

SECOND AMENDMENT TO CONTRACT FOR PURCHASE AND SALE OF WATER LINE CAPACITY

This Second Amendment to Contract for Purchase and Sale of Water Line Capacity ("Amendment") is made this ____ day of March, 2017 between **PIONEER METROPOLITAN DISTRICT NO. 3**, a Title 32 District formed and existing under the laws of the State of Colorado, ("Seller") whose address is c/o McGeady Becher P.C., 450 E. 17th Avenue, Suite 400, Denver, Colorado 80203, and the **TOWN OF CASTLE ROCK BY AND THROUGH THE TOWN OF CASTLE ROCK WATER ENTERPRISE** ("Buyer") whose address is 100 N. Wilcox Street, Castle Rock, CO 80104.

WHEREAS, Seller and Buyer have entered into that certain the Contract for Purchase and Sale of Water Line Capacity dated October 14, 2016 and that certain First Amendment to Contract for Purchase and Sale of Water Line Capacity dated February 9, 2017 attached hereto as **EXHIBIT A** (collectively "Agreement").

WHEREAS, the Colorado Ground Water Commission ("GWC") issued Amended Permit Nos. 12123-FP, 12124FP, 31526-FP, 31527-FP, 31643-FP, 14860-FP and 31640-FP ("Permits") on February 23, 2017, each containing no limitation on the place of use of groundwater once exported from the Lost Creek Designated Ground Water Basin.

WHEREAS, issuance of the Permits may be subject to appeal for a period of 35 days after the date of issuance, and, if so, such appeal period ("Period") will expire March 30, 2017.

WHEREAS, this Amendment does not determine whether issuance of the Permits constitutes issuance of "Amended Final Permits," before the Period has expired.

WHEREAS, Seller and Buyer desire to amend the Agreement.

NOW, THEREFORE, Buyer and Seller agree as follows:

- 1) The first sentence of paragraph 6 of the Agreement shall be amended as follows:

6. **Closing.** The closing of the transaction contemplated by this Agreement ("Closing") shall take place on: 1) March 31, 2017 if no appeal to the issuance of the Permits is filed; or 2) if any person or entity files an appeal of the GWC's issuance of the Permits, within 10 days after the dismissal or the resolution of the appeal in a manner acceptable to Buyer, but in no event later than May 15, 2017, as the same may be mutually extended by the Parties. If the appeal is resolved in a manner unacceptable to Buyer or if it is not resolved by May 15, 2017, either Party may terminate this Agreement by written notice to the other Party.

- 2) All other terms and conditions of the Agreement shall remain in full force and effect, and the parties reserve their respective rights under the Agreement, as amended, including to retain, or obtain a refund of, the Earnest Money.

SELLER:

PIONEER METROPOLITAN DISTRICT NO. 3

By:

Name

Title

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me by _____, the _____ of the
Pioneer Metropolitan District No. 3 this _____ day of March 2017.

Witness my hand and official seal.

Notary Public

My commission expires: _____

BUYER:

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

ATTEST:

By: _____
David Corliss, City Manager

Date: _____

By: _____
Sally A. Misare, Town Clerk

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark W. Marlowe, Director of Castle Rock Water

RESOLUTION NO. 2016-080

**A RESOLUTION APPROVING THE EXECUTION OF THE
PURCHASE AND SALE FOR WATER LINE CAPACITY FROM
PIONEER METROPOLITAN DISTRICT NO. 3**

WHEREAS, Pioneer Metropolitan District No. 3, a Title 32 District formed and existing under the laws of the State of Colorado ("Seller") and the Town of Castle Rock by and through the Town of Castle Rock Water Enterprise ("Buyer") dated this date have agreed on the terms of a Purchase and Sale Agreement for Water Line Capacity further described in *Exhibit 1*;

WHEREAS, the Seller is a party to the Agreement with the Town of Keenesburg, Colorado ("Keenesburg") dated April 17, 2008 and recorded at Reception No. 3555656 in Weld County, Colorado, as amended by the First Amendment to and Assignment of Agreement dated May 1, 2012 and recorded at Reception No. 3845481 in Weld County, Colorado (collectively "Water Line Agreement"); and

WHEREAS, the Water Line Agreement grants to Seller the sole, exclusive and perpetual right to use eight hundred (800) gallons per minute of capacity in the Keenesburg Well Water Transmission Line ("Water Line"), subject to the terms and conditions in the Water Line Agreement; and

WHEREAS, Seller and Buyer have agreed on the terms of an assignment of the Water Line Agreement from Seller to Buyer; and

WHEREAS, this purchase is a key part of a preferred project for development of a renewable water supply and accordingly the Town has analyzed the feasibility of the project and otherwise undertaken due diligence of the Project and its various assets;

WHEREAS, an integral part of the Box Elder project is the identification and purchase of at least 2,500 acre-feet of renewable water rights and the Town has or is close to securing over 70 percent of that water; and

WHEREAS, the purchase of the capacity in this pipeline enhances the value of water rights the Town has or is securing.

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

Section 1. Approval. The Purchase and Sale of Water Line Capacity in the form attached as *Exhibit 1* is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Contract by and on behalf of the Town of Castle Rock Water Enterprise. The purchase of the property and water interests by the Castle Rock Water Enterprise on the terms of the Contract is approved and the administrative staff is authorized to take all action necessary to close the transaction.

Section 2. Encumbrance and Authorization for Payment. In order to meet the Town's financial obligation under the Contract, the Town Council authorizes the expenditure and payment

from the 2016 appropriation account 211 4375 443 7730 WRKP in an amount not to exceed \$2,230,000 plus the annual payments of \$63,099 for 2016 assuming staff is satisfied with the results of due diligence and proceeds to closing.

PASSED, APPROVED AND ADOPTED this 16th day of August, 2016, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of 6 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

CONTRACT FOR PURCHASE AND SALE OF WATER LINE CAPACITY

This Contract for Purchase and Sale of Water Line Capacity ("Agreement") is made this 14th day of October 2016 (the "Effective Date") between PIONEER METROPOLITAN DISTRICT NO. 3, a Title 32 District formed and existing under the laws of the State of Colorado, ("Seller") whose address is 141 Union Boulevard, Suite 150, Lakewood, CO 80226, and the TOWN OF CASTLE ROCK BY AND THROUGH THE TOWN OF CASTLE ROCK WATER ENTERPRISE ("Buyer") whose address is 100 N. Wilcox Street, Castle Rock, CO 80104.

WHEREAS, Seller is a party to the Agreement with the Town of Keenesburg, Colorado ("Keenesburg") dated April 17, 2008 and recorded at Reception No. 3555856 in Weld County, Colorado, as amended by the First Amendment to and Assignment of Agreement, dated May 1, 2012 and recorded at Reception No. 3645481 in Weld County, Colorado (collectively "Water Line Agreement").

WHEREAS, The Water Line Agreement grants to Seller the sole, exclusive and perpetual right to use eight hundred (800) gallons per minute of capacity in the Keenesburg Well Water Transmission Line ("Water Line"), subject to the terms and conditions in the Water Line Agreement.

WHEREAS, Seller and Buyer have agreed on the terms of an assignment of the Water Line Agreement from Seller to Buyer.

Now, therefore, Buyer and Seller agree as follows:

1) **Assignment of Water Line Agreement.** At closing, Seller shall assign to Buyer one hundred per cent (100%) of Seller's interest in the Water Line Agreement on the terms and conditions set forth in this Agreement.

2) **Consideration.** As consideration for the assignment, Buyer shall pay to Seller two million two hundred and thirty-two thousand five hundred dollars (\$2,232,500) ("Purchase Price") and shall assume all of Seller's duties under the Water Line Agreement, including but not limited to the requirement to pay \$63,098.58 annually to Keenesburg until the final payment on May 25, 2032 ("Other Consideration").

3) **Earnest Money.** Within five (5) calendar days after the Effective Date, Buyer shall deposit fifty thousand dollars (\$50,000) with Land Title Guarantee Company ("Title Company"). The Effective Date, as identified above, shall be the date when this Agreement and the escrow agreement with the Title Company have both been fully executed by the parties. The Earnest Money shall be applied to the Purchase Price at Closing, unless this Agreement is terminated prior to the end of the Inspection Period as set forth in section 5 of this Agreement.

CONTRACT FOR PURCHASE AND SALE OF WATER LINE CAPACITY

This Contract for Purchase and Sale of Water Line Capacity ("Agreement") is made this 28th day of September 2016 (the "Effective Date") between **PIONEER METROPOLITAN DISTRICT NO. 3**, a Title 32 District formed and existing under the laws of the State of Colorado, ("Seller") whose address is 141 Union Boulevard, Suite 150, Lakewood, CO 80228, and the **TOWN OF CASTLE ROCK BY AND THROUGH THE TOWN OF CASTLE ROCK WATER ENTERPRISE** ("Buyer") whose address is 100 N. Wilcox Street, Castle Rock, CO 80104.

WHEREAS, Seller is a party to the Agreement with the Town of Keenesburg, Colorado ("Keenesburg") dated April 17, 2008 and recorded at Reception No. 3555856 in Weld County, Colorado, as amended by the *First Amendment to and Assignment of Agreement*, dated May 1, 2012 and recorded at Reception No. 3845481 in Weld County, Colorado (collectively "Water Line Agreement").

WHEREAS, The Water Line Agreement grants to Seller the sole, exclusive and perpetual right to use eight hundred (800) gallons per minute of capacity in the Keenesburg Well Water Transmission Line ("Water Line"), subject to the terms and conditions in the Water Line Agreement.

WHEREAS, Seller and Buyer have agreed on the terms of an assignment of the Water Line Agreement from Seller to Buyer.

Now, therefore, Buyer and Seller agree as follows:

- 1) **Assignment of Water Line Agreement.** At closing, Seller shall assign to Buyer one hundred per cent (100%) of Seller's interest in the Water Line Agreement on the terms and conditions set forth in this Agreement.
- 2) **Consideration.** As consideration for the assignment, Buyer shall pay to Seller two million two hundred and thirty-two thousand five hundred dollars (\$2,232,500) ("Purchase Price") and shall assume all of Seller's duties under the Water Line Agreement, including but not limited to the requirement to pay \$63,098.58 annually to Keenesburg until the final payment on May 25, 2032 ("Other Consideration").
- 3) **Earnest Money.** Within five (5) calendar days after the Effective Date, Buyer shall deposit fifty thousand dollars (\$50,000) with Land Title Guarantee Company ("Title Company"). The Effective Date, as identified above, shall be the date when this Agreement and the escrow agreement with the Title Company have both been fully executed by the parties. The Earnest Money shall be applied to the Purchase Price at Closing, unless this Agreement is terminated prior to the end of the Inspection Period as set forth in section 5 of this Agreement.

4) Documents from Seller.

a) Within five (5) calendar days of the Effective Date ("Document Production Period"), Seller shall furnish to Buyer all information in Seller's possession or control related to the Water Line or Water Line Agreement ("Property Information"). Such Property Information shall include, but shall not be limited to:

i) Any agreements related to the Water Line or Water Line Agreement, including any loan documents between Keenesburg and the Colorado Water Conservation Board for the Water Line;

ii) Any deeds or other instruments conveying the easements or licenses for the Water Line ("Easements") to Seller or Keenesburg;

iii) Any bill of sale or other instrument conveying a portion of the Water Line or Water Line Agreement to Seller or Keenesburg;

iv) Any encumbrance documents related to the Water Line or Water Line Agreement;

v) Any maps or surveys showing the Easements; or the Water Line or the underground and surface facilities related thereto, including but not limited to, electric or other control systems, conduits, valves and vaults. ("Appurtenances");

vi) Any reports evaluating the Water Line, including the capacity of the Water Line, Appurtenances, or Easements including technical reports, inspection reports and maintenance reports;

vii) Any construction drawings, as-built drawings, maps, construction estimates and outstanding invoices regarding the Water Line or Appurtenances;

viii) Any information regarding pumping and power costs related to the Water Line;

ix) Any information regarding past and future operation, maintenance and repair costs for the Water Line and Appurtenances;

x) Any construction drawings, construction estimates or operation, maintenance and repair estimates regarding the District Pipeline as such is described in section 3 of the Water Line Agreement;

xi) Any construction drawings, construction estimates or operation, maintenance and repair estimates regarding chlorination mechanism as such is described in section 5 of the Water Line Agreement;

xii) Any information regarding the interconnection, as such is described in sections 3 and 4 of the Water Line Agreement; and

xiii) Any information regarding the District Pipeline and its connection to the Water Line, as such is described in section 3 of the Water Line Agreement.

b) Seller consents to and shall assist Buyer in obtaining information relating to encumbrances, liens, taxes, or adverse claims related to the Water Line or Water Line Agreement, and Seller shall authorize any holder of such encumbrances, liens or adverse claims to release such information to Buyer.

c) All Property Information provided by Seller to Buyer shall remain confidential and shall be returned to Seller, if the Closing does not occur.

5) Inspection Period. Buyer shall have ninety (90) calendar days from the Effective Date ("Inspection Period") to conduct any and all due diligence investigations and inspections Buyer desires regarding the Water Line or Water Line Agreement, at Buyer's sole expense. Such investigations and inspections may include, but are not be limited to: confirming Seller's interest in the Water Line Agreement; confirming that Seller's interest in the Water Line Agreement and Water Line is unencumbered; inspecting the Water Line; confirming title to Easements for the Water Line; confirming that Keenesburg will consent to the assignment of the Water Line Agreement; and determining, in Buyer's sole discretion, that the Water Line Agreement and Water Line is sufficient for Buyer's intended purposes. Buyer may terminate this Agreement by giving written notice of termination to Seller prior to the end of the Inspection Period if the Water Line Agreement or Water Line is deemed, in Buyer's sole discretion, unsatisfactory for any reason or for no reason.

a) If the notice of termination is given on or before the sixtieth (60) calendar day after the Effective Date, then the Earnest Money and all interest earned thereon shall be returned to Buyer, and the parties shall have no further rights or obligations under this Agreement.

b) If the notice of termination is given sixty-one (61) calendar days to ninety (90) calendar days after the Effective Date, then: i) Seller shall have the right to retain eleven thousand dollars (\$11,000) of the Earnest Money, unless Seller has defaulted in one or more of its obligations under this Agreement; ii) the remaining thirty nine thousand dollars (\$39,000) of the Earnest Money and all interest earned on the earnest money shall be returned to Buyer; and iii) the parties shall have no further rights or obligations under this Agreement.

c) If Buyer does not provide notice of termination within the Inspection Period, but Buyer does not complete Closing for any reason, other than a default in one or more of Seller's obligations under this Agreement, then Seller shall have the right to retain the Earnest Money and all interest earned thereon, and the parties shall have no further rights or obligations under this Agreement.

6) **Closing.** The closing of the transaction contemplated by this Agreement ("Closing") shall take place within thirty (30) days after the end of the Inspection Period at the offices of the Title Company or at such other time and place as may be mutually agreed upon by the parties. The following shall occur at the Closing:

a) Buyer shall pay to Seller an amount equal to Purchase Price minus the Earnest Money, and all interest earned thereon, by cash, certified funds or wire transfer.

b) Seller shall execute and deliver to Buyer an assignment of the Water Line Agreement free from all liens, encumbrances, or adverse claims.

c) Seller shall execute and deliver such affidavits, instruments, agreements or other documents as may be reasonably required to complete the transaction contemplated under this Agreement.

7) **Representations and Warranties.**

a) **Seller's Representations and Warranties.** Seller represents and warrants the following, as of the Effective Date and as of closing:

i) Seller is a governmental entity duly formed and validly existing in the State of Colorado;

ii) Seller has full right, power and authority to enter into this Agreement and perform all of Seller's obligations hereunder, without violating any other agreement or contract;

iii) Seller's undersigned representative is duly authorized to enter into this Agreement on behalf of Seller and to bind Seller to the terms of this Agreement;

iv) Seller is now and will remain, until the conclusion of Closing, the lawful owner of its interest in the Water Line Agreement;

v) The Water Line or Water Line Agreement is free of any liens, encumbrances and third-party claims;

vi) There are no pending actions or claims which might give rise to any court proceedings or contingent claims affecting ownership or use of the Water Line; and

vii) No other person has any legal or equitable right to use the Water Line in a fashion that would interfere with Buyer's use of the Water Line, pursuant to the Water Line Agreement.

b) Buyer's Representations and Warranties. Buyer represents and warrants the following, as of the Effective Date and as of closing:

i) Buyer is a governmental entity duly formed and validly existing in the State of Colorado;

ii) Buyer has full right, power and authority to enter into this Agreement and perform all of Buyer's obligations hereunder; and

iii) Buyer's undersigned representative is duly authorized to enter into this Agreement on behalf of Buyer and to bind Buyer to the terms of this Agreement.

8) Remedies. The parties shall have the following remedies in the event of a breach of this Agreement. However, before a party is deemed in default of this Agreement, the other party must provide written notice of the alleged violation to the defaulting party, and the defaulting party shall have ten (10) calendar days thereafter to cure such violation.

a) If Seller is in default, then: i) Buyer may elect to terminate this Agreement upon written notice to Seller, in which event the Earnest Money and all interest earned thereon shall be returned to Buyer; or ii) Buyer may treat this Agreement as being in full force and effect, and Buyer shall have a right of specific performance. In

the event of a breach of warranties as set forth in Section 7.a., Buyer shall have all remedies available, including a claim for damages, and may file an action after closing subject to providing notice to Seller as required above.

b) If Buyer is in default, Seller's sole remedy shall be to terminate this Agreement by written notice to Buyer, to have the Earnest Money released to Seller as liquidated damages, and to have the documents produced pursuant to section 4 returned from Buyer.

c) In any litigation brought by either party relating to this Agreement, the substantially prevailing party shall be entitled to the award of its reasonable attorney fees. By this provision, the parties have agreed to an award of reasonable attorney fees to the substantially prevailing party, but have not waived any immunity from an award of costs in any litigation nor have the parties waived any other immunity or protection afforded them by law.

9) **Survival of Closing.** The representations, warranties, covenants, and the mutual agreements described in section 7 shall survive Closing and the delivery and recording of the Closing documents.

10) **Miscellaneous.**

a) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, and legal representatives of the parties hereto. Seller may not assign its rights or delegate its duties hereunder without the prior written consent of Buyer, which Buyer may withhold in its sole discretion. Buyer shall be entitled to assign its rights and obligations under this Agreement with notice to, but not consent of, Seller.

b) **Notice.** Any notice shall be effective when received by the party or parties. All notices shall be by either; 1. certified mail return receipt requested; 2. personal delivery; or 3. electronic mail to the parties and the parties' representatives at the following addresses or at such other address as the parties may provide in writing:

To Seller:

Pioneer Metropolitan District No. 3
Joel Farkas, President
c/o McGeady Becher, PC
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254

With a copy to:

MaryAnn M. McGeady, Esq.
McGeady Becher, PC
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
mmcgeady@specialdistrictlaw.com

mmcgeady@specialdistrictlaw.com

To Buyer:

Town of Castle Rock
c/o Mark Marlowe, Utilities Director
175 Kellogg Court
Castle Rock, CO 80109
mmarlowe@crgov.com

With copies to:

Town of Castle Rock
c/o Bob Slentz, Town Attorney
100 Wilcox
Castle Rock, CO 80104
bslentz@crgov.com

and:

Lyons Gaddis
c/o Madoline Wallace-Gross
363 Centennial Parkway, Suite 110
Louisville, CO 80027
mwg@lyonsgaddis.com

e) Holidays. If the date that any notice or action required or permitted under this Agreement falls on a weekend or Federal holiday, the required or permitted date shall be extended to the next day that is neither a Federal holiday nor a weekend day.

d) Counterparts. The parties may transmit this Agreement by electronic mail. Digital and scanned signatures shall be adequate, binding and valid as original signatures on this Agreement. This Agreement may be executed in several counterpart copies and all such counterparts taken together shall be deemed the Agreement.

e) Brokers and Commissions. Buyer and Seller are solely responsible for payment of any commission or other compensation due to their respective agents as a result of this transaction.

f) Entire Agreement. This Agreement embodies the entire understanding and agreement between Buyer and Seller regarding the assignment of the Water Line Agreement and supersedes any and all prior negotiations, understandings or agreements regarding the subject matter hereof.

g) Amendments. This Agreement may be modified, amended, changed or terminated in whole or in part only by written agreement duly authorized and executed by each of the parties with the same formality as this Agreement.

h) Colorado Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

i) Section Headings. The section headings are inserted for convenience of reference only and do not define, limit or prescribe the scope of this Agreement.

SELLER:

PIONEER METROPOLITAN DISTRICT NO. 3

By:

Joel H. Farkas, President
Name Title

Date: 9-16-16

STATE OF COLORADO)

COUNTY OF Arapahoe) ss.

Subscribed and sworn to before me by Joel H. Farkas, the President of the Pioneer Metropolitan District No. 3, this 16th day of September, 2016.

Witness my hand and official seal.

Toni Serra
Notary Public

My commission expires: 01-27-2017



BUYER:

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

By:

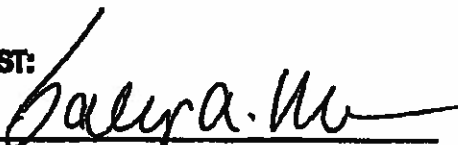


Paul Donahue, Mayor

Date:

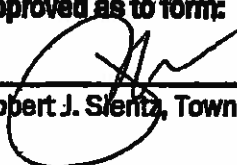
9/28/16

ATTEST:



Sally A. Misare, Town Clerk

Approved as to form:



Robert J. Slentz, Town Attorney

Approved as to content:



Mark W. Marlowe, Utilities Director