

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF CASTLE ROCK AND CASTLEVIEW METROPOLITAN
DISTRICT NO. 1, REGARDING FINANCIAL CONTRIBUTION AND PROJECT
MANAGEMENT FOR THE PLUM CREEK PARKWAY FULL DEPTH
RECLAMATION PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____ 2025, by and between the Town of Castle Rock, Colorado, a Colorado home rule municipality (the “**Town**”), and Castleview Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado, (the “**District**”), hereinafter collectively referred to as the “**Parties**.”

RECITALS

WHEREAS, the Parties are legally empowered under Section 29-1-201, et seq., C.R.S. to enter into this Agreement; and

WHEREAS, the District plans to complete the construction of a sanitary sewer line (the “**Sewer Line**”) underneath the west-bound lanes of Plum Creek Parkway (also referred to as the “**Right of Way**”) in 2025 as generally described in the attached **Exhibit A** (the “**District Project**”); and

WHEREAS, the Town plans to conduct a full-depth reclamation project in 2025 to restore the roadway pavements along the same stretch of Plum Creek Parkway where the District Project is to take place as generally described in attached **Exhibit B** (the “**Town Improvements**”); and

WHEREAS, the Town and the District both acknowledge that there is significant overlap in the scope of the District Project and the Town Improvements, and conducting these projects separately would result in unnecessary redundancy in work and extended roadway disruption to the public; and

WHEREAS, the Parties acknowledge that incorporating the Town Improvements into the scope of the District Project would result in a combined estimated cost savings of approximately \$205,000; and

WHEREAS, incorporating the Town Improvements into the scope of the District Project would reduce construction time on Plum Creek Parkway from approximately 4 months to 6 weeks; and

WHEREAS, construction of the Sewer Line ahead of the Town Improvements provides the District with the benefit of constructing the Sewer Line within the existing public Right of Way and of not having to wait to construct the Sewer Line until all upstream sanitary users are ready to develop; and

WHEREAS, the Parties desire to have the District coordinate the Town Improvements as the District proceeds with the District Project (the “**Combined Project**”); and

WHEREAS, the Parties acknowledge that despite collaborating in this way, it is important to keep the scope of work and funding for each party's portion of the Combined Project distinct and separate; and

WHEREAS, the Combined Project will serve the residents of the Town of Castle Rock and the residents of the District; and

WHEREAS, in accordance with the terms and conditions stated in this Agreement, the District shall manage the construction of the Combined Project and the Town shall fulfill a funding role to pay for the Town Improvements.

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

1. **Acknowledgment and Incorporation of Recitals.** The foregoing recitals are hereby acknowledged by the Parties to be true and correct and are incorporated into this Agreement.

2. **Term.** This Agreement shall commence upon execution by both Parties and shall continue until the completion of the Combined Project. Completion of the Combined Project shall be determined as described in Section 6 of this Agreement.

3. **Combined Project Construction Contract/Contractor/Change Orders/Construction Manager.** The District has already publicly bid and awarded the construction contract (the "**Construction Contract**") for the District Project to Alpine Civil Construction a Colorado corporation (the "**Contractor**"). The Town has reviewed and approved the form of the Construction Contract and approved of the Contractor to perform the Combined Project. The Town has supplied the District with the plans and specifications for the Town Improvements and the work related to the Town Improvements is set forth in Change Order No. 1 to the Construction Contract ("**Town Improvements Change Order**"). The Town has reviewed the Town Improvements Change Order, has approved the scope and cost reflected in the Town Improvements Change Order for the Town Improvements and has authorized the District to proceed to deliver the executed Town Improvements Change Order to the Contractor to proceed with the construction of the Town Improvements for a not to exceed cost of \$615,000.

4. **Total Town Improvements Costs.** A preliminary budget for costs related to the Town Improvements is set forth in **Exhibit C** attached hereto and incorporated herein by this reference and the Town is responsible for payment of all actual costs related to the Town Improvements (the "**Town Improvements Costs**") which will include:

(a) The total amount contained within the Town Improvements Change Order.

(b) The total amount due to the Construction Manager for the Town Improvements Cost Construction Manage Fee.

(c) The total amount due for geotechnical services, surveying costs and engineering expenses related to completing the Town Improvements Change Order (“**Construction Related Vendors Costs**”).

(d) An administrative fee payable to the District, in an amount equal to seven (7%) percent of the Town Improvements Change Order and the Construction Related Vendors for the costs incurred in executing its responsibilities under this Agreement, including Cost Verification fees, accounting fees and legal fees.

(e) In order to meet the Town’s financial obligations under the agreement, the Town Council authorizes the expenditure and payment in an amount not to exceed \$615,000.

5. **Funding of Town Improvements Costs.** The District shall pay all costs of construction associated with the District Project. Nothing herein shall be interpreted to limit the ability of the District to secure reimbursement from other parties benefitting from the District Project. The District shall review and approve all pay applications for all work performed related to the District Project.

Within five (5) business days of execution of the Escrow Agreement, the Town shall place the funds needed to pay for the Town Improvements Costs into the Escrow Account (“**Escrow Account**”) established pursuant to the Escrow Agreement executed by the Town, the District and Land Title (the “**Escrow Agent**”) on the same date as this Agreement, in the form attached hereto as **Exhibit D** and incorporated herein by this reference (“**Escrow Agreement**”).

The Town acknowledges that the District will be liable to the Contractor for payment of work that has been completed under a pay application for the Town Improvements. The District acknowledges the Town needs information to assure that any pay application to be paid from funds withdrawn from the Escrow Account is for Town Improvements Costs. Therefore, the Escrow Agreement shall provide that every draw request of the District from the Escrow Account shall be accompanied by a report from Independent District Engineering Services, Inc., the District’s cost verification engineer (“**District Engineer**”), that the amounts being requested from the Escrow Account are for Town Improvement Costs, and that such Town Improvement Costs have not been paid from any prior draw requests (the “**Cost Verification Report**”). The Cost Verification Report shall also include the Total Costs of the Town Improvements, the costs paid to date, the remaining costs to complete and the costs being requested in the current draw request. All invoices that are the subject of the Cost Verification Report shall be available through an electronic link contained within the Cost Verification Report. The draw request and related Cost Verification Report (the “**Draw Request Package**”) will be delivered to the Escrow Agent, and the Town.

The draws on the Escrow Account shall be governed by the terms of the Escrow Agreement.

The District will make payment to the Contractor of funds received from the Draw Requests for costs incurred under the Town Improvements Change Order within two (2) business days of receipt.

The Town shall be responsible for payment to the Contractor of any interest or penalties that accrue under the Construction Contract for delay in payment due and any costs incurred by the District related thereto resulting from any unreasonable objection to a Draw Request Package. Any delay in payment associated with the Town's audit of a Draw Request Package shall not be considered an unreasonable objection.

Upon final completion of the Town Improvements, any remaining and unused funds in the Escrow Account shall be released in full to the Town by the Escrow Agent.

6. **Project Initiation and Completion.**

The District shall cause the Combined Project to be constructed in accordance with the approved design plans, the Construction Contract and the Town Improvements Change Order. The District, by and through its agents, employees, and the contractor(s) shall be responsible for all aspects of project permitting and day-to-day construction management of the Combined Project through completion.

The Parties shall determine together and agree upon the acceptability of the contractor's performance and conformance with the design for the Combined Project (the "**Final Acceptance**"). The District shall ensure that any defective materials, equipment or work are remedied immediately by the contractor before final payment is made. The date of the Final Acceptance shall be used to determine the expiration of the term of this Agreement as described in Section 2.

Upon completion of the Town Improvements, the Town shall assume ownership of the Town Improvements, the responsibility to maintain same, and release the District from all liability resulting from the construction of the Town Improvements.

Upon completion of the District Project, the District shall retain ownership of the Sewer Line and shall be responsible for all maintenance and warranty obligations of the Sewer Line until or unless title to all or portions of the Sewer Line are formally conveyed to another party. The Town shall have no ownership or maintenance obligations related to the Sewer Line. Nothing herein shall be interpreted to release the District or its contractor from their obligations related to the District Project, including but not limited to, the 2 year warranty required by Development Services.

7. **Time of Performance.** The District shall commence construction (issuance of Notice-to-Proceed) of the Combined Project in August, 2025. The District shall cause the Town Improvements to be constructed such that the Town Improvements are completed

by October 4, 2025. Should the Combined Project remain incomplete after October 4, 2025, a fee shall be assessed to the District, payable to the Town, for each calendar day that the Combined Project remains incomplete thereafter. The fee shall be assessed at \$1,000.00 per day through October 11, 2025. If the Combined Project remains incomplete after October 11, 2025, the District shall be assessed a fee in the amount of \$2,500.00 per day for each day the Combined Project remains incomplete. The Parties agree that, under all of the circumstances, the daily basis and the amount set herein for an extension of time beyond October 4, 2025 for completion of the Combined Project is a reasonable and equitable estimate of all the Town's actual damages for such a delay. The Town expends additional personnel effort in managing this Agreement when the Combined Project is not completed on time; and some, if not all, citizens of Castle Rock incur personal inconvenience and lose confidence in their government as a result of public projects or parts of them not being completed on time. The impact and damages, certainly serious in monetary as well as other terms, are impossible to measure.

8. **Default and Remedies.** In the event either party should default in the performance of its obligations under this Agreement, and such default shall remain uncured for more than ten (10) days after notice of default is given to the defaulting Party, the non-defaulting Party shall have the right to take action at law or in equity that appears necessary or desirable to enforce performance and compliance with this Agreement. No Party will be entitled to incidental, consequential, punitive, or exemplary damages in the event of a default.

9. **Representations and Warranties.**

A. **Representations and Warranties by District.** The District represents and warrants as follows:

(i) The District is a Metropolitan District, validly existing and in good standing under the laws of the State of Colorado and in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

(ii) The execution and delivery of this Agreement has been duly and validly authorized by all necessary action to make this Agreement and the Agreement is valid and binding upon the District.

(iii) The execution and delivery of this Agreement will not (1) conflict with or contravene any law, order, rule or regulation applicable to the District or to the District's governing documents; (2) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the District is a party or by which it may be bound or affected, or (3) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the District.

(iv) The District knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of the District or any of its principals or officials with respect to the subject matter of this Agreement that has not been disclosed in writing to the other Parties.

(v) This Agreement constitutes a valid and binding obligation of the District, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

B. Representations and Warranties by the Town. The Town represents and warrants as follows:

(i) The Town is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

(ii) The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

(iii) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (1) conflict with or contravene any law, order, rule or regulation applicable to the Town or to its governing documents; (2) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected; or (3) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

(iv) This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms.

10. 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.

Town: Town of Castle Rock
100 N. Wilcox Street
Castle Rock, CO 80104
Attention: Dan Sailer, P.E., Public Works Director
Email: DSailer@crgov.com

With an legal@crgov.com
electronic copy
sent to:

District: Castleview Metropolitan District No. 1
450 East 17th Ave. Suite 400
Denver, CO 80202
Attn: MaryAnn M McGeary
Email: legalnotices@specialdistrictlaw.com

11. **Appropriation.** Pursuant to section 29-1-110, C.R.S., any financial obligations of the Town contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis. The District's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the District's Board of Directors. The Parties understand and agree that each are subject to Article X, Section 20 of the Colorado Constitution (TABOR) and that this Agreement does not create a multiple fiscal year direct or indirect debt or obligation within the meaning of TABOR and therefore, notwithstanding anything to the contrary, any payment obligation of the Town or of the District is expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period.

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

13. **Colorado Law.** The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado.

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

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

16. **No Waiver of Governmental Immunity Act.** The Parties hereto understand and agree that the Parties, their council members, board members, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S., or otherwise available to the County and the Town.

17. **Waiver.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

18. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

19. **Entirety.** This Agreement represents the entire agreement between the Parties. This Agreement may be amended only by an instrument in writing signed by the Parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such a holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

(Remainder of page intentionally left blank; signature page to follow.)

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

TOWN:

Attest:

TOWN OF CASTLE ROCK:

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to Form:

Approved as to Content:

Michael J. Hyman

Daniel Sailer, Director of Public Works

DISTRICT:

**CASTLEVIEW METROPOLITAN
DISTRICT NO. 1**, a quasi-municipal
corporation and political subdivision of the
State of Colorado

By: _____
President

ATTEST:

Secretary

EXHIBIT A

General Description of District Project

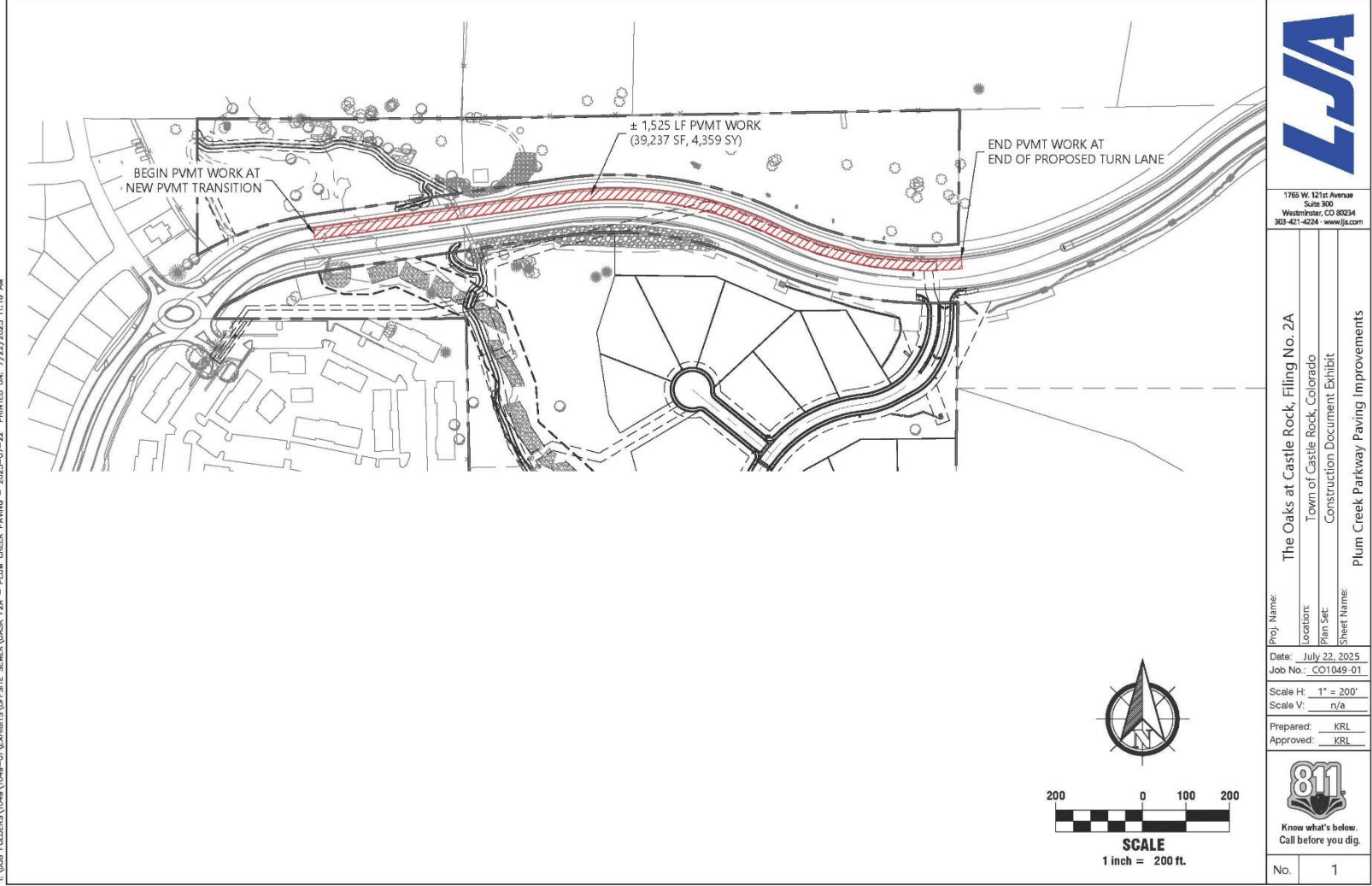


EXHIBIT B

General Description of Town Improvements



EXHIBIT C

Plum Creek Parkway Reconstruction (Eaton to The Oaks Enterance)					
Bid Schedule					
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
202A	REMOVAL OF CURB AND GUTTER TYPE 2	LF	25	\$13	\$325.00
203A	UNCLASSIFIED EXCAVATION (CIP)(CONTINGENCY)	CY	200	\$5	\$1,000.00
203B	UNCLASSIFIED EXCAVATION (CIP)	CY	2,250	\$25	\$56,250.00
203C	TEST HOLE	HR	20	\$400	\$8,000.00
208A	STORM DRAIN INLET PROTECTION	LF	100	\$31	\$3,100.00
208B	VEHICLE TRACKING PAD	EA	2	\$1,899	\$3,798.00
208C	CONCRETE WASHOUT STRUCTURE	EA	1	\$2,722	\$2,722.00
210A	ADJUST MANHOLE (RECON)	EA	5	\$400	\$2,000.00
304	AGGREGATE BASE COURSE (CLASS 6 RECYCLED CONCRETE)(CONTINGENCY)	CY	100	\$105	\$10,500.00
308	PROCESSING CEMENT TREATED BASE (5%)(8") (CIP)	SY	4,300	\$15	\$62,350.00
310	FULL DEPTH RECLAMATION (18")	SY	4,300	\$4	\$15,050.00
403A	HMA/WMA (2.0") (GR SX) (PG 64-24) (75)	SY	4,300	\$15	\$62,350.00
403B	HMA/WMA (3.0") (GR S) (PG 64-24) (75)	SY	4,300	\$22	\$92,450.00
403F	HMA/WMA (4.0") (GR S) (PG 64-24) (75)	SY	4,300	\$29	\$122,550.00
609	MOUNTABLE CURB, GUTTER TYPE 2 (SECTION IIB)	LF	25	\$25	\$625.00
620	SANITARY FACILITY	LS	1	\$275	\$275.00
626	MOBILIZATION	LS	1	\$10,000	\$10,000.00
627A	PAVEMENT MARKINGS (PAINT)(4" White)	SF	225	\$12	\$2,700.00
627B	PAVEMENT MARKINGS (PAINT)(6" White)	SF	1,000	\$12	\$12,000.00
627C	PAVEMENT MARKINGS (SYMBOL)(PREFORMED THERMOPLASTIC)	SF	75	\$19	\$1,425.00
630A	TRAFFIC CONTROL MANAGEMENT	LS	1	\$18,000	\$18,000.00
630B	VARIABLE MESSAGE SIGN (2 VMS PER DAY)	DY	24	\$263	\$6,300.00
720	MATERIALS SAMPLING & TESTING	LS	1	\$10,500	\$10,500.00
TOTAL PROJECT COST:					\$504,270.00
Minor Contract Revisions					\$25,000.00
Contingency 10%					\$50,427.00
Management Fee 7% (CM and Admin)					\$35,298.90
Grand Total					\$614,995.90

EXHIBIT D

Escrow

Agreement

Form

TOWN IMPROVEMENTS ESCROW AGREEMENT

This **TOWN IMPROVEMENTS ESCROW AGREEMENT** (this “**Agreement**”) is made and entered into by and between **Castleview Metropolitan District No. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and, the **Town of Castle Rock**, a municipal corporation of the State of Colorado (the “**Town**”), and **Land Title Guarantee Company**, _____ (the “**Escrow Agent**”) (individually, each a “**Party**” and collectively the “**Parties**”).

RECITALS

A. Pursuant to the Intergovernmental Agreement between the Town of Castle Rock and the Castleview Metropolitan District No. 1, Regarding Financial Contribution and Project Management for the Plum Creek Parkway Full Depth Reclamation Project, the District and the Town have agreed to incorporate the Town Improvements into the scope of construction work to be completed by the Contractor under the Construction Contract approved by the District for the District Project (the “**IGA**”).

B. Pursuant to the IGA, the Town will fund the Town Improvements Costs and will deposit funds in escrow to assure the District will have the funding as needed to pay the Town Improvements Costs.

C. Pursuant to the IGA the Town, the District and the Escrow Agent have executed this Agreement to govern the terms pursuant to which the funds deposited in the Escrow Account will be disbursed for payment of the Town Improvements Costs.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. **Definitions.** All capitalized terms used, but not defined, in this Agreement shall have the definitions set forth in the IGA, and the following capitalized terms shall have the meanings ascribed to the same as set forth below:

- (a) **Town Response Period:** shall have the meaning set forth in Section 3/(a).
- (b) **Complete Draw Request Dispute Notice:** shall have the meaning set forth in Section 3.(c)(2)b).
- (c) **Construction Accounting Deficiency Amount:** shall have the meaning set forth in Section 2.(c).
- (d) **Cost Certification:** shall have the meaning set forth in Section 3(b)(i)(4).

- (e) **District Engineer:** shall have the meaning set forth in Section 3/(b)(i)(4).
- (f) **Draw Request:** shall have the meaning set forth in Section 3.(b)(i).
- (g) **Draw Request Pre-Submittal Package:** shall have the meaning set forth in Section 3(a).
- (h) **Engineers Cost Estimate:** shall have the meaning set forth in Section 3.(b)(i)(4).
- (i) **Escrow Account:** shall have the meaning set forth in Section 2.
- (j) **Partial Draw Request Dispute Notice:** shall have the meaning set forth in Section 3.(c)(2)a
- (k) **IGA:** shall have the meaning set forth in Recital A.
- (l) **Supporting Documentation:** shall have the meaning set forth in Section 3(a).
- (m) **Termination Notice:** shall have the meaning set forth in Section 4.

2. **Escrow Account.** The Escrow Agent shall establish the Escrow Account as an interest-bearing account pursuant to the written direction of the Town (the “**Escrow Account**”).

(a) The Town will deliver for deposit into the Escrow Account _____ (\$ _____) Dollars (the “**Town Deposit**”) which is an amount equal to the Town Improvement Costs as set forth in the Engineers Cost Estimate plus a fifteen (15%) percent contingency and the Escrow Agent will deposit the Town Deposit into the Escrow Account.

(b) All references to the amounts in the Escrow Account are deemed to include any interest earned on amounts held on deposit in the Escrow Account.

(c) At any time prior to Completion of the Town Improvements the cost to complete contained in a Cost Certification Report exceeds the remaining amount on deposit in the Escrow Account (the “**Construction Accounting Deficiency Amount**”), the Town shall, within ten (10) days following the District’s written request, deposit into the Escrow Account, an amount equal to the Construction Accounting Deficiency Amount.

3. **Disbursements From the Escrow Account.** The Escrow Agent will make disbursements from the Escrow Account as follows:

(a) Prior to submittal by the District of a Draw Request to the Escrow Agent the District will submit the Draw Request Package, including the Cost Verification Report, with a link to all related contracts and invoices (“**Supporting Documentation**”), to the Town (the “**Draw Request Pre-Submittal Package**”). The Town shall have five (5) business days from the receipt of a Draw Request Pre-Submittal Package (the “**Town Response Period**”) to deliver

a Partial Draw Request Dispute Notice or a Complete Draw Request Dispute Notice to the District and the Escrow Agent, in which event the provisions of 3.(c)(i) shall be applicable. If the Town fails to timely deliver a Partial Request Dispute Notice or Complete Draw Request Dispute Notice as provided above, the District shall be entitled to submit a Draw Request in accordance with the provisions of 3.(b)(i) below.

(b) If the Town fails to deliver a Partial Draw Request Dispute Notice or a Complete Draw Request Dispute Notice to the District, and the Escrow Agent prior to the expiration of the Town Response Period, the District may submit requests for the release of Accounts on deposit in the Escrow Account as follows:

(i) The District shall submit written requests for release of funds from the Escrow Account (each, a “**Draw Request**”) to the Escrow Agent for the payment of costs from the Escrow Account based on the costs set out in the Engineers Cost Estimate. The Draw Request shall be provided on a business day and no more frequently than once each month. Each Draw Request shall generally take the form of and contain the information set out in **Exhibit A** attached hereto, and shall include, at a minimum, the following information:

(1) Reference to the Town Improvements Change Order or other basis for payment and provide a description of the work performed for which payment is being requested.

(2) The total amount of the requested funds.

(3) Detail of the total amount of progress payments on the construction and other applicable contracts executed for the Town Improvements, all payments made toward the same prior to the date of the Draw Request, including copies of lien waivers and the amount that will be outstanding after payment of the Draw Request.

(4) The District’s engineer shall be an independent licensed engineer experienced in the design and construction of public Town Improvements (the “**District Engineer**”). Certification by the District Engineer of the current estimate of the Town Improvements Costs to complete the Town Improvements (“**Engineers Cost Estimate**”), that all costs to be paid pursuant to the Draw Request constitute eligible costs and estimates of the percentage of total completion of the Town Improvements (“**Cost Certification**”). The Cost Certification will identify which of the costs contained in the respective certification for the Town Improvements are eligible for payment (“**Eligible Costs**”).

(ii) Upon receipt of a Draw Request signed by the District in accordance with this Section, the Escrow Agent shall make disbursement of the authorized amount to the District within two (2) business days. The Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in the Draw Request if the Draw Request is signed by the District and the Escrow Agent, in good faith, believes the Draw Request is genuine. The Escrow Agent shall not be required to make any independent investigation in connection therewith.

(c) During the term of this Agreement, Escrow Agent shall hold and disburse the fund in the Escrow Account in accordance with the terms and provisions of this Agreement.

(i) If the Town delivers written notice to the Escrow Agent of a dispute during the Town Response Period, Escrow Agent will proceed as follows:

a) If the written notice identifies an objection to the payment of less than all of a Draw Request, the written notice will specify the amount of the Improvement Costs that are the subject of the dispute and the reason for the dispute (the “**Partial Draw Request Dispute Notice**”), in which event:

i) The Escrow Agent will proceed to make disbursement of the amounts in the Draw Request that are not the subject of the Partial Draw Request Dispute Notice.

ii) The Escrow Agent will not make disbursement of the amounts that are the subject of the Partial Draw Request Dispute Notice until it receives a written instruction from the District and the Town that the disbursement that is the subject of a Partial Draw Request Notice has been resolved and disbursement may be made.

b) If the written notice identifies an objection to the payment of all of a Draw Request the written notice will specify that it is an objection to the payment of all of a Draw Request and the reason for the dispute (“**Complete Draw Request Dispute Notice**”), in which event:

i) The Escrow Agent will not make disbursement of any of the amounts that are the subject of the Complete Draw Request Dispute Notice until it receives a written instruction from the District and the Town that the disbursement that is the subject of a Complete Draw Request Notice can be made

c) The District agrees it will use the funds received from the Escrow Agent for completion of the Town Improvements not otherwise completed as set forth in the IGA.

(2) The Escrow Agent may act in reliance upon any written instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such written instrument.

(3) The Escrow Agent shall execute and deliver all forms required by Federal, State and other governmental agencies relative to the Escrow Accounts.

(4) The Escrow Agent shall not remit any moneys on deposit in the Escrow Account to the District except to pay or reimburse eligible costs of the Town Improvements and upon compliance with the Draw Request process set forth herein.

(5) Notwithstanding anything stated to the contrary in this section or elsewhere in this Agreement and so long as the Escrow Agent has not received the Termination Notice the Escrow Agent shall not remit any funds on deposit in the Escrow Account to the Town.

4. **Termination of Escrow.** The escrow established under this Agreement shall terminate upon Completion of the Town Improvements and disbursement of all funds that are the subject of a Draw Request. The Town and the District shall deliver to the Escrow Agent a written notice stating the Construction Completion has occurred, all payments that are the subject of a Draw Request have been made and the Agreement can be terminated (the “**Termination Notice**”).

5. **Notices.** All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Castleview Metropolitan District No. 1
 c/o McGeady Becher Cortese Williams P.C.
 450 E. 17th Avenue, Suite 400
 Denver, CO 80203-1254
 Phone: 303-592-4380
 Email: legalnotices@specialdistrictlaw.com

To Town: Town of Castle Rock
 100 N. Wilcox Street
 Castle Rock, Colorado 80104
 Attn: Dan Sailer, P.E., Public Works Director
 Email: DSailer@crgov.com

With an electronic legal@crgov.com
copy sent to:

To Escrow Agent: Land Title Guarantee Company
 Attn: _____
 Email: _____
 Phone: _____

6. **Incorporation of Recitals.** The Recitals to this Agreement are incorporated herein by this reference.

7. **Customary Escrow Agent Provisions.** Customary Escrow Agent Provisions will be attached hereto as **Exhibit C** and upon attachment are incorporated herein by this reference.

8. **Governing Law and Venue.** This Agreement shall be governed and construed under the laws of the State of Colorado and any enforcement of this Agreement by the Parties shall be instituted in the Douglas County District Court.

9. **Default and Remedies.** Upon any default by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, including specific performance and/or monetary damages. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

10. **Assignment and Delegation.** The Parties may not assign their rights or delegate their duties under this Agreement, in whole or in part, without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed. Any purported assignment or delegation without such consent shall be void.

11. **Parties Interested Herein.** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District, and the Town any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Town shall be for the sole and exclusive benefit of the District, and the Town.

(a) The Town and the District acknowledge and agree that, notwithstanding anything stated to the contrary in this Agreement, the obligations of the Subdivider under this Agreement are only intended to, and shall only, bind the Subdivider, and are not intended to, and shall not, run with the Property or be binding on any successors or assigns of the Subdivider.

12. **Severability.** If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

13. **Amendment.** This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the Parties unless the same is in writing and duly executed by the Parties hereto.

14. **Counterparts, Electronic Signatures, and Electronic Records.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same below document. Facsimile signatures shall be accepted as originals. The Parties consent to the use of electronic signatures by any Party hereto. This Agreement, and any other documents requiring a signature, may be signed electronically by each Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that is not in its original form or is not an original.

15. **Conflicting Provisions.** The provisions of this Agreement shall prevail and control in the event there is a conflict or inconsistency between the provisions of the IGA and this Agreement.

SIGNATURE PAGES FOLLOW

[TOWN IMPROVEMENTS ESCROW AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

DISTRICT:
CASTLEVIEW METROPOLITAN DISTRICT NO. 1,
a quasi-municipal corporation and political subdivision of
the State of Colorado

By: _____
President

ATTEST:

By: _____
Secretary

[TOWN IMPROVEMENTS ESCROW AGREEMENT]

TOWN:
TOWN OF CASTLE ROCK, COLORADO, a municipal corporation of the State of Colorado

By: _____
Name: _____
Title: Mayor

ATTEST:

By: _____
Town Clerk

[TOWN IMPROVEMENTS ESCROW AGREEMENT]

ESCROW AGENT:
LAND TITLE GUARANTEE COMPANY

By: _____
Name: _____
Title: _____

EXHIBIT A
ENGINEERS COST ESTIMATE

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EXHIBIT B

DRAW REQUEST FORM

For

TOWN IMPROVEMENTS ESCROW AGREEMENT

(Form of Draw Request)

Draw Request No. _____

The undersigned District President (capitalized terms used herein shall have the meanings ascribed thereto by the above Indenture) hereby makes a requisition from the Escrow Account held by Land Title Guarantee Company as Escrow Agent, and in support thereof states:

1. The amount to be paid or reimbursed pursuant hereto is \$ _____.
2. The name and address of the person, firm, or corporation to whom payment is due is as follows:

3. The amount to be paid or reimbursed pursuant hereto shall be transmitted by the Escrow Agent to the District (wire transfer or other transmission instructions for transition of Accounts to the District) for payment by the District of the persons, firms or corporations listed in Paragraph 2 above as follows:

4. The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Escrow Account and will be used solely for the payment of Town Improvement Costs as determined to be eligible for payment in Cost Certification No. ____.

5. The amounts to be paid or reimbursed pursuant to this Draw Request have not been the subject of any previous Draw Request.

6. With respect to the disbursement of Accounts by the Escrow Agent from the Escrow Account pursuant to this Draw Request, on behalf of the District, the undersigned District Representative or District President hereby: (a) certifies that the District has reviewed the wire instructions set forth in this Draw Request, and confirms that, to the best of the District's knowledge, such wire instructions are accurate; (b) agrees that, to the extent permitted by law, the District will indemnify and hold harmless the Escrow Agent from and against any and all claims, demands, losses, liabilities, and expenses sustained, including, without limitation, attorney fees, arising directly or indirectly from the Escrow Agent's disbursement of Accounts from the Escrow Account in accordance with this Draw Request and the wiring instructions provided herein; and (iii) agrees that the District will not seek recourse from the Escrow Agent as a result of losses

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incurred by the District arising from the Escrow Agent's disbursement of Accounts in accordance with this Draw Request.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20__.

District President as to Paragraphs 1-6

District Accountant as to Paragraphs 1 through 5

By: _____
Name: _____
Title: _____

EXHIBIT C

CUSTOMARY ESCROW AGENT PROVISIONS

(TO BE PROVIDED BY LAND TITLE GUARANTEE COMPANY)

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