

ORDINANCE NO. 2023-020

**AN ORDINANCE AUTHORIZING THE EXERCISE OF THE TOWN'S
POWERS OF EMINENT DOMAIN TO ACQUIRE CERTAIN REAL
PROPERTY INTERESTS NECESSARY FOR THE EAST PLUM CREEK/
SELLARS GULCH CONFLUENCE PROJECT**

WHEREAS, the Town Council of the Town of Castle Rock (the “Town”) has determined that there is a compelling public need and purpose for the construction of the East Plum Creek/Sellars Gulch Confluence Project (the “Project”); and

WHEREAS, located in the Downtown area at the confluence of East Plum Creek and Sellars Gulch, the Project consists of 2,800 linear feet of stream stabilization, water quality and detention improvements, and room to construct a passive recreational trail; and

WHEREAS, the Project will cross or otherwise impact 12 properties, 10 of which are in public ownership and, as such, are not subject to this ordinance; and

WHEREAS, of the other two properties, one is in private ownership, while the other is unclaimed; and

WHEREAS, the Town will need to acquire both a permanent easement and a temporary easement in the privately-owned property, and a fee simple interest in the unclaimed property, which property interests are generally described in the map attached as ***Exhibit 1*** (the “Property”); and

WHEREAS, the exercise of the Town’s powers of eminent domain to acquire the Property for the Project is necessary and serves a valid public purpose.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK AS FOLLOWS:

Section 1. Acquisition Authorization. The Town Attorney is authorized to take necessary and appropriate action to acquire good title to the Property in accordance with Section 38-1-101, *et seq.*, C.R.S., and Section 24-56-101 *et seq.*, C.R.S., subject to compliance with Section 3.B of this Ordinance, as applicable. The Town Attorney is further authorized to retain the services of special condemnation counsel for this purpose.

Section 2. Just Compensation. The Town Manager is authorized to establish the just compensation to be offered to each Property owner in compliance with applicable laws and regulations.

Section 3. Good Faith Negotiations.

A. Town staff is directed to undertake in an expedient manner and in accordance with the requirements of Section 38-1-101, *et seq.*, C.R.S., and Section 24-56-101 *et seq.*, C.R.S., as

applicable, good faith negotiations with each Property owner for the acquisition of such owner's Property on the basis of fair and reasonable value.

B. Pursuant to the requirements of Section 14.02.070 of the Castle Rock Municipal Code, should such good faith negotiations fail to result in agreement with any Property owner on the value of such owner's Property, the Town Attorney shall so advise the Town Council and request Council authorization to institute eminent domain proceedings and acquire immediate possession of the Property. The Town Council shall consider the request at a regular or special Town Council meeting, at which time the Property owner will have the opportunity to be heard. Upon conclusion of the hearing, the Town Council shall approve or deny the request for commencement of filing a petition in condemnation. If the request is denied, Town staff will seek to continue negotiations with the Property owner.

Section 4. Need, Necessity and Public Use. The Town Council finds and determines it is in the interest of the public's health, safety and welfare for it to acquire, as soon as possible, the Property. The Town further finds and determines there is a public need and necessity for obtaining possession of and acquiring the Property.

Section 5. Costs. The Town Manager shall be further authorized to incur reasonable costs associated with acquiring the Property, including, without limitation, the cost of title examination, title insurance, appraisal fee payments mandated by statute, normal closing costs, filing fees and charges, and all other related or incidental costs or expenses customarily associated with the quiet title, acquisition or condemnation of the Property.

Section 6. Approval and Amendment. Following approval of the final design of the Project, the Director of Castle Rock Water, or such director's designee, is authorized to approve and, if and when necessary, amend the legal descriptions of any Property to be acquired and the nature of the interests to be acquired, including the commencement date and duration of any temporary easement.

Section 7. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this Ordinance.

Section 8. Safety Clause. The Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this 15th day of August, 2023, by the Town Council of the Town of Castle Rock by a vote of __ for and __ against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2023, by the Town Council of the Town of Castle Rock by a vote of __ for and __ against.

ATTEST:

Lisa Anderson, Town Clerk

Approved as to form:

Michael J. Hyman, Town Attorney

TOWN OF CASTLE ROCK

Jason Gray, Mayor

Approved as to content:

Mark Marlowe., Director of Castle Rock Water