated Intergovernmental Agreement with Douglas County for the Highway 85 Wastewater Collection and Treatment System** *[Located along the Highway 85 Corridor North of E. Happy Canyon Rd to W. Titan Rd in northern Douglas County]*

Executive Summary

Castle Rock Water (CRW) staff recommends Town Council approval of a Resolution approving a second amendment to the previously approved Amended and Restated Intergovernmental Agreement (IGA) with Douglas County. The project completed 60% design and a Guaranteed Maximum Price (GMP) was negotiated with the design-builder, S.J. Louis Construction, Inc. Town Council approved the negotiated GMP as the second amendment to the design-builder construction contract in the amount of \$16,766,642.73. The total estimated project budget including easement acquisition and other costs is now \$19,784,296. This will require an increase in CRW's contribution to the project from \$4,800,000 to \$5,784,296; an increase of \$984,296. This additional cost will be recovered under the same terms as the \$4,800,000 under a second amendment to the agreement with Douglas County that is presented herein.

The First Amendment to the IGA defined how a funding gap for the project would be covered before the project moved into final design and construction. CRW proposed to cover the funding gap and the amendment refined the financial structure and cost recovery terms associated with CRW's proposal to cover the funding gap. The key terms for the First Amendment included:

- Castle Rock Water will fund any funding shortfall for construction of the project up to a maximum of \$4.8 million.
- System development fees (SDFs) collected for connectors to the project will pay off the Castle Rock Water contribution to the project first before any of that funding goes back to Douglas County or for improvements or expansions of the sewer system.

- A 25% surcharge will be added to the portion of the system development fee reimbursing any funding gap covered by Castle Rock Water, and this surcharge will be for use by Castle Rock Water to benefit its existing customers and system.
- Interest will accrue to the balance of the funding provided by Castle Rock Water at a rate of 5% per year until the funds provided by Castle Rock Water have been fully reimbursed.
- System development fees will be handled consistently with the original agreement once Castle Rock Water has been reimbursed, except for the 25% surcharge which will continue to be collected and used for improvements or expansions to the system.

The Second Amendment maintains all the same terms as the First Amendment but revises the amount that CRW will fund based on the funding shortfall for the project as result of the increased GMP that was negotiated with the design-builder. CRW's contribution as stated in the IGA will increase by \$984,296 to a total of \$5,784,296 for the project.

Benefits to CRW of the Second Amendment to the IGA include:

- Ensures the benefits and terms from Amended and Restated IGA and First Amendment still apply.
- Maintains the additional financial resources to CRW with the increased funding amount by the additional 25% surcharge over and above the additional financial resources provided by the current extraterritorial surcharge to accomplish our core mission and vision.
- Ensures that the \$14M in ARPA funding will still be used for a lift station and force main that will allow CRW to bring reusable supplies directly back to the Plum Creek Water Reclamation Authority Wastewater Treatment Plant where those supplies can easily be accessed using CRW's existing infrastructure.

Notification and Outreach Efforts

CRW has worked closely with potential customers in the corridor including Sedalia, CORE, the Douglas County School District and new proposed developments in northern Douglas County.

Douglas County has conducted outreach including posting a news article on their web page about the Highway 85 Southern Corridor Wastewater Project. Castle Rock Water has posted information on its web page about the project as well.

CRW publicly noticed the project for Location & Extents application that was submitted to the Douglas County Planning Commission, and the application was approved on January 5, 2026.

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

Castle Rock Water staff presented this item to the Castle Rock Water Commission at their meeting held on April 26, 2023, and the Castle Rock Water Commission voted unanimously 6 to 0 to recommend Town Council approval of the Resolution as presented.

Council approved the original agreement with Douglas County at their meeting on May 2, 2023.

Castle Rock Water staff presented the Amended and Restated IGA with Douglas County at their meeting on May 22, 2024. Castle Rock Water Commission voted to unanimously (6 to 0) recommend Council approval of the Resolution.

Castle Rock Water staff presented the Amendment to the Amended and Restated IGA with Douglas County at the Castle Rock Water Commission meeting on June 27, 2025. Castle Rock Water Commission voted unanimously (7-0) to recommend Council approval of the Resolution.

On July 15, 2025 Town Council approved an amendment to the IGA adjusting the project funding amount to \$18.8 million, with CRW funding a projected shortfall of approximately up to a maximum of \$4.8 million.

On September 16, 2025 Town Council approved the First Amendment to the agreement with S.J. Louis for Phase 2 Design services to complete design to 100%.

Castle Rock Water staff presented the second contract price amendment to the progressive design-build agreement with S. J. Louis Construction, Inc. for the Phase 2 Construction Services for the Sedalia Lift Station and Force Main to the Castle Rock Water Commission at their meeting held on December 10, 2025, and the Castle Rock Water Commission voted unanimously 7 to 0 to recommend Town Council approval of the Resolution as presented.

On December 16, 2025 Town Council approved the second contract price amendment to the progressive design-build agreement with S. J. Louis Construction, Inc. for Phase 2 Construction Services for the Sedalia Lift Station and Force Main which included the discussion of the need of the increased project budget and need to amend the IGA with Douglas County.

Discussion

The project completed 60% design and a Guaranteed Maximum Price (GMP) was negotiated with the design-builder, S.J. Louis Construction, Inc. Town Council approved the negotiated GMP as the second amendment to the design-builder construction contract in the amount of \$16,766,642.73. The total estimated project budget including easement acquisition and other costs is now \$19,784,296. This will require an increase in CRW's contribution to the project from \$4,800,000 to \$5,784,296; an increase of \$984,296. This additional cost will be recovered under the same terms as the First Amendment with the increased amount included in the Second Amendment to the agreement with Douglas County. CRW wants to ensure that adequate funding is in place for the project. CRW is proposing to fill any funding gap over \$14M up to a maximum of \$19,784,296 or essentially up to a \$5,784,296 gap.

Budget Impact

CRW modeled the impact of this approach on rates and fees and CRW's capital plan. The model was updated to account for the additional \$984,296 to be funded by CRW as reflected in the Second Amendment to the IGA. There is no anticipated impact on rates and fees based on the 2024 rates and fees model. With respect to the capital plan, CRW believes that it will not be impacted as long as CRW is able to be reimbursed in a 5 to 10-year timeframe.

In order to be fully reimbursed within five years, assuming a \$5.78M gap, the project will have to connect approximately 805 single family equivalents (SFEs). Possible connectors totaling more than 805 have been identified below including estimated SFEs.

- CORE – 11 SFEs
- Plum Creek Trust Property – 600 SFEs (CRW already contracted to serve this development for water and sewer)
- Planned multi-family development – 227 SFEs
- Douglas County Public Works Building – 26 SFEs
- Douglas County School District Sedalia Elementary School – 22 SFEs

CRW updated the model, see **Attachment B**, which estimates the reimbursement. The model also identifies additional funding which will come to CRW under the Amendment to the IGA based on the 25% surcharge and could be up to \$426,859.

Staff Recommendation

Staff recommends Town Council approval of this Second Amendment to the Amended and Restated IGA with Douglas County for the Highway 85 Wastewater Collection and Treatment System.

Proposed Motion

“I move to approve the Resolution as introduced by title.”

Alternative Motions

“I move to approve the resolution as introduced by title, with the following conditions: (list conditions).”

“I move to continue this item to the Town Council meeting on _____ date to allow additional time to (list information needed).”

Attachments

Attachment A: Resolution
Exhibit: Agreement
Attachment B: Updated Financial Model

RESOLUTION NO. 2026-009

**A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE
AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK AND DOUGLAS COUNTY
FOR THE HIGHWAY 85 WASTEWATER COLLECTION AND
TREATMENT SYSTEM**

WHEREAS, on May 22, 2024, the Town of Castle Rock, Colorado (the “Town”) and the Board of County Commissioners of the County of Douglas (the “County”) entered into an Amended and Restated Intergovernmental Agreement (the “IGA”) for the design, construction, and operation of the Highway 85 Wastewater Collection and Treatment System (the “Project”); and

WHEREAS, the IGA provides that the County shall commit \$14,000,000 of American Rescue Plan Act funding for the Project; and

WHEREAS, on July 15, 2025, based upon an updated engineering cost estimate, the Town and the County entered into a First Amendment to the IGA (the “First Amendment”) whereby the Town agreed to fund a potential shortfall of \$4,800,000, which shortfall would eventually be reimbursed from system development fees collected from customers connecting to the Project; and

WHEREAS, recently, the design-builder for the Project has submitted a guaranteed maximum price for the project of \$16,766,642, resulting in a total expected Project cost of \$19,784,296; and

WHEREAS, accordingly, there now exists an additional potential shortfall of \$984,296 over and above the amount accounted for in the First Amendment; and

WHEREAS, the Town is willing to fund the additional shortfall under specific terms and conditions related to the reimbursement of this shortfall from system development fees as set forth in a Second Amendment to the IGA (the “Second Amendment”); and

WHEREAS, the Town Council finds and determines that it is in the best interests of the Town and its residents to approve this Second Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Approval. The Second Amendment to the Amended and Restated Intergovernmental Agreement for the design, construction, and operation of the Highway 85 Wastewater Collection and Treatment System between the Town and the County is hereby approved in substantially the same form as presented at tonight’s meeting, with such technical changes, additions, modifications, deletions, or amendments as the Town Manager may approve upon consultation with the Town Attorney. The Mayor and other proper Town officials are hereby

authorized to execute the Agreement and any technical amendments thereto by and on behalf of the Town.

Section 2. Encumbrance and Authorization for Payment. In order to meet the Town's financial obligations under the Second Amendment, the Town Council authorizes the expenditure and payment of an additional amount not to exceed \$984,296, unless otherwise authorized in writing by the Town.

PASSED, APPROVED AND ADOPTED this 20th day of January, 2026, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading, 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

**SECOND AMENDMENT TO THE AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK
AND DOUGLAS COUNTY FOR THE HIGHWAY 85 WASTEWATER COLLECTION
AND TREATMENT SYSTEM**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (the “Second Amendment”) is made and entered into this 20th day of January, 2026 (“Effective Date”), by and between the Town of Castle Rock, a home rule municipal corporation, acting by and through the Town of Castle Rock Water Enterprise (“Castle Rock”), and the Board of County Commissioners of the County of Douglas (“Douglas County”), (each individually, a “Party”, and collectively, the “Parties”).

RECITALS:

WHEREAS, Castle Rock and Douglas County entered into an Amended and Restated Intergovernmental Agreement on May 22, 2024 (the “Agreement”) for the design, construction, and operation of the Highway 85 Wastewater Collection and Treatment System the “Project”); and

WHEREAS, Castle Rock and Douglas County entered into a First Amendment to the Amended and Restated Intergovernmental Agreement on July 15, 2025 to fund a potential \$4.8 million shortfall not accounted for in the Agreement that was based on a total expected cost of up to \$18.8 million for the project at the 30% design level; and

WHEREAS, the Agreement provides that Douglas County shall commit fourteen million dollars in American Rescue Plan Act funds to the Project; and

WHEREAS, the design-builder for the project has submitted a guaranteed maximum price for the project at \$16,766,642 resulting in a total expected project cost of \$19,784,296 leaving a potential additional \$984,296 shortfall not accounted for in the Agreement for a total funding shortfall of \$5,784,296; and

WHEREAS, Castle Rock wishes to fund the shortfall under specific terms related to reimbursement, interest, and surcharges on system development fees; and

WHEREAS, the Parties agree to incorporate said terms into the Agreement.

NOW, THEREFORE, the Parties, in and for the consideration of the performance of mutual promises set forth herein, the receipt and adequacy of which is hereby acknowledged for themselves and their successors, wish to memorialize this Amendment as follows:

1. **Definitions.** Terms used in this Amendment, when capitalized, shall have the same meanings assigned to them as set forth in the Agreement.

2. **Amendment.** Section 3(A)(ii) of the Agreement is hereby amended to read as follows:

(ii) **Funding Shortfall Commitment.** Castle Rock shall pay up to a maximum of five million, seven-hundred, eighty-four thousand, two hundred and ninety-six dollars (\$5,784,296) beyond the \$14 million in ARPA funding to complete final design and construction (the “Funding Shortfall Payment”). The Funding Shortfall Payment shall be reimbursed to Castle Rock as detailed herein. Any portion of the Funding Shortfall Payment not reimbursed to Castle Rock shall accrue interest at a rate of 5% per year (“Accrued Interest”).

3. **Ratification.** Except as expressly modified by this Amendment, the Agreement remains in full force and effect. To the extent any conflict arises between this Amendment and the Agreement, the provisions of this Amendment shall prevail.

(Signature pages to follow)

IN WITNESS WHEREOF, the parties hereby execute this Second Amendment on the date first written above.

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

ATTEST:

Clerk to the Board

DOUGLAS COUNTY

By: _____

Name: _____

Title: _____

APPROVED AS TO FISCAL CONTENT:

Director of Finance

APPROVED AS TO LEGAL FORM:

Sr. Asst. County Attorney

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK AND DOUGLAS COUNTY
FOR THE HIGHWAY 85 WASTEWATER COLLECTION AND
TREATMENT SYSTEM**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this 2nd day of July, 2024 (the “Effective Date”), by and between the Town of Castle Rock, a home rule municipal corporation, acting by and through the Town of Castle Rock Water Enterprise (“Castle Rock”), and the Board of County Commissioners of the County of Douglas (“Douglas County”), (each, individually, a “Party” and, collectively, the “Parties”).

WITNESSETH:

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, Castle Rock operates a wastewater collection system and owns wastewater treatment capacity in the Plum Creek Water Reclamation Authority (“PCWRA”) treatment facility to provide retail wastewater service to its customers; and

WHEREAS, Douglas County desires to utilize American Rescue Plan Act funding to design and construct a wastewater collection and treatment system along the Highway 85 corridor (the “Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System” or “System”) in Douglas County, extending from the unincorporated Town of Louviers to the PCWRA wastewater treatment facility, which System will allow all treated wastewater to be collected and reused in Douglas County to the maximum extent allowed by law; and

WHEREAS, Castle Rock and Douglas County believe that the System will help to ensure that all available reusable water supplies are reused within Douglas County to extinction, thereby extending the life of the Denver Basin aquifer; and

WHEREAS, Castle Rock and Douglas County believe that the System will help encourage and enable the future connection of properties along the Highway 85 corridor to renewable water supplies; and

WHEREAS, Castle Rock and Douglas County believe the System will encourage additional regional infrastructure and intergovernmental partnerships that will provide future benefits by expanding the use and availability of reusable and renewable water supplies in Douglas County and by creating economies of scale to keep down costs for all users of water and wastewater in the region; and

WHEREAS, Castle Rock and Douglas County believe the System will avoid the future proliferation of small, underfunded water and sanitation districts in this part of Douglas County; and

WHEREAS, Castle Rock and Douglas County believe the System will provide opportunities for collaboration in the development of recreational trails and facilities along the

Highway 85 corridor, including a trail that will eventually extend from Castle Rock to Chatfield Reservoir; and

WHEREAS, Castle Rock has the experienced project engineering and management staff that are needed to help Douglas County construct the System; and

WHEREAS, Castle Rock also has the operational capacity and experience to own, operate, maintain, and, if necessary, replace the System, and/or manage the contracting for these services, for the benefit of the future customers of the System in unincorporated Douglas County; and

WHEREAS, Castle Rock is willing to make available at cost, plus an extraterritorial surcharge, wastewater treatment capacity it owns in the PCWRA treatment facility to serve customers of the System, but only if this proves to be the most cost-effective method of providing such service; and

WHEREAS, Castle Rock is willing to use its project engineering and management expertise to design and construct a System for Douglas County and to give Douglas County full authority to allocate capacity in the System to existing and future customers of the System; and

WHEREAS, Douglas County further desires to utilize American Rescue Plan Act funding to obtain easements to facilitate the construction, operation, and maintenance of the System along Plum Creek, which easements can exist in combination with existing and future trails, thereby expanding recreational amenities for Douglas County residents; and

WHEREAS, Castle Rock has the ability to acquire these easements on behalf of Douglas County; and

WHEREAS, Douglas County and Castle Rock believe the System will improve water quality in Plum Creek and Chatfield Reservoir, both of which are drinking water sources for Douglas County and Castle Rock, by eliminating failing wastewater lagoon systems and, eventually, septic systems; and

WHEREAS, Douglas County believes that the System will stimulate economic development and growth in the Highway 85 corridor; and

WHEREAS, based upon the foregoing reasons, the Parties find and determine that it is in the best interests of their respective customers and citizens to enter into this Agreement.

NOW, THEREFORE, the Parties, in and for the consideration of the performance of the mutual promises set forth herein, the receipt and adequacy of which is hereby acknowledged, for themselves and their successors, do hereby agree as follows:

1. DEFINITIONS.

The following terms, when capitalized, shall have the meanings indicated:

- A. “ARPA Funds” shall mean funds encumbered by Douglas County in accordance with Section 603(b) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act (“ARPA”), Public Law No. 117-2 (March 11, 2021), together with all rules and regulations promulgated thereunder.
- B. “Castle Rock-Managed Project Infrastructure” means that portion of the Project Infrastructure for which Castle Rock will manage the design, construction, and installation, including the Sedalia Lift Station and Force Main, which Infrastructure shall be used for the purpose of collecting wastewater from the Service Area for treatment at the PCWRA wastewater treatment facility using the PCWRA Treatment Capacity.
- C. “Collection System” means that portion of the Project Infrastructure utilized for the collection and delivery of wastewater to the PCWRA wastewater treatment facility using PCWRA Treatment Capacity.
- D. “Collection System Development Fee” means the fee that Castle Rock will charge to those persons seeking to develop or redevelop property within the Service Area for the right to connect to the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System. Said fee shall be charged for the purpose of defraying all costs associated with the design and construction of the Collection System and any improvements thereto, and shall consist of: (i) the capital recovery fee, which shall be calculated based on the Final Infrastructure Costs for the Collection System, (ii) the capital improvement fee, which shall be calculated based on the costs of increasing the capacity of the Collection System as may be necessary to serve new development or redevelopment in the Service Area, (iii) the Extraterritorial Surcharge, and (iv) any other costs determined by Castle Rock to be necessary and appurtenant. All revenues generated by the Collection System Development Fee that reimburse Douglas County for its investment in the System shall be invested by Castle Rock in the Collection System. All other revenues generated by such Fee shall be retained by Castle Rock.
- E. “Collection System Treatment Capacity” means that portion of the PCWRA Treatment Capacity actually used in the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System.
- F. “Collection System Treatment Facility” means any treatment works, as defined in section 212 of the Federal Clean Water Act (33 U.S.C. §§1251, *et seq.*), that currently exists and is used to provide treatment capacity for the Project and/or is designed and constructed as part of the Project to be used in the storage, treatment, recycling, reuse, and reclamation of domestic and/or industrial wastewater generated by customers of the System for purposes of complying with the Federal Clean Water Act.
- G. “Collection System Treatment Facility Development Fee” means the fee that Castle Rock will charge to those persons seeking to develop or redevelop property within

the Service Area for the right to connect to the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System. Said Fee shall be charged for the purpose of defraying all costs associated with design and construction of Collection System Treatment Facility and any improvements thereto, and shall consist of: (i) the capital recovery fee, which shall be calculated based on the Final Infrastructure Costs for the Collection System Treatment Facility, (ii) the capital improvement fee, which shall be calculated based on the costs of increasing the capacity of the Collection System Treatment Facility as may be necessary to serve new development or redevelopment in the Service Area, (iii) the Extraterritorial Surcharge, and (iv) any other costs determined by Castle Rock to be necessary and appurtenant. All revenues generated by the Collection System Treatment Facility Development Fee will be retained by Castle Rock.

- H. “Estimated Castle Rock-Managed Project Infrastructure Costs” means the estimated costs of designing, constructing and installing the Castle Rock-Managed Project Infrastructure, as more particularly described in the attached Exhibit A.
- I. “Extraterritorial Surcharge” means the ten percent (10%) surcharge that Castle Rock will add to the Collection System Development Fees, the Collection System Treatment Facility Development Fees, the PCWRA Treatment System Development Fee, and all other rates and fees charged by Castle Rock in providing extraterritorial retail wastewater service to System customers.
- J. “Final Castle Rock-Managed Project Infrastructure Costs” means the final costs of designing, constructing and installing the Castle Rock-Managed Project Infrastructure, as more particularly described in the amended Exhibit A.
- K. “MGD” means million gallons per day.
- L. “Necessary Improvement” means any improvement to the Castle Rock-Managed Project Infrastructure, (i) the construction or installation of which Castle Rock reasonably deems to be a necessary prerequisite for any person seeking to develop or redevelop property within the Service Area to connect to the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System, and (ii) which is in addition to those improvements to the Castle Rock-Managed Project Infrastructure that are funded by Collection System Development Fees or Collection System Treatment Facility Development Fees.
- M. “PCWRA Treatment Capacity” means wastewater treatment capacity that Castle Rock owns in the PCWRA wastewater treatment facility, which capacity may be used in the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System.
- N. “PCWRA Treatment System Development Fee” means the fee that Castle Rock will charge and collect from Douglas County or existing and/or future customers that connect to the Castle Rock-Managed Highway 85 Wastewater Collection and

Treatment System and use PCWRA Treatment Capacity for the purpose of defraying all costs associated with connecting to the PCWRA wastewater treatment facility. Said Fee shall consist of: (i) the capital recovery fee, which shall be calculated based on the amount of PCWRA Treatment Capacity required for a Single-Family Equivalent and retained by Castle Rock and (ii) the Extraterritorial Surcharge, which shall be retained by Castle Rock as reimbursement for the value of its Treatment Capacity in the PCWRA treatment facility. The current fee is set at \$4,900 per Single Family Equivalent and shall be adjusted each year based on Castle Rock's annual study of rates and fees.

- O. "Project" means the design, construction, and installation of the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System.
- P. "Project Infrastructure" means the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System, all as more particularly identified in the description attached as Exhibit B and shown on the map attached as Exhibit B-1.
- Q. "Project Management Fee" means the fee that Castle Rock charges Douglas County to manage the design, construction, and installation of the Castle Rock-Managed Project Infrastructure, which fee shall be equal to one percent (1%) of the Douglas County share of the Project costs.
- R. "Reusable Water" means wastewater from water rights that can be used and reused to extinction, which wastewater shall be put into the Castle Rock-Managed Project Infrastructure and, thereby, made available for purchase by Castle Rock.
- S. "Service Area" means the area located in unincorporated Douglas County within which Castle Rock will provide retail wastewater service through the Castle Rock-Managed Highway 85 Wastewater Collection and Treatment System as shown on the map attached as Exhibit C. Upon the delivery of written notice thereof to Castle Rock, Douglas County may designate additional property in unincorporated Douglas County to be included within the Service Area, subject to the availability of sufficient capacity in the System to serve such property.
- T. "Single Family Equivalent" means the relative measure of demand placed on any wastewater facility or infrastructure by an average single-family residential unit.
- U. "System Development Fees" means, collectively and individually, as applicable, Collection System Development Fees, Collection System Treatment Facility Development Fees, and PCWRA Treatment System Development Fees.

2. DESCRIPTION OF PROJECT.

- A. Consideration. Douglas County agrees to use available American Rescue Plan Act funds to help: (i) finance the design, construction, and installation of a wastewater collection and treatment system along the Highway 85 corridor, extending

approximately from south of the unincorporated Town of Louviers to the PCWRA wastewater treatment facility, and (ii) acquire all easements, whether temporary or permanent, rights-of-way, and other real property interests as may be necessary to construct, operate, maintain, repair, and replace the System. In consideration of obtaining access to available Reusable Water in the Service Area and the payment by Douglas County of fourteen million dollars (\$14,000,000.00) of ARPA Funds for the design, construction, and installation of Project Infrastructure and the Project Management Fee, Castle Rock agrees to manage the design, construction, and installation of the Castle Rock-Managed Project Infrastructure. Douglas County acknowledges and understands that Castle Rock is in the process of negotiating additional agreements that will be required to ensure the design and construction of a complete wastewater collection and treatment system. If, for whatever reason, Castle Rock is unable to consummate these agreements, Castle Rock will work with Douglas County to amend and/or terminate this Agreement as may be necessary.

- B. Ownership. Upon the substantial completion of construction and the initial acceptance of the Castle Rock-Managed Project Infrastructure by Douglas County and Castle Rock, ownership of the Castle Rock-Managed Project Infrastructure shall be conveyed to Castle Rock by the general contractor of the Project, along with all warranties associated therewith. Thereafter, Castle Rock agrees to own, operate, maintain, repair and replace the Castle Rock-Managed Project Infrastructure. Castle Rock further agrees to own, operate, maintain, repair and replace any wastewater collection infrastructure that is paid for by, and built to serve any new or existing development connecting to the Castle Rock Managed Project Infrastructure and to provide retail wastewater service to those Douglas County residents within the Service Area who connect to the Castle Rock-Managed Project Infrastructure.

3. PROJECT DESIGN, CONSTRUCTION, AND INSTALLATION.

- A. Costs. The Estimated Castle Rock-Managed Project Infrastructure Costs, as shown in Exhibit A, shall include, without limitation, the following costs incurred by Castle Rock: (i) staff time spent administering the work set forth herein, which time shall be accounted for within the Project Management Fee; (ii) design of the Castle Rock-Managed Project Infrastructure; (iii) easement research and acquisition, and any right-of-way or other permitting fees; and (iv) construction and contract management. Castle Rock shall track all costs incurred during the course of the designing, constructing, and installing the Castle Rock-Managed Project Infrastructure; provided, however, that Douglas County acknowledges and agrees that Castle Rock staff time shall not be tracked. The total ARPA Funds that Douglas County will provide for the Castle Rock-Managed Project Infrastructure is fourteen million dollars (\$14,000,000.00).
- B. Change Orders. Douglas County acknowledges and agrees that the Estimated Castle Rock-Managed Project Infrastructure Costs may increase at any time during the design, construction or installation of the Castle Rock-Managed Project Infrastructure. Castle Rock shall provide updated Estimated Castle Rock-Managed

Project Infrastructure Costs to Douglas County on a quarterly basis through completion of the Castle Rock-Managed Project Infrastructure. Upon completion and initial acceptance of the Castle Rock-Managed Project Infrastructure, Castle Rock shall prepare an amended Exhibit A showing the Final Castle Rock-Managed Project Infrastructure Costs. Upon agreement of the Parties as to the amount of the Final Castle Rock-Managed Project Infrastructure Costs, the amended Exhibit A shall be substituted for the original Exhibit A and shall be incorporated into this Agreement.

- C. Scope of Work. The general proposed scope of work for the Project Infrastructure and the estimated timeline are provided in the attached Exhibit D (the “Scope of Work”).
- D. Examination of Records; Dispute Resolution. At Douglas County’s request, Castle Rock shall provide records relating to the design, construction, and installation of the Castle Rock-Managed Project Infrastructure, including copies of each draw request from the general contractor, together with paid invoices or such other documentation as may be available and reasonably requested for Douglas County to verify the Final Castle Rock-Managed Project Infrastructure Costs. The Parties shall cooperate to resolve any disputes concerning the Final Castle Rock-Managed Project Infrastructure Costs. If the Parties are unable to resolve their dispute informally, they shall submit the dispute to non-binding mediation before a mutually agreeable mediator. If the Parties remain unable to resolve their dispute within sixty (60) days of commencing mediation, the Parties may pursue any remedies lawfully available to them.
- E. Costs in Excess of Contingency. Castle Rock shall administer the Castle Rock-Managed Project Infrastructure in substantially the same manner and with the same care as other Castle Rock design and construction projects of a similar scope and nature. Castle Rock shall manage all change orders and costs adjustments within a contingency amount agreed to by the Parties. Adjusted cost estimates will be made based upon actual construction bids or change orders. If the Estimated Castle Rock-Managed Project Infrastructure Costs need to be adjusted over and above the contingency amount, Castle Rock shall give written notice to Douglas County. Douglas County shall have 30 days to provide approval of such additional costs. If Douglas County does not approve the additional costs, the Parties will meet to review and identify opportunities to decrease the overall Scope of Work to bring the Estimated Castle Rock-Managed Project Infrastructure Costs within the amount of funding available under ARPA. If the Parties cannot identify opportunities to decrease the overall Scope of Work and Estimated Castle Rock-Managed Project Infrastructure Costs, then the Parties agree to submit the dispute to non-binding mediation as provided in Subsection D of this Section.
- F. Easements. Castle Rock agrees to undertake the acquisition of all easements, whether temporary or permanent, rights-of-way, and other real property interests as may be necessary to construct, operate, maintain, repair, and replace the Castle

Rock-Managed Project Infrastructure. All such real property interests shall be granted to Castle Rock at the time of acquisition. In addition, provision shall be made for recreational trail easements in locations consistent with Douglas County's draft Plum Creek Regional Trail feasibility study. Any trail easements acquired by Castle Rock for this purpose shall be granted to Douglas County at the time of acquisition. Wherever feasible, such easements may be non-exclusive and occupy the same location as the real property interests granted to Castle Rock pursuant to this Subsection F.

- G. Contract Solicitation. Castle Rock will undertake the bidding and contracting for design, property acquisition, and construction services utilizing its standard design and construction contracting processes. Selected consultants and contractors will be provided to Douglas County by Castle Rock for Douglas County's concurrence prior to the signing of each contract. Douglas County shall fully fund each contract prior to award by Castle Rock and partially fund any remaining contract until the full amount of ARPA funds allocated to this Project has been invested in the Castle Rock-Managed Project Infrastructure. For any construction contract, the Parties will enter into a separate agreement to establish an escrow account, which account shall be funded by Douglas County to the appropriate amount of each such contract, plus a reasonable contingency. This escrow account will be used for payment of all invoices for each such contract. The Parties acknowledge and agree that the construction of the Castle Rock-Managed Project Infrastructure may be phased as the Parties may deem appropriate, and that separate construction contracts may be entered into for each phase of the Castle Rock-Managed Project Infrastructure.
- H. Escrow. Castle Rock will review and approve all consultant and contractor invoices that are funded with ARPA Funds and then forward said invoices to Douglas County for approval on a monthly basis. Douglas County will review and approve said invoices within fifteen (15) days following receipt of the invoice and then submit the approved invoices to the escrow agent for payment to the contractor. Payment from the escrow account shall be made in full within thirty (30) days following receipt of the invoice from the contractor.
- I. Insurance. Castle Rock will require each Project contractor to procure and maintain the following types and amounts of insurance in accordance with the requirements of Castle Rock's purchasing policies, with each policy to be issued to include Douglas County, its officers and employees, as and additional named insured:
 - (i) Commercial General Liability Insurance, including coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations, with minimum combined single limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate.
 - (ii) Comprehensive Automobile Liability Insurance, including coverage for each of the contractor's owned, hired and/or non-owned vehicles assigned

to or used in performance of the services, with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 for each occurrence and \$1,000,000 aggregate.

- (iii) Workers' Compensation Insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under the contract, and Employer's Liability insurance with minimum limits of \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.
- (iv) Builder's Risk or Installation Floater Policy, at Castle Rock's discretion, in an amount equal to the value of the Project where the possibility exists of loss or damage to the Project (for the construction contract only).
- (v) Professional Liability Insurance, including coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, with minimum combined single limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate (for the design contract only).

4. CAPACITY ALLOCATION.

- A. Capacity Reservation and Allocation. Concurrent with the substantial completion and initial acceptance of the Castle Rock-Managed Project Infrastructure, Castle Rock shall grant Douglas County a license for Douglas County's proportional share in the permanent capacity of the Castle Rock-Managed Project Infrastructure (the "License"). Castle Rock will retain all other capacity in the Castle Rock-Managed Project Infrastructure. This will result in an estimated initial allocation of permanent capacity in the System of 5% for Castle Rock and 95% for Douglas County. A final allocation shall be determined by the Parties at the time of final design of the Castle Rock-Managed Project Infrastructure. As new customers connect to the Castle Rock-Managed Project Infrastructure, Castle Rock's share of the allocation of permanent capacity shall increase, while Douglas County's share of the allocation of permanent capacity will decrease, by the amount of permanent capacity needed to serve each new customer.
- B. Access Restriction. The Parties acknowledge and agree that the License granted herein is for capacity in the Castle Rock-Managed Project Infrastructure only. Following the transfer of ownership of Castle Rock-Managed Project Infrastructure as provided in Subsection A of this section, Douglas County shall not at any time access the Castle Rock-Managed Project Infrastructure or other facilities or property owned or controlled by Castle Rock, except pursuant to the terms, restrictions and conditions set forth in this Agreement.

- C. License Capacity. The total capacity of the Castle Rock-Managed Project Infrastructure is set forth in Exhibit B. The License granted to Douglas County is limited to the percentage share set forth in Subsection A of this Section, which share may not be sold or assigned by Douglas County. If the total capacity of the Castle Rock-Managed Project Infrastructure should ever exceed the amounts set forth in Exhibit B for any reason, as determined by Castle Rock in its sole discretion, the excess capacity shall be allocated between Castle Rock and Douglas County based upon the prorated funding of such capacity until such time as new customers connect to the System and such capacity is allocated to Castle Rock as set forth in Subsection A of this Section.

- D. Capacity Restriction. If capacity in the Castle Rock-Managed Project Infrastructure is restricted on account of maintenance, emergencies, force majeure, or legal or regulatory requirements, Castle Rock shall forthwith advise Douglas County of such capacity restriction and the anticipated duration thereof, and apportion capacity in the Castle Rock-Managed Project Infrastructure based upon Douglas County's proportional share of Castle Rock-Managed Project Infrastructure capacity.

- E. Limitations. The allocation of costs set forth herein between Castle Rock and Douglas County is intended to apply solely to the costs of designing, constructing, and installing the Castle Rock-Managed Project Infrastructure, and shall not be construed to include costs and fees related to the operation, maintenance, repair, or replacement of the Castle Rock-Managed Project Infrastructure. Such costs and other related terms and conditions, shall be managed by Castle Rock.

- F. Warranty. Upon the completion of construction, initial acceptance, and conveyance of the Castle Rock-Managed Project Infrastructure, Castle Rock shall be the sole owner of the Castle Rock-Managed Project Infrastructure and all warranties associated therewith, subject to the rights of Douglas County as further set forth herein. Castle Rock represents and warrants to Douglas County that Castle Rock either has, or will obtain, all necessary right, title and interest in the Castle Rock-Managed Project Infrastructure to convey the License set forth in Subsection A of this Section. Castle Rock does covenant and agree that it shall warrant and forever defend Douglas County in its quiet and peaceful possession of its license rights granted herein against all and every person or persons. In the event that the license or any part thereof is challenged by the person or entity granting rights, interests or title to Castle Rock or any portion thereof, Castle Rock shall, to the extent permitted by law, take all necessary actions to acquire the requisite interest needed to satisfy its obligations hereunder; provided that, for so long as Douglas County has capacity in the System, Douglas County may be required by Castle Rock to pay its proportional share of the costs related to any action taken by Castle Rock if the need for such action is not due to the negligence of Castle Rock.

- G. Insurance. Castle Rock shall procure and maintain property insurance for the Castle Rock-Managed Project Infrastructure that is substantially similar to the coverage

maintained by Castle Rock for other similar Castle Rock-owned water and wastewater infrastructure. If the Castle Rock-Managed Project Infrastructure is damaged, Castle Rock shall allocate all proceeds from the insurance policy towards repairing the Project Infrastructure

5. RETAIL WASTEWATER SERVICE.

- A. Wastewater Collection and Treatment System Capacity. Douglas County shall be allocated licensed capacity in the Castle Rock-Managed Project Infrastructure. Douglas County can make this capacity available for customers in the Service Area. Douglas County and Castle Rock agree that service to future development within the Service Area will be provided in the most cost-effective manner as determined by Castle Rock, as the retail wastewater service provider, and the customer applying for service
- B. General Service Requirements. Castle Rock will be the retail provider of wastewater service in the Service Area. With regard to property within the Service Area that (i) is undeveloped as of January 1, 2023, or (ii) is fully developed, but for which approval is being sought from Douglas County to redevelop, the property owner shall submit an application to Douglas County for the development or redevelopment of such property, which application shall include a request to connect to the Castle Rock-Managed Project Infrastructure. Within fifteen (15) days of receipt, Douglas County shall notify Castle Rock of each such application. Castle Rock will set an application fee for evaluation of the service options to the property that is the subject of the application and, upon collection of that fee, will evaluate service options for such property. If Douglas County has adequate capacity for Castle Rock to serve the property under the License, Castle Rock will then calculate the amount of System Development Fees that it will charge the applicant for the right to connect to the Castle Rock-Managed Project Infrastructure. Castle Rock will also determine what Necessary Improvements, if any, are required as a condition precedent for the applicant to connect to the Castle Rock-Managed Project Infrastructure. Thereafter, Castle Rock will provide a “will serve” letter to the applicant stating the total System Development Fees that the applicant will be required to pay and identifying the Necessary Improvements that the applicant will be required to provide. Douglas County, as the land use agency for the Service Area, will provide the required review(s) for the development or redevelopment application in accordance with its land use rules and regulations; provided, however, that Douglas County agrees that Castle Rock’s rules and regulations regarding water, wastewater, and water conservation, including landscaping, shall take precedence over any Douglas County rules and regulations pertaining to this subject matter. Upon approval by Douglas County of the development or redevelopment application, the payment of all applicable System Development Fees to Castle Rock, and the substantial completion of all Necessary Improvements, the applicant will be allowed to connect to the Castle Rock-Managed Project Infrastructure and retail wastewater service shall be provided to the newly developed or redeveloped property.

With regard to property within the Service Area that is fully developed as of January 1, 2023, and for which no approval is being sought from Douglas County to redevelop, the property owner shall submit an application to Douglas County for connection to the Castle Rock-Managed Project Infrastructure. Within fifteen (15) days of receipt, Douglas County shall notify Castle Rock of each such application. If Douglas County has adequate capacity to serve the property under the License, Castle Rock will then determine what Necessary Improvements, if any, are required as a condition precedent for the applicant to connect to the Castle Rock-Managed Project Infrastructure. Thereafter, Castle Rock will provide a “will serve” letter to the applicant identifying the Necessary Improvements that the applicant will be required to provide. No System Development Fees associated with that portion of the Castle Rock-Managed Project Infrastructure funded by Douglas County will be charged to the applicant, as long as Douglas County has adequate capacity to serve the property with the Castle Rock-Managed Project Infrastructure; provided, however, that if the applicant will be using PCWRA Treatment Capacity and/or any portion of the Castle Rock-Managed Project Infrastructure not funded by Douglas County, Castle Rock will charge and collect from the property owner the PCWRA Treatment System Development Fee and other System Development Fees as appropriate. If Douglas County does not have adequate capacity available, then the application will be treated as if it is an application for the development or redevelopment of property within the Service Area. In such cases, Castle Rock will calculate System Development Fees in a manner similar to how they are calculated for new development or redevelopment. Upon approval by Douglas County of the connection application and the substantial completion of all Necessary Improvements, and, if applicable, the payment of System Development Fees to Castle Rock, the applicant will be allowed to connect to the Castle Rock-Managed Project Infrastructure and retail wastewater service shall be provided to the property.

Each connection shall meet all of Castle Rock’s connection requirements, which requirements are generally set forth in Title 13 of the Castle Rock Municipal Code. Such connection shall also meet the PCWRA Code of Rules and Regulations dated May 19, 2020, and adopted by reference pursuant to Section 13.04.020 of the Castle Rock Municipal Code. As consideration for allowing the connection to the Castle Rock-Managed Project Infrastructure, Douglas County will allocate to Castle Rock the pro-rated capacity in the Castle Rock-Managed Project Infrastructure that will be used by new development or redevelopment. The allocation of such capacity shall be memorialized in an annual statement to be provided by Castle Rock to Douglas County by no later than thirty (30) days following the end of each calendar year. Within thirty (30) days following the date upon which all capacity in the Castle Rock-Managed Project Infrastructure has been allocated to Castle Rock pursuant to the terms of this Subsection B, Castle Rock will send Douglas County written notice that the License granted to Douglas County herein is terminated.

- C. Use of System Development Fees. With the exception of System Development Fees or the portion of System Development Fees that is due to Castle Rock, the System Development Fees for Douglas County's licensed capacity will be: (i) reinvested by Douglas County in the design, construction, and installation of additional components of the Castle Rock-Managed Project Infrastructure in the Service Area as recommended by Castle Rock to Douglas County or (ii) returned to Douglas County for other uses as determined in Douglas County's sole discretion. The amount of System Development Fees associated with Douglas County's licensed capacity will be collected, reported, and transferred to Douglas County no less than annually. Based on the amount of System Development Fees collected for Douglas County's licensed capacity, Castle Rock will notify Douglas County as to the specific infrastructure it intends to fund with System Development Fees, along with the estimated costs of such infrastructure. Such notice will be presented to Douglas County annually for its review and approval. A separate intergovernmental agreement will be negotiated and executed by the Parties for each such infrastructure component, identifying the amount of the System Development Fees that Douglas County will agree to use for such purpose. Nothing in this Agreement shall be deemed to require Douglas County to use System Development Fees associated with Douglas County's licensed capacity for expansion of the Castle Rock-Managed Project Infrastructure.
- D. Renewable Water Requirement. For new development or redevelopment in the Service Area, Castle Rock will require the developer or redeveloper to provide a renewable water supply for their development or redevelopment as a condition precedent to obtaining a "will serve" letter from Castle Rock to connect to the Castle Rock-Managed Project Infrastructure.
- E. Limitations. At such time as Castle Rock agrees to be the retail wastewater provider to any property within the Service Area, any costs and fees related to the operation, maintenance, repair, or replacement of any wastewater infrastructure that Castle Rock owns or comes to own will be assessed in accordance with Castle Rock's standard rate-setting policies and procedures, and shall include a 10% extraterritorial surcharge separate from the process of setting and collecting System Development Fees.
- 6. AMERICAN RESCUE PLAN ACT PROVISIONS.**
- A. Acknowledgement. Castle Rock acknowledges and agrees that the funds encumbered by Douglas County to pay for the design, construction, and installation of the Castle Rock-Managed Project Infrastructure, and the acquisition of all easements, rights-of way, and other real property interests necessary and appurtenant thereto, have been provided in accordance with ARPA. The Parties acknowledge that all ARPA Funds may only be used to cover those eligible costs incurred by Douglas County during the period that begins on March 3, 2021, and ends on December 31, 2024, including costs incurred to make necessary investments in sewer infrastructure. The Parties anticipate that the total amount of

ARPA Funds available for the Castle Rock-Managed Project Infrastructure shall not exceed \$14,000,000.

- B. Use of ARPA Funds. Castle Rock shall only utilize ARPA Funds for the purposes described in this Agreement. Castle Rock agrees and acknowledges that, as a condition to receiving the ARPA Funds, it shall strictly follow the Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached as Exhibit E. All invoices submitted by Castle Rock to Douglas County pursuant to this Agreement shall use “COVID-19” or “Coronavirus” as a descriptor for those costs that are paid by ARPA Funds to facilitate the tracking of Agreement-related spending related to COVID-19. Castle Rock shall segregate and specifically identify the time and expenditures billed to Douglas County on each invoice to allow for future review and analysis of COVID-19 related expenses. To avoid an unlawful duplication of federal benefits, the Parties agree and acknowledge that the services provided by Castle Rock for which ARPA Funds are used shall not, to the extent that ARPA Funds are used, also be paid for or reimbursed by monies provided under any other federal program.
- C. ARPA Deadlines. Douglas County agrees and acknowledges that it shall obligate the use of ARPA funds for the services performed by Castle Rock under this Agreement no later than December 31, 2024. Castle Rock agrees and acknowledges that all services performed by Castle Rock using ARPA Funds must be performed by no later than December 31, 2026.
- D. Reporting Requirements. To the extent that Castle Rock’s services hereunder contemplate the spending of ARPA Funds, Castle Rock shall provide to Douglas County information responsive to mandatory performance measures, including programmatic data sufficient to conduct oversight as well as understand aggregate program outcomes. Further, in providing the ARPA-required information to the City, to the extent possible, Castle Rock shall provide this programmatic data related to such services disaggregated by race, ethnicity, gender, income, and other relevant demographic factors as may be determined by Douglas County. Castle Rock shall insert the foregoing requirement into all subcontracts related to this Agreement, thereby obligating all subcontractors to the same reporting requirement as Castle Rock.
- E. Inspection of Records. Castle Rock shall maintain records of the documentation supporting the use of ARPA Funds in an auditable format, for the later of five (5) years after final payment on this Agreement or the expiration of the applicable statute of limitations. Any authorized agent of Douglas County or of the Federal government, including the Special Inspector General for Pandemic Recovery, have the right to access, and the right to examine, copy and retain copies, at the official’s election in paper or electronic form, any pertinent books, documents, papers and records related to Castle Rock’s use of ARPA Funds pursuant to this Agreement. Castle Rock shall cooperate with Federal and Douglas County representatives and such representatives shall be granted access to the foregoing documents and

information during reasonable business hours and until the latter of five (5) years after the final payment under this Agreement or expiration of the applicable statute of limitations. No examination of records and audits pursuant to this section shall require Castle Rock to make disclosures in violation of state or federal privacy laws.

7. DEFAULT/REMEDIES. In the event a Party deems the other Party to be in default, it shall provide written notice indicating the event of default. The defaulting party shall have thirty (30) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within thirty (30) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed thirty (30) days for monetary defaults, or sixty (60) days for non-monetary defaults, except by written consent of the non-defaulting party. In the event the defaulting party has failed to cure in accordance with this Section, the non-defaulting party may pursue all available remedies at law or equity. In addition, Castle Rock shall have the ability to withhold services to manage the design and construction of the Project Infrastructure due to a monetary default by Douglas County.

8. MISCELLANEOUS.

- A. Governing Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for Douglas County, State of Colorado.
- B. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof, and there are no prior or contemporaneous agreements, either oral or written, relating to the subject matter hereof except as expressly set forth herein.
- C. Agreement Modification. The Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.
- D. Counterpart Execution. The Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto.
- E. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Parties or their officials, employees, contractors, or agents, or any other person acting on behalf of the Parties and, in particular, governmental immunity that may be afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

- F. Assignability. This Agreement and the License granted herein may not be assigned, pledged or transferred, in whole or in part, without the express written consent of the other Party which consent shall not be unreasonably withheld.
- G. No Public Dedication/No Third-Party Beneficiary. Nothing contained herein shall be deemed to be a grant or dedication of any rights or use to the public in general, and no third-party beneficiary interests are created nor intended to be created by this Agreement.
- H. Headings for Convenience. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
- I. 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.

If to Castle Rock: Town of Castle Rock
Attn: Director of Castle Rock Water
175 Kellogg Court
Castle Rock, CO 80109

with copy to: Town of Castle Rock
Attn: Town Attorney
100 N. Wilcox Street
Castle Rock, CO 80104

If to Douglas County: Douglas County
Attn: Special Projects Manager
100 Third Street
Castle Rock, CO 80104

with copy to: Douglas County
Attn: County Attorney
100 Third Street
Castle Rock, CO 80104

- J. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

- K. Recordation. The Parties agree that this Agreement may be recorded in the records of the Clerk and Recorder for county in which a Party has its principal place of business.
- L. Binding Agreement. The benefits and burdens of this Agreement shall inure to and be binding upon on the successors, and assigns of the Parties.
- M. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time.
- N. Survival of Representations. Each and every covenant, promise, and payment contained in this Agreement shall survive each and be binding and obligatory upon each of the Parties and shall not merge into any deed, assignment, covenant, escrow agreement, easement, lease or any other document.
- O. Non-Severability. Each Section of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.
- P. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, the Parties will immediately negotiate valid alternative portions) that as near as possible give effect to any stricken portion(s).
- Q. Force Majeure. Each Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; action of the government (except the parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

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

(Signature pages to follow)

ATTEST:

DocuSigned by:

Lisa Anderson

298A8A4EDEE34AF...

Lisa Anderson, Town Clerk



DS

TOWN OF CASTLE ROCK

DocuSigned by:

Jason Gray

A7938A42F3A848A...

Jason Gray, Mayor

Approved as to form:

DocuSigned by:

Mike Hyman

F7347F32A6794D1...

Michael J. Hyman, Town Attorney

Approved as to content:

DocuSigned by:

Mark Marlowe

FEA6D2E651B241D...

Mark Marlowe, Director Castle Rock Water

STATE OF COLORADO)

) ss.

COUNTY OF DOUGLAS)

The foregoing instrument as acknowledged before me this 8th day of July, 2024, 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 9/30/2024

DAN#20084033388-459132

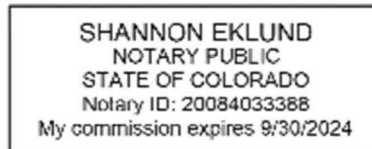
DS

DocuSigned by:

Shannon Eklund

06259A95F544D1A3...

Notary Public



ATTEST:

**BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF DOUGLAS**

Approved as to form:

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument as acknowledged before me this __ day of _____, 2024, by _____ for the Board of County Commissioners of the County of Douglas.

Witness my official hand and seal.

My commission expires:

Notary Public

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF
CASTLE ROCK AND DOUGLAS COUNTY FOR THE HIGHWAY 85
WASTEWATER COLLECTION AND TREATMENT SYSTEM**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this 2nd day of May, 2023 (the “Effective Date”), by and between the Town of Castle Rock, a home rule municipal corporation, acting by and through the Town of Castle Rock Water Enterprise (“Castle Rock”), and the Board of County Commissioners of the County of Douglas (“Douglas County”), (each, individually, a “Party” and, collectively, the “Parties”).

WITNESSETH:

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, Castle Rock operates a wastewater collection system and owns wastewater treatment capacity in the Plum Creek Water Reclamation Authority (“PCWRA”) treatment facility to provide retail wastewater service to its customers; and

WHEREAS, Douglas County desires to utilize American Rescue Plan Act funding to design and construct a wastewater collection and treatment system along the Highway 85 corridor (the “Highway 85 Wastewater Collection and Treatment System” or “System”) in Douglas County, starting in the unincorporated Town of Louviers and extending as far south towards the PCWRA wastewater treatment facility as funding will allow; and

WHEREAS, Castle Rock has the experienced project engineering and management staff that are needed to help Douglas County construct the System; and

WHEREAS, Castle Rock also has the operational capacity and experience to own, operate, maintain, and, if necessary, replace the System, and/or manage the contracting for these services, for the benefit of the future customers of the System in unincorporated Douglas County; and

WHEREAS, Castle Rock is willing to make available at cost, plus an extraterritorial surcharge, wastewater treatment capacity it owns in the PCWRA treatment facility to serve customers of the System, but only if this proves to be the most cost-effective method of providing such service; and

WHEREAS, Castle Rock is willing to use its project engineering and management expertise to design and construct a System for Douglas County and to give Douglas County full authority to allocate capacity in the System to existing and future customers of the System; and

WHEREAS, Douglas County further desires to utilize American Rescue Plan Act funding to obtain easements to facilitate the construction, operation, and maintenance of the System along Plum Creek, which easements can exist in combination with existing and future trails, thereby expanding recreational amenities for Douglas County residents; and

WHEREAS, Castle Rock has the ability to acquire these easements on behalf of Douglas County; and

WHEREAS, Douglas County and Castle Rock believe the System will improve water quality in Plum Creek and Chatfield Reservoir, both of which are drinking water sources for Douglas County and Castle Rock, by eliminating failing wastewater lagoon systems and, eventually, septic systems; and

WHEREAS, Douglas County believes that the System will stimulate economic development and growth in the Highway 85 corridor; and

WHEREAS, based upon the foregoing reasons, the Parties find and determine that it is in the best interests of their respective customers and citizens to enter into this Agreement.

NOW, THEREFORE, the Parties, in and for the consideration of the performance of the mutual promises set forth herein, the receipt and adequacy of which is hereby acknowledged, for themselves and their successors, do hereby agree as follows:

1. DEFINITIONS.

The following terms, when capitalized, shall have the meanings indicated:

- A. “Collection System” means that portion of the Project Infrastructure utilized for the collection and delivery of wastewater to the Collection System Treatment Facility, in the event that such Facility is designed and constructed as part of the Project.
- B. “Collection System Development Fee” means the fee that Castle Rock will charge to those persons seeking to develop or redevelop property within the Service Area for the right to connect to the Highway 85 Wastewater Collection and Treatment System. Said fee shall be charged for the purpose of defraying all costs associated with the design and construction of the Collection System and any improvements thereto, and shall consist of: (i) the capital recovery fee, which shall be calculated based on the Final Infrastructure Costs for the Collection System, (ii) the capital improvement fee, which shall be calculated based on the costs of increasing the capacity of the Collection System as may be necessary to serve new development or redevelopment in the Service Area, (iii) the Extraterritorial Surcharge, and (iv) any other costs determined by Castle Rock to be necessary and appurtenant. All revenues generated by the Collection System Development Fee, except for those revenues attributable to the Extraterritorial Surcharge, shall be invested by Castle Rock in the Collection System.
- C. “Collection System Treatment Capacity” means wastewater treatment capacity in the Collection System Treatment Facility, in the event that such Facility is designed and constructed as part of the Project.

- D. “Collection System Treatment Facility” means any treatment works, as defined in section 212 of the Federal Clean Water Act (33 U.S.C. §§1251, *et seq.*), that is designed and constructed as part of the Project to be used in the storage, treatment, recycling, and reclamation of domestic and/or industrial wastewater generated by customers of the System for purposes of complying with the Federal Clean Water Act.
- E. “Collection System Treatment Facility Development Fee” means the fee that Castle Rock will charge to those persons seeking to develop or redevelop property within the Service Area for the right to connect to the Highway 85 Wastewater Collection and Treatment System. Said Fee shall be charged for the purpose of defraying all costs associated with design and construction of Collection System Treatment Facility and any improvements thereto, and shall consist of: (i) the capital recovery fee, which shall be calculated based on the Final Infrastructure Costs for the Collection System Treatment Facility, (ii) the capital improvement fee, which shall be calculated based on the costs of increasing the capacity of the Collection System Treatment Facility as may be necessary to serve new development or redevelopment in the Service Area, (iii) the Extraterritorial Surcharge, and (iv) any other costs determined by Castle Rock to be necessary and appurtenant. All revenues generated by the Collection System Treatment Facility Development Fee, except for those revenues attributable to the Extraterritorial Surcharge, shall be invested by Castle Rock in the Collection System Treatment Facility.
- F. “Dominion” means the Dominion Water and Sanitation District, a quasi-municipal special district organized and existing pursuant to the provisions of Title 32 of the Colorado Revised Statutes.
- G. “Dominion and Castle Rock Wastewater Service Agreement” means the intergovernmental agreement between Dominion and Castle Rock that will be executed in the event that Castle Rock proceeds with the alternative for the Project that utilizes any portion of the Dominion System in the design and construction of the Highway 85 Wastewater Collection and Treatment System.
- H. “Dominion System” means any collection system or treatment works, as defined in section 212 of the Federal Clean Water Act (33 U.S.C. §§1251, *et seq.*), that is used by Dominion in the collection, storage, treatment, recycling, and reclamation of domestic and/or industrial wastewater generated by Dominion customers for purposes of complying with the Federal Clean Water Act.
- I. “Dominion System Development Fee” means the fee that Castle Rock will charge and collect from those persons seeking to develop or redevelop property within the Service Area that connect to the Highway 85 Wastewater Collection and Treatment System and use any portion of the Dominion System. Said Fee shall be charged for the purpose of defraying all costs associated with connecting to the Dominion System, and shall consist of (i) the capital recovery fee, which shall be calculated based on the total infrastructure costs of the Dominion System, (ii) the capital

improvement fee, which shall be calculated based on the costs of increasing the capacity of the Dominion System as may be necessary to serve new development or redevelopment connecting to the Dominion System, (iii) the Extraterritorial Surcharge, and (iv) any other costs determined by Castle Rock to be necessary and appurtenant.

- J. “Estimated Project Infrastructure Costs” means the estimated costs of designing, constructing and installing the Project Infrastructure, as more particularly described in the attached Exhibit A.
- K. “Extraterritorial Surcharge” means the ten percent (10%) surcharge that Castle Rock will add to the Collection System Development Fees, the Collection System Treatment Facility Development Fees, the Dominion System Development Fee, the PCWRA Treatment System Development Fee, and all other rates and fees charged by Castle Rock in providing extraterritorial retail wastewater service to System customers.
- L. “Final Project Infrastructure Costs” means the final costs of designing, constructing and installing the Project Infrastructure, as more particularly described in the amended Exhibit A.
- M. “Louviere” means the Louviere Water and Sanitation District, a quasi-municipal special district organized and existing pursuant to the provisions of Title 32 of the Colorado Revised Statutes
- N. “Louviere and Castle Rock Reuse Water Purchase and Sale Agreement” means the intergovernmental agreement between Louviere and Castle Rock for the purchase by Castle Rock of certain Reusable Water presently owned by Louviere.
- O. “MGD” means million gallons per day.
- P. “Necessary Improvement” means any improvement to Project Infrastructure, (i) the construction or installation of which Castle Rock reasonably deems to be a necessary prerequisite for any person seeking to develop or redevelop property within the Service Area to connect to the Highway 85 Wastewater Collection and Treatment System, and (ii) which is in addition to those improvements to Project Infrastructure that are funded by Collection System Development Fees, Collection System Treatment Facility Development Fees, or Dominion System Development Fees.
- Q. “PCWRA Treatment Capacity” means wastewater treatment capacity that Castle Rock owns in the PCWRA wastewater treatment facility, which capacity may be used in the Highway 85 Wastewater Collection and Treatment System.
- R. “PCWRA Treatment System Development Fee” means the fee that Castle Rock will charge and collect from Douglas County or existing and/or future customers

that connect to the Highway 85 Wastewater Collection and Treatment System and use PCWRA Treatment Capacity for the purpose of defraying all costs associated with connecting to the PCWRA wastewater treatment facility. Said Fee shall consist of: (i) the capital recovery fee, which shall be calculated based on the amount of PCWRA Treatment Capacity required for a Single Family Equivalent and retained by Castle Rock and (ii) the Extraterritorial Surcharge, which shall be retained by Castle Rock as reimbursement for the value of its Treatment Capacity in the PCWRA treatment facility. The current fee is set at \$4,900 per Single Family Equivalent and shall be adjusted each year based on Castle Rock's annual study of rates and fees.

- S. "Project" means the design, construction, and installation of the Highway 85 Wastewater Collection and Treatment System.
- T. "Project Infrastructure" means the Highway 85 Wastewater Collection and Treatment System, all as more particularly identified in the description attached as Exhibit B and shown on the map attached as Exhibit B-1.
- U. "Project Management Fee" means the fee that Castle Rock charges Douglas County to manage the design, construction, and installation of the Project, which fee shall be equal to one percent (1%) of the total Project costs.
- V. "Reusable Water" means wastewater from water rights that can be used and reused to extinction, which wastewater shall be put into the Project Infrastructure and, thereby, made available for purchase by Castle Rock.
- W. "Service Area" means the area located in unincorporated Douglas County within which Castle Rock will provide retail wastewater service through the Highway 85 Wastewater Collection and Treatment System as shown on the map attached as Exhibit C. Upon the delivery of written notice thereof to Castle Rock, Douglas County may designate additional property in unincorporated Douglas County to be included within the Service Area, subject to the availability of sufficient capacity in the System to serve such property.
- X. "Single Family Equivalent" means the relative measure of demand placed on any wastewater facility or infrastructure by an average single-family residential unit.
- Y. "System Development Fees" means, collectively and individually, as applicable, Collection System Development Fees, Collection System Treatment Facility Development Fees, Dominion System Development Fees and PCWRA Treatment System Development Fees.

2. DESCRIPTION OF PROJECT.

- A. Consideration. Douglas County agrees to use available American Rescue Plan Act funds to: (i) finance the design, construction, and installation of a wastewater

collection and treatment system along the Highway 85 corridor, extending approximately from the unincorporated Town of Louviers to the PCWRA wastewater treatment facility, or as far south as such available funding will allow, and (ii) acquire all easements, whether temporary or permanent, rights-of-way, and other real property interests as may be necessary to construct, operate, maintain, repair, and replace the System. In consideration of obtaining access to available Reusable Water in vicinity of the Highway 85 corridor and the payment by Douglas County of the Project Management Fee, Castle Rock agrees to manage the design, construction, and installation of the Project Infrastructure.

- B. Ownership. Upon the substantial completion of construction and the initial acceptance of the Project Infrastructure by Douglas County and Castle Rock, ownership of the Project Infrastructure shall be conveyed to Castle Rock by the general contractor of the Project, along with all warranties associated therewith. Thereafter, with the exception of those portions of the System it may convey to Dominion pursuant to the Dominion and Castle Rock Wastewater Service Agreement, Castle Rock agrees to own, operate, maintain, repair and replace the System and to provide retail wastewater service to those Douglas County residents within the Service Area who agree to connect to the System.

3. **PROJECT DESIGN, CONSTRUCTION, AND INSTALLATION.**

- A. Costs. The Estimated Project Infrastructure Costs shall include, without limitation, the following costs incurred by Castle Rock: (i) staff time spent administering the work set forth herein, which time shall be accounted for within the Project Management Fee; (ii) design of the Project Infrastructure; (iii) easement research and acquisition, and any right-of-way or other permitting fees; and (iv) construction and contract management. Castle Rock shall track all costs incurred during the course of the Project; provided, however, that Douglas County acknowledges and agrees that Castle Rock staff time shall not be tracked.
- B. Change Orders. Douglas County acknowledges and agrees that the Estimated Project Infrastructure Costs may increase at any time during the design, construction or installation of the Project Infrastructure. Castle Rock shall provide updated Estimated Project Infrastructure Costs to Douglas County on a quarterly basis through completion of the Project Infrastructure. Upon completion and initial acceptance of the Project Infrastructure, Castle Rock shall prepare an amended Exhibit A showing the Final Project Infrastructure Costs. Upon agreement of the Parties as to the amount of the Final Project Infrastructure Costs, the amended Exhibit A shall be substituted for the original Exhibit A and shall be incorporated into this Agreement.
- C. Scope of Work. The general proposed scope of work for the Project Infrastructure and the estimated timeline are provided in the attached Exhibit D (the "Scope of Work"). As part of the Scope of Work, Castle Rock will evaluate the most cost-effective and beneficial overall approach to providing the Project Infrastructure and

long-term service to the existing and future residents of the Highway 85 corridor, while taking into account the total available funds for the Project and the costs to each portion of the Service Area. In so doing, Castle Rock shall consider the various benefits that will result from the Project to the broadest cross-section of Douglas County residents, including, but not limited to, environmental, economic development, and recreational benefits, as well as the availability of additional drinking water and reuse water supplies. In particular, this evaluation shall identify the most cost-effective and beneficial means of providing wastewater treatment from among the following three alternatives: (i) the construction of a new wastewater treatment facility in the unincorporated Town of Louviers, (ii) the construction of a new wastewater treatment facility on Dominion's property located along the South Platte River, and (iii) the utilization of Castle Rock's existing treatment capacity in PCWRA. Castle Rock will also work with Louviers to negotiate a separate intergovernmental agreement, the Louviers and Castle Rock Reuse Water Purchase and Sale Agreement, to purchase reuse water supply from Louviers, thereby providing Louviers with additional capital to reinvest in its water and wastewater system. These evaluations will be reviewed with Douglas County and agreed to prior to Castle Rock proceeding with final design of the Project Infrastructure. In the event that Castle Rock proceeds with the alternative set forth in Subsection C.(ii) above, Castle Rock will work with Dominion to negotiate a separate intergovernmental agreement, the Dominion and Castle Rock Wastewater Service Agreement to set forth the terms and conditions the will govern the construction of the wastewater treatment facility and the use of the Dominion System.

- D. Examination of Records; Dispute Resolution. At Douglas County's request, Castle Rock shall provide records relating to the design, construction, and installation of the Project Infrastructure, including copies of each draw request from the general contractor, together with paid invoices or such other documentation as may be available and reasonably requested for Douglas County to verify the Final Project Infrastructure Costs. The Parties shall cooperate to resolve any disputes concerning the Final Project Infrastructure Costs. If the Parties are unable to resolve their dispute informally, they shall submit the dispute to non-binding mediation before a mutually agreeable mediator. If the Parties remain unable to resolve their dispute within sixty (60) days of commencing mediation, the Parties may pursue any remedies lawfully available to them.
- E. Costs in Excess of Contingency. Castle Rock shall administer the Project in substantially the same manner and with the same care as other Castle Rock design and construction projects of a similar scope and nature. Castle Rock shall manage all change orders and costs adjustments within a contingency amount agreed to by the Parties. Adjusted cost estimates will be made based upon actual construction bids or change orders. If the Estimated Project Infrastructure Costs need to be adjusted over and above the contingency amount, Castle Rock shall give written notice to Douglas County. Douglas County shall have 30 days to provide approval of such additional costs. If Douglas County does not approve the additional costs,

the Parties will meet to review and identify opportunities to decrease the overall Scope of Work to bring the Estimated Project Infrastructure Costs within the amount of funding available under the American Rescue Plan Act. If the Parties cannot identify opportunities to decrease the overall Scope of Work and Estimated Project Infrastructure Costs, then the Parties agree to submit the dispute to non-binding mediation as provided in Subsection D of this Section.

- F. Easements. Castle Rock agrees to undertake the acquisition of all easements, whether temporary or permanent, rights-of-way, and other real property interests as may be necessary to construct, operate, maintain, repair, and replace the Project. All such real property interests shall be granted to Castle Rock at the time of acquisition. In addition, provision shall be made for recreational trail easements in locations consistent with Douglas County's draft Plum Creek Regional Trail feasibility study. Any trail easements acquired by Castle Rock for this purpose shall be granted to Douglas County at the time of acquisition. Wherever feasible, such easements may be non-exclusive and occupy the same location as the real property interests granted to Castle Rock pursuant to this Subsection F.

- G. Contract Solicitation. Castle Rock will undertake the bidding and contracting for design, property acquisition, and construction services utilizing its standard design and construction contracting processes. Selected consultants and contractors will be recommended to Douglas County by Castle Rock with Douglas County confirming approval of each contract prior to signing. Douglas County shall fully fund each contract prior to award by Castle Rock. For any construction contract, the Parties will enter into a separate agreement to establish an escrow account, which account shall be funded by Douglas County to the full amount of each such contract, plus a reasonable contingency. This escrow account will be used for payment of all invoices for each such contract. The Parties acknowledge and agree that the construction of the Project may be phased as the Parties may deem appropriate, and that separate construction contracts may be entered into for each phase of the Project.

- H. Escrow. Castle Rock will review and approve all contractor invoices and then forward said invoices to Douglas County for approval on a monthly basis. Douglas County will review and approve said invoices within fifteen (15) days following receipt of the invoice and then submit the approved invoices to the escrow agent for payment to the contractor. Payment from the escrow account shall be made in full within thirty (30) days following receipt of the invoice from the contractor.

- I. Insurance. Castle Rock will require each Project contractor to procure and maintain the following types and amounts of insurance in accordance with the requirements of Castle Rock's purchasing policies, with each policy to be issued to include Douglas County, its officers and employees, as and additional named insured:
 - (i) Commercial General Liability Insurance, including coverage for bodily injury, broad form property damage (including for contractual and

employee acts), blanket contractual, independent contractors, products, and completed operations, with minimum combined single limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate.

- (ii) Comprehensive Automobile Liability Insurance, including coverage for each of the contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services, with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 for each occurrence and \$1,000,000 aggregate.
- (iii) Workers' Compensation Insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under the contract, and Employer's Liability insurance with minimum limits of \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.
- (iv) Builder's Risk or Installation Floater Policy, at Castle Rock's discretion, in an amount equal to the value of the Project where the possibility exists of loss or damage to the Project (for the construction contract only).
- (v) Professional Liability Insurance, including coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, with minimum combined single limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate (for the design contract only).

4. CAPACITY ALLOCATION.

- A. Capacity Reservation and Allocation. Concurrent with the substantial completion and initial acceptance of the Project Infrastructure, Castle Rock shall grant Douglas County a license for Douglas County's proportional share in the permanent capacity of the System (the "License"). Castle Rock will retain adequate capacity in the System for the purpose of providing retail or wholesale wastewater service to Louviers. All remaining capacity shall be granted to Douglas County by virtue of the License. This will result in an estimated initial allocation of permanent capacity in the System of 10% for Castle Rock and 90% for Douglas County. A final allocation shall be determined by the Parties at the time of final design and construction of the Project Infrastructure. As new customers connect to the System, Castle Rock's share of the allocation of permanent capacity shall increase, while Douglas County's share of the allocation of permanent capacity will decrease, by the amount of permanent capacity needed to serve each new customer.
- B. Access Restriction. The Parties acknowledge and agree that the License granted herein is for capacity in the System only. Following the transfer of ownership of Project Infrastructure as provided in Subsection A of this section, Douglas County

shall not at any time access the Project Infrastructure or other facilities or property owned or controlled by Castle Rock, except pursuant to the terms, restrictions and conditions set forth in this Agreement.

- C. License Capacity. The total capacity of the Project Infrastructure is set forth in Exhibit B. The License granted to Douglas County is limited to the percentage share set forth in Subsection A of this Section, which share may not be sold or assigned by Douglas County. If the total capacity of the Project Infrastructure should ever exceed the amounts set forth in Exhibit B for any reason, as determined by Castle Rock in its sole discretion, the excess capacity shall be allocated to Douglas County until such time as new customers connect to the System and such capacity is allocated to Castle Rock as set forth in Subsection A of this Section.

- D. Capacity Restriction. If capacity in the Project Infrastructure is restricted on account of maintenance, emergencies, force majeure, or legal or regulatory requirements, Castle Rock shall forthwith advise Douglas County of such capacity restriction and the anticipated duration thereof, and apportion capacity in the Project Infrastructure based upon Douglas County's proportional share of Project Infrastructure capacity.

- E. Conveyance of Capacity. Castle Rock will be the retail provider of wastewater service in the Service Area. With regard to property within the Service Area that (i) is undeveloped as of January 1, 2023, or (ii) is fully developed, but for which approval is being sought from Douglas County to redevelop, the property owner shall submit an application to Douglas County for the development or redevelopment of such property, which application shall include a request to connect to the System. Within fifteen (15) days of receipt, Douglas County shall notify Castle Rock of each such application. Castle Rock will then calculate the amount of System Development Fees that it will charge the applicant for the right to connect to the System. Castle Rock will also determine what Necessary Improvements, if any, are required as a condition precedent for the applicant to connect to the System. Thereafter, Castle Rock will provide a "will serve" letter to the applicant stating the total System Development Fees that the applicant will be required to pay and identifying the Necessary Improvements that the applicant will be required to provide. Douglas County, as the land use agency for the Service Area, will provide the required review(s) for the development or redevelopment application in accordance with its land use rules and regulations. Upon approval by Douglas County of the development or redevelopment application, the payment of all applicable System Development Fees to Castle Rock, and the substantial completion of all Necessary Improvements, the applicant will be allowed to connect to the System and retail wastewater service shall be provided to the newly developed or redeveloped property.

With regard to property within the Service Area that is fully developed as of January 1, 2023, and for which no approval is being sought from Douglas County to redevelop, the property owner shall submit an application to Douglas County for

connection to the System. Within fifteen (15) days of receipt, Douglas County shall notify Castle Rock of each such application. If Douglas County has adequate capacity to serve the property under the License granted by Subsection C of this Section, Castle Rock will then determine what Necessary Improvements, if any, are required as a condition precedent for the applicant to connect to the System. Thereafter, Castle Rock will provide a “will serve” letter to the applicant identifying the Necessary Improvements that the applicant will be required to provide. No System Development Fees will be charged to the applicant, as long as Douglas County has adequate capacity to serve the property; provided, however, that if the applicant will be using PCWRA Treatment Capacity, Castle Rock will charge and collect from the property owner the PCWRA Treatment System Development Fee. If Douglas County does not have adequate capacity available, then the application will be treated as if it is an application for the development or redevelopment of property within the Service Area. In such cases, Castle Rock will calculate System Development Fees in a manner similar to how they are calculated for new development or redevelopment. Upon approval by Douglas County of the connection application and the substantial completion of all Necessary Improvements, and, if applicable, the payment of System Development Fees to Castle Rock, the applicant will be allowed to connect to the System and retail wastewater service shall be provided to the property.

Each connection shall meet all of Castle Rock’s connection requirements, which requirements are generally set forth in Title 13 of the Castle Rock Municipal Code. If PCWRA Treatment Capacity is being used, such connection shall also meet the PCWRA Code of Rules and Regulations dated May 19, 2020, and adopted by reference pursuant to Section 13.04.020 of the Castle Rock Municipal Code. If Dominion’s System is used to provide wastewater service, the applicant must also meet all of Dominion’s connection requirements. As consideration for allowing the connection to the System, Douglas County will allocate to Castle Rock the pro-rated capacity in the Project Infrastructure that will be used by new development or redevelopment. The allocation of such capacity shall be memorialized in an annual statement to be provided by Castle Rock to Douglas County by no later than thirty (30) days following the end of each calendar year. Within thirty (30) days following the date upon which all capacity in the Project Infrastructure has been allocated to Castle Rock pursuant to the terms of this Subsection E, Castle Rock will send Douglas County written notice that the License granted to Douglas County herein is terminated.

- F. Dominion System Development Fee. Notwithstanding any provision of this Agreement to the contrary, the Dominion System Development Fee shall not be charged and collected until such time as the average daily capacity of the Highway 85 Wastewater Collection and Treatment System exceeds 200,000 gallons of wastewater. Thereafter, if any portion of the Dominion System is being used, Castle Rock will commence collecting Dominion System Development Fees and, with the exception of the Extraterritorial Surcharge, remit any such Fees it collects to Dominion.

- G. Renewable Water Requirement. For new development or redevelopment in the Service Area, after the first 200,000 gallons of wastewater capacity has been allocated, Castle Rock will require new development and redevelopment requiring capacity beyond the first 200,000 gallons to have renewable water supply for their development as a condition precedent to obtaining a “will serve” letter from Castle Rock to connect to the System.
- H. Limitations. The allocation of costs set forth herein between Castle Rock and Douglas County is intended to apply solely to the costs of designing, constructing, and installing the Project Infrastructure, and shall not be construed to include costs and fees related to the operation, maintenance, repair, or replacement of the Project Infrastructure. Such costs and other related terms and conditions, shall be managed by Castle Rock as the retail wastewater provider in the Service Area in accordance with Castle Rock’s standard rate setting policies and procedures.
- I. Warranty. Upon the completion of construction, initial acceptance, and conveyance of the Project Infrastructure, Castle Rock shall be the sole owner of the Project Infrastructure and all warranties associated therewith, subject to the rights of Douglas County as further set forth herein. Castle Rock represents and warrants to Douglas County that Castle Rock either has, or will obtain, all necessary right, title and interest in the Project Infrastructure to convey the License set forth in Subsection A of this Section. Castle Rock does covenant and agree that it shall warrant and forever defend Douglas County in its quiet and peaceful possession of its license rights granted herein against all and every person or persons. In the event that the license or any part thereof is challenged by the person or entity granting rights, interests or title to Castle Rock or any portion thereof, Castle Rock shall, to the extent permitted by law, take all necessary actions to acquire the requisite interest needed to satisfy its obligations hereunder; provided that, for so long as Douglas County has capacity in the System, Douglas County may be required by Castle Rock to pay its proportional share of the costs related to any action taken by Castle Rock if the need for such action is not due to the negligence of Castle Rock.
- J. Insurance. Castle Rock shall procure and maintain property insurance for the Project Infrastructure that is substantially similar to the coverage maintained by Castle Rock for other similar Castle Rock-owned water and wastewater infrastructure. If the Project Infrastructure is damaged, Castle Rock shall allocate all proceeds from the insurance policy towards repairing the Project Infrastructure.

5. AMERICAN RESCUE PLAN ACT PROVISIONS.

- A. Acknowledgement. Castle Rock acknowledges and agrees that the funds encumbered by Douglas County to pay for the design, construction, and installation of the Project Infrastructure, and the acquisition of all easements, rights-of way, and other real property interests necessary and appurtenant thereto, have been provided in accordance with Section 603(b) of the Social Security Act, as added by

Section 9901 of the American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) (together with all rules and regulations promulgated thereunder, “ARPA”). The Parties acknowledge that all funding from ARPA (“ARPA Funds”) may only be used to cover those eligible costs incurred by Douglas County during the period that begins on March 3, 2021, and ends on December 31, 2024, including costs incurred to make necessary investments in sewer infrastructure. The Parties anticipate that the total amount of ARPA Funds available for the Project shall not exceed \$26,800,000.

- B. Use of ARPA Funds. Castle Rock shall only utilize ARPA Funds for the purposes described in this Agreement. Castle Rock agrees and acknowledges that, as a condition to receiving the ARPA Funds, it shall strictly follow the Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached as Exhibit E. All invoices submitted by Castle Rock to Douglas County pursuant to this Agreement shall use “COVID-19” or “Coronavirus” as a descriptor for those costs that are paid by ARPA Funds to facilitate the tracking of Agreement-related spending related to COVID-19. Castle Rock shall segregate and specifically identify the time and expenditures billed to Douglas County on each invoice to allow for future review and analysis of COVID-19 related expenses. To avoid an unlawful duplication of federal benefits, the Parties agree and acknowledge that the services provided by Castle Rock for which ARPA Funds are used shall not, to the extent that ARPA Funds are used, also be paid for or reimbursed by monies provided under any other federal program.
- C. ARPA Deadlines. Douglas County agrees and acknowledges that it shall obligate the use of ARPA funds for the services performed by Castle Rock under this Agreement no later than December 31, 2024. Castle Rock agrees and acknowledges that all services performed by Castle Rock using ARPA Funds must be performed by no later than December 31, 2026.
- D. Reporting Requirements. To the extent that Castle Rock’s services hereunder contemplate the spending of ARPA Funds, Castle Rock shall provide to Douglas County information responsive to mandatory performance measures, including programmatic data sufficient to conduct oversight as well as understand aggregate program outcomes. Further, in providing the ARPA-required information to the City, to the extent possible, Castle Rock shall provide this programmatic data related to such services disaggregated by race, ethnicity, gender, income, and other relevant demographic factors as may be determined by Douglas County. Castle Rock shall insert the foregoing requirement into all subcontracts related to this Agreement, thereby obligating all subcontractors to the same reporting requirement as Castle Rock.
- E. Inspection of Records. Castle Rock shall maintain records of the documentation supporting the use of ARPA Funds in an auditable format, for the later of five (5) years after final payment on this Agreement or the expiration of the applicable statute of limitations. Any authorized agent of Douglas County or of the Federal

government, including the Special Inspector General for Pandemic Recovery, have the right to access, and the right to examine, copy and retain copies, at the official's election in paper or electronic form, any pertinent books, documents, papers and records related to Castle Rock's use of ARPA Funds pursuant to this Agreement. Castle Rock shall cooperate with Federal and Douglas County representatives and such representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of five (5) years after the final payment under this Agreement or expiration of the applicable statute of limitations. No examination of records and audits pursuant to this section shall require Castle Rock to make disclosures in violation of state or federal privacy laws.

6. DEFAULT/REMEDIES. In the event a Party deems the other Party to be in default, it shall provide written notice indicating the event of default. The defaulting party shall have thirty (30) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within thirty (30) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed thirty (30) days for monetary defaults, or sixty (60) days for non-monetary defaults, except by written consent of the non-defaulting party. In the event the defaulting party has failed to cure in accordance with this Section, the non-defaulting party may pursue all available remedies at law or equity. In addition, Castle Rock shall have the ability to withhold services to manage the design and construction of the Project Infrastructure due to a monetary default by Douglas County.

7. MISCELLANEOUS.

- A. Governing Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for Douglas County, State of Colorado.
- B. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof, and there are no prior or contemporaneous agreements, either oral or written, relating to the subject matter hereof except as expressly set forth herein.
- C. Agreement Modification. The Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.
- D. Counterpart Execution. The Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto.
- E. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Parties or their officials, employees, contractors, or

agents, or any other person acting on behalf of the Parties and, in particular, governmental immunity that may be afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

- F. Assignability. This Agreement and the License granted herein may not be assigned, pledged or transferred, in whole or in part, without the express written consent of the other Party which consent shall not be unreasonably withheld.
- G. No Public Dedication/No Third Party Beneficiary. Nothing contained herein shall be deemed to be a grant or dedication of any rights or use to the public in general, and no third party beneficiary interests are created nor intended to be created by this Agreement.
- H. Headings for Convenience. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
- I. 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.

If to Castle Rock: Town of Castle Rock
 Attn: Director of Castle Rock Water
 175 Kellogg Court
 Castle Rock, CO 80109

with copy to: Town of Castle Rock
 Attn: Town Attorney
 100 N. Wilcox Street
 Castle Rock, CO 80104

If to Douglas County: Douglas County
 Attn: Special Projects Manager
 100 Third Street
 Castle Rock, CO 80104

with copy to: Douglas County
 Attn: County Attorney
 100 Third Street
 Castle Rock, CO 80104

- J. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- K. Recordation. The Parties agree that this Agreement may be recorded in the records of the Clerk and Recorder for county in which a Party has its principal place of business.
- L. Binding Agreement. The benefits and burdens of this Agreement shall inure to and be binding upon on the successors, and assigns of the Parties.
- M. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time.
- N. Survival of Representations. Each and every covenant, promise, and payment contained in this Agreement shall survive each and be binding and obligatory upon each of the Parties and shall not merge into any deed, assignment, covenant, escrow agreement, easement, lease or any other document.
- O. Non-Severability. Each Section of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.
- P. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, the Parties will immediately negotiate valid alternative portions) that as near as possible give effect to any stricken portion(s).
- Q. Force Majeure. Each Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; action of the government (except the parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

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

(Signature pages to follow)

ATTEST:

DocuSigned by:

Robbie Schouler

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Lisa Anderson, Town Clerk



DocuSigned by:

TOWN OF CASTLE ROCK

DocuSigned by:

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Jason Gray, Mayor

Approved as to form:

DocuSigned by:

Mike Hymen

~~F7347F32A6794D1...~~

Michael J. Hyman, Town Attorney

Approved as to content:

—DocuSigned by:

Mark Marlowe

FEA6D2E651B241D..

Mark Marlowe, Director Castle Rock Water

STATE OF COLORADO)

) **SS.**

COUNTY OF DOUGLAS)

 The foregoing instrument as acknowledged before me this 8th day of May, 2023, 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: 9/30/2024

SHANNON EKLUND

NOTARY PUBLIC

STATE OF COLORADO

Notary ID: 20084033388

My commission expires 9/30/2024

—DocuSigned by:

Shannon Shl

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Notary Public

DAN#20084033388-694923

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS**

DocuSigned by:
Doug DeBord
BY: B5C95B8DCFAB4AA...

Doug DeBord
County Manager

DATE: 5/26/2023

BY: n/a

DATE: _____

APPROVED AS TO FISCAL CONTENT:

DocuSigned by:
Andrew Copland
BY: 80C333BC1187403...

Andrew Copland
Director of Finance

DATE: 5/26/2023

APPROVED AS TO LEGAL FORM:

DocuSigned by:
Amy Edwards
BY: 0B7C2CA4F0B4477...

Amy Edwards
Senior Assistant County Attorney

DATE: 5/17/2023

5-Year Funding

Year 1	2027
Number of Years	5
Final Year	2031

Total SFEs	2,727
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SFE's Per Year	161
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Total Project Cost	19,784,296
ARPA Funding	14,000,000
Funding Gap	5,784,296

SDF - ARPA	5,133.85
SDF - Funding GAP	2,121.12
ARPA Funding Multiplier	10%
Funding Gap Multiplier	25%

SDF - ARPA Funding Final	5,647.23
SDF -Funding Gap Final	2,651.40
SDF - Total	8,298.63

Interest Rate	5.00%
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2027 SFEs	161
2028 SFEs	161
2029 SFEs	161
2030 SFEs	161
2031 SFEs	161
Total 2027-2031 SFEs	805

CRW Funding Gap Revenue (25%)	2,134,293
CRW Interest Revenue (5%)	895,837

CRW Funding Gap Revenue - Just 25% Portion	426,859
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[illegible]

30-Year Funding

Year 1	2027
Number of Years	30
Final Year	2056

Total SFEs	2,727
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SFE's Per Year	45
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Total Project Cost	19,784,296
ARPA Funding	14,000,000
Funding Gap	5,784,296

SDF - ARPA	5,133.85
SDF - Funding GAP	2,121.12
ARPA Funding Multiplier	10%
Funding Gap Multiplier	25%

SDF - ARPA Funding Final	5,647.23
SDF - Funding Gap Final	2,651.40
SDF - Total	8,298.63

Interest Rate	5.00%
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1	2027 SFEs	45
2	2028 SFEs	45
3	2029 SFEs	45
4	2030 SFEs	45
5	2031 SFEs	45
6	2032 SFEs	45
7	2033 SFEs	45
8	2034 SFEs	45
9	2035 SFEs	45
10	2036 SFEs	45
11	2037 SFEs	45
12	2038 SFEs	45
13	2039 SFEs	45
14	2040 SFEs	45
15	2041 SFEs	45
16	2042 SFEs	45
17	2043 SFEs	45
18	2044 SFEs	45
19	2045 SFEs	45
20	2046 SFEs	45
21	2047 SFEs	45
22	2048 SFEs	45
23	2049 SFEs	45
24	2050 SFEs	45
25	2051 SFEs	45
26	2052 SFEs	45
27	2053 SFEs	45
28	2054 SFEs	45
29	2055 SFEs	45
30	2056 SFEs	45
Total 2027-2031 SFEs		1,360

CRW Funding Gap Revenue (25%)	3,606,596
CRW Interest Revenue (5%)	5,504,007

CRW Funding Gap Revenue - Just 25% Portion	721,319
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Year	SFEs	Total Payment	Interest Payment	Principal Payment	End of Year Balance
2027	45	376,277	289,214.80	87,061.96	5,697,234.04
2028	45	376,277	284,861.70	91,415.05	5,605,818.99
2029	45	376,277	280,290.95	95,985.81	5,509,833.18
2030	45	376,277	275,491.66	100,785.10	5,409,048.09
2031	45	376,277	270,452.40	105,824.35	5,303,223.74
2032	45	376,277	265,161.19	111,115.57	5,192,108.17
2033	45	376,277	259,605.41	116,671.35	5,075,436.82
2034	45	376,277	253,771.84	122,504.91	4,952,931.91
2035	45	376,277	247,646.60	128,630.16	4,824,301.75
2036	45	376,277	241,215.09	135,061.67	4,689,240.08
2037	45	376,277	234,462.00	141,814.75	4,547,425.33
2038	45	376,277	227,371.27	148,905.49	4,398,519.84
2039	45	376,277	219,925.99	156,350.76	4,242,169.07
2040	45	376,277	212,108.45	164,168.30	4,078,000.77
2041	45	376,277	203,900.04	172,376.72	3,905,624.05
2042	45	376,277	195,281.20	180,995.55	3,724,628.50
2043	45	376,277	186,231.42	190,045.33	3,534,583.17
2044	45	376,277	176,729.16	199,547.60	3,335,035.57
2045	45	376,277	166,751.78	209,524.98	3,125,510.59
2046	45	376,277	156,275.53	220,001.23	2,905,509.37
2047	45	376,277	145,275.47	231,001.29	2,674,508.08
2048	45	376,277	133,725.40	242,551.35	2,431,956.73
2049	45	376,277	121,597.84	254,678.92	2,177,277.81
2050	45	376,277	108,863.89	267,412.87	1,909,864.94
2051	45	376,277	95,493.25	280,783.51	1,629,081.44
2052	45	376,277	81,454.07	294,822.68	1,334,258.75
2053	45	376,277	66,712.94	309,563.82	1,024,694.93
2054	45	376,277	51,234.75	325,042.01	699,652.92
2055	45	376,277	34,982.65	341,294.11	358,358.81
2056	45	376,277	17,917.94	358,358.81	(0.00)
Total	1,360	11,288,303	5,504,007	5,784,296	(0.00)