

ATTACHMENT C

DRAFT

~~April 30, 2015~~ May 4, 2015

DUE DILIGENCE LICENSE AGREEMENT

THIS DUE DILIGENCE LICENSE AGREEMENT is made as of _____, 2015 (“Agreement Date”) by and between UNITED WATER AND SANITATION DISTRICT, a water and sanitation district established under the laws of the State of Colorado (“United”), and the TOWN OF CASTLE ROCK, a home rule municipality of the County of Douglas, State of Colorado (“Town”).

RECITALS:

A. United owns the Sedalia Diversion (“Diversion Facilities”) and the Sedalia Reservoir No. 1 (“Storage Facilities”), which are existing structures constructed adjacent to Plum Creek in Douglas County, Colorado and are a part of the Plum Creek Diversion, Storage and Delivery System (the “Plum Creek Project”).

B. The Town has expressed an interest in acquiring an ownership interest in the Diversion Facilities and the Storage Facilities and, in connection therewith, has requested from United a license to enter upon the Property for purposes of making inspections, conducting tests and otherwise reviewing the condition of the Plum Creek Project.

C. United is willing to grant such a license on and subject to the terms and conditions set forth in this Agreement.

IN CONSIDERATION of the foregoing Recitals, Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. License. United hereby grants to Licensee and its employees and contractors a nonexclusive, revocable license (the “License”) to enter upon the Plum Creek Project for purposes of inspecting, making surveys, conducting soils tests, conducting environmental audits, obtaining topographical information and for all other reasonable investigations deemed necessary by Licensee solely in connection with its potential purchase of an interest in the Plum Creek Project. All such inspections, surveys, investigations, tests, studies and audits (collectively, the “Inspections”) shall be undertaken by Licensee, at Licensee's sole cost, expense and risk. Licensee shall notify United before entry upon or conducting any invasive Inspections on the Plum Creek Project. United shall have the right to have a representative present during any entry upon the Plum Creek Project by Licensee.

2. No Damage. In using the License, Licensee will not make any permanent modifications to the Plum Creek Project, and Licensee will leave the Plum Creek Project in

substantially the same condition as existed prior to its entry upon the Plum Creek Project. Licensee shall promptly pay for all work performed on the Plum Creek Project, and shall not permit any liens to be filed against the Plum Creek Project or any other Plum Creek Project as a result of its use of the License.

3. Indemnification. To the extent provided by law, Licensee shall indemnify and hold harmless United from any damages, claims, losses, causes of action, obligations, costs and expenses, including reasonable attorneys' fees, incurred by United arising out of the entry upon Plum Creek Project by Licensee or its employees or contractors (including any entry prior to the Agreement Date), including those incurred by reason of personal injury, damage to the Plum Creek Project, liens that may be filed against the Plum Creek Project or United, or any other acts or omissions of such persons arising out of their entry upon the Plum Creek Project or conducting any Investigations. This obligation to indemnify, to the extent provided by law, will survive any termination of this Agreement.

4. Results of Inspections. In consideration of United permitting entry, Licensee shall provide a copy of the results of all Inspections undertaken on the Plum Creek Project to United at no cost to United. All such results shall be delivered without representation or warranty by Licensee.

5. Insurance. Prior to Licensee conducting any Inspections on the Plum Creek Project, Licensee shall provide to United evidence of insurance from Licensee and any third-party contractors performing any Inspections, or otherwise conducting any work upon the Plum Creek Project. All such insurance shall name United and such other parties as United may reasonably designate as additional insureds, and shall include such other terms and coverages and shall be subject to the approval of United.

6. Term. The License shall terminate on July 31, 2015, unless extend in writing by United. The License shall be revocable at any time, orally or in writing, by United. This Agreement shall not be merged into any agreement for purchase and sale of the Plum Creek Project that the parties may enter into, provided that upon termination of any such agreement the License granted under this Agreement shall also terminate.

7. General Provisions.

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

(b) Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable to any extent, the remainder of this Agreement shall continue in full force and effect.

(c) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements in regard thereto, whether written or oral.

(d) Waiver. No provision of this Agreement may be waived, except by an agreement in writing signed by all of the parties hereto. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

(e) Headings. The subject headings used in this Agreement are included for purposes of reference only, and shall not affect the construction or interpretation of any of its provisions.

(f) Amendment. This Agreement may be amended only by written instrument executed by all of the parties.

(g) Construction. Throughout this Agreement, the singular shall include the plural, the plural shall include the singular; all genders shall be deemed to include other genders, wherever the context so requires; and the terms “including,” “include” or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean “including, but not limited to,” or “including, by way of example and not limitation.”

(h) Further Acts. Upon reasonable request from a party hereto, from time to time, each party shall execute and deliver such additional documents and instruments and take such other actions as may be reasonably necessary to give effect to the intents and purposes of this Agreement.

(i) Attorneys' Fees. In the event of any litigation or arbitration proceedings between the parties hereto concerning the subject matter of this Agreement, the prevailing party in such litigation or proceeding shall be awarded, in addition to the amount of any judgment or other award entered therein, the costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the litigation or proceeding.

(j) Authority. Each of the parties hereto represents to the other that such party has full power and authority to execute, deliver and perform this Agreement, and the individuals executing this Agreement on behalf of the party are fully empowered and authorized to do so.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

[Signature pages immediately follow]

THIS DUE DILIGENCE LICENSE AGREEMENT is executed by the parties to be effective as of the Agreement Date, notwithstanding the actual date of execution.

UNITED:

UNITED WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, acting by and through its Plum Creek Enterprise

By: _____
Robert A. Lembke, President

Attest:

By: _____
Title: _____

TOWN:

TOWN OF CASTLE ROCK,
a home rule municipality

By: _____

Title: _____

Attest:

By: _____

Title: _____