

RESOLUTION NO. 2016-081

A RESOLUTION APPROVING THE FIRST AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN THE TOWN OF CASTLE ROCK AND BOX ELDER CREEK PROPOERTIES, LLC

WHEREAS, the Town of Castle Rock Water Enterprise and Box Elder Creek Properties, LLC, entered into the First Amendment to Option Agreement and Joint Escrow Instructions; and

WHEREAS, the parties previously entered an Option Agreement and Joint Escrow Instruction dated April 1, 2014 ("Agreement") with respect to an option to purchase water rights, as defined therein, and certain real property located in the counties of Weld and Arapahoe, State of Colorado; and

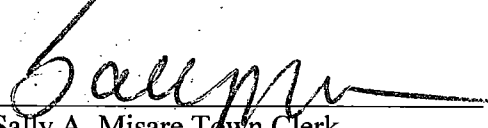
WHEREAS, the parties have determined that it is appropriate to amend the Agreement to modify the timeframe for which the Town can exercise its option to purchase under the Agreement, in order to provide additional time to complete due diligence.

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

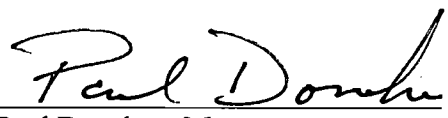
Section 1. Approval. The First Amendment to Option Agreement and Join Escrow Instructions, more fully described in *Exhibit 1* is hereby approved. The Mayor and other proper Town officials are authorized to execute the First Amendment by and on behalf of the Town of Castle Rock, Colorado.

PASSED, APPROVED AND ADOPTED this 6th day of September, 2016, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of 7 for and 0 against.

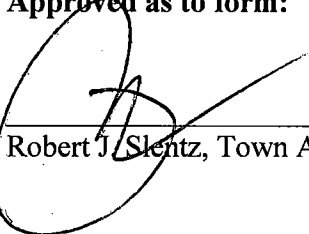
ATTEST:


Sally A. Misare Town Clerk

TOWN OF CASTLE ROCK


Paul Donahue, Mayor

Approved as to form:


Robert J. Slentz, Town Attorney

Approved as to content:


Mark Marlowe, Utilities Director

FIRST AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This First Amendment to Option Agreement and Joint Escrow Instructions ("First Amendment") is dated the ___ day of August, 2016 by and between **TOWN OF CASTLE ROCK WATER ENTERPRISE** ("Castle Rock") and **BOX ELDER CREEK PROPERTIES, LLC**, a Colorado limited liability company ("Box Elder"). Box Elder and Castle Rock may each be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

A. The Parties previously entered into that certain Option Agreement and Joint Escrow Instructions dated April 1, 2014, with respect to an option to purchase Water Rights, as defined therein, and certain real property located in the Counties of Weld and Arapahoe, State of Colorado as described more fully therein (the "Agreement"). For purposes of this First Amendment, all capitalized terms used herein shall have the meanings ascribed to them in the Agreement, unless otherwise defined herein.

B. The Parties now desire to amend the Agreement as set forth below.

AGREEMENT:

NOW THEREFORE, in consideration of the covenants and promises set forth below, and the receipt of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein in their entirety by this reference.

2. December 1 Price Concession. Castle Rock and Box Elder agree that the table set forth in paragraph 5.b. of the Agreement is hereby deleted and replaced with the following table, in order to provide Castle Rock an opportunity to purchase the Property on or before December 1, 2016 at the price which was in effect prior to the October 1, 2016 price increase (the "December 1 Price Concession"). All other dates, periods and Option Payments described in the Agreement remain unchanged by this First Amendment.

Closing Date	Purchase Price for entire Property	FRICO Reduction	GMS Reduction
On or before October 1, 2017	\$9,907,000.00	\$125,000.00	\$500,000.00

On or before December 1, 2016	\$8,753,173.00	\$110,000.00	\$440,000.00
On or before October 1, 2015	\$7,558,558.00	\$95,000.00	\$380,000.00
On or before October 1, 2014	\$6,365,944.00	\$80,000.00	\$320,000.00

3. Limited Purchase Notice. Castle Rock hereby provides Box Elder its Purchase Notice, as provided in paragraph 8.a. of the Agreement. Castle Rock gives notice that it intends to purchase the Property (including the FRICO Shares but excluding GMS Contracts) on or before December 1, 2016, on no less than 10 days prior written notice (from Castle Rock to Box Elder) as to the exact date of Closing. Castle Rock and Box Elder agree that in the event Castle Rock does not effect Closing on or before December 1, 2016 notwithstanding the foregoing, it shall nonetheless have the right to provide one subsequent Purchase Notice, and thereafter close the Option pursuant to its terms. However, in that event, the December 1 Price Concession shall be of no further force of effect.

4. Construction. Each of the Parties acknowledges that they, and their respective counsel, substantially participated in the negotiation, drafting and editing of this First Amendment. Accordingly, the Parties agree that the provisions of this First Amendment shall not be construed or interpreted for or against any Party hereto based on authorship.

5. Authority. Each Party represents and warrants that it has the power and authority to execute this First Amendment and that there are no third party approvals required to execute this First Amendment or to comply with the terms or provisions contained herein.

6. Headings. The section headings used herein shall have absolutely no legal significance and are used solely for convenience of reference.

7. Ratified and Confirmed. The Agreement, except as modified by this First Amendment, is hereby ratified and confirmed and shall remain in full force and effect in accordance with its original terms and provisions.

8. Counterparts; Facsimile. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original, and both of which together shall be deemed to constitute one and the same instrument. Each of the Parties shall be entitled to rely upon a counterpart of this First Amendment executed by the other Party and sent via facsimile transmission.

9. Time of the Essence. Time is of the essence in this First Amendment and with respect to the dates set forth herein.

IN WITNESS WHEREOF the Parties have executed this First Amendment as of the date first written above.

BOX ELDER:

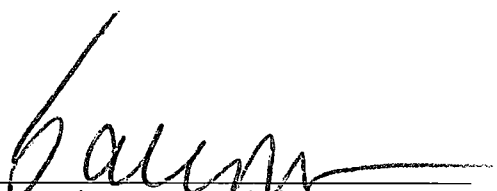
BOX ELDER CREEK PROPERTIES, LLC,
a Colorado limited liability company

By: _____
Michael Jeronimus, Manager

CASTLE ROCK:

ATTEST:

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



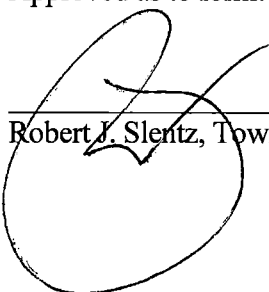
Sally A. Misare, Town Clerk



Paul Donahue, Mayor

Approved as to form:

Approved as to content:



Robert J. Slentz, Town Attorney

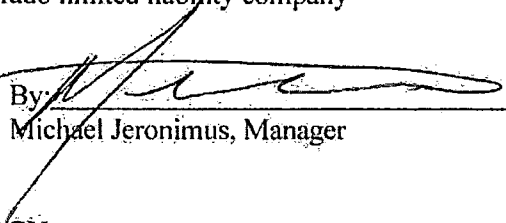


Mark Marlowe, Utilities Director

IN WITNESS WHEREOF the Parties have executed this First Amendment as of the date first written above.

BOX ELDER:

BOX ELDER CREEK PROPERTIES, LLC,
a Colorado limited liability company

By: 
Michael Jeronimus, Manager

CASTLE ROCK:

ATTEST:

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

Sally A. Misare, Town Clerk

Paul Donahue, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Utilities Director



Town of Castle Rock

100 North Wilcox Street
Castle Rock, CO 80104

Agenda Memorandum

Agenda Date: 9/6/2016

Item #: 7. File #: RES 2016-081

To: Honorable Mayor and Members of Town Council

From: Mark Marlowe, P.E., Utilities Director
Matt Benak, P.E., Water Resources Manager

Resolution Approving the First Amendment to Option Agreement and Joint Escrow Instructions between the Town of Castle Rock and Box Elder Creek Properties, LLC

Executive Summary

The purpose of this memo is to request Council approval of an amendment to the Option Agreement and Joint Escrow Instructions between Town of Castle Rock Water Enterprise and Box Elder Creek Properties, LLC. The amendment postpones the price increase on the take down option for the Box Elder property from October 1, 2016, to December 1, 2016. Now, if Castle Rock takes down the option by December 1, the cost will be \$8.3 million. After December 1, 2016, the cost goes up to \$9.4 million. Both parties agreed to postpone the date of the price increase because the Town is currently performing due diligence activities on other water rights that would be used to augment out of priority depletions from wells located on the Box Elder property. Assuming that the water rights are ultimately purchase, Castle Rock staff will likely recommend taking down the option on the well field.

Budget Impact

There is no budget impact associated with amending the option agreement to postpone the date of the next price increase, unless Castle Rock takes down the option before December 1, which would save the Town \$1.1 million.

Staff Recommendation

Staff recommends Town Council approve the First Amendment to Option Agreement and Joint Escrow Instructions as provided in Exhibit 1 of **Attachment A**.

Proposed Motion

"I move to approve the resolution as introduced by title."

Attachments

Item #: 7. File #: RES 2016-081

Attachment A: Resolution
Exhibit 1: Amendment

EM'd CR 9B