

RESOLUTION NO. 2016-116

A RESOLUTION APPROVING THE SECOND AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTION BETWEEN THE TOWN OF CASTLE ROCK AND BOX ELDER CREEK PROPERTIES, LLC AND AUTHORIZING THE EXERCISE OF THE OPTION TO CLOSE

WHEREAS, in 2012, the Stillwater/Box Elder project was selected by Town Council along with the WISE project as 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; and ,

WHEREAS, the parties previously entered an Option Agreement and Joint Escrow Instructions dated April 1, 2014 with respect to an option to purchase water rights and certain real property in Weld and Arapahoe counties ("Option Agreement"); and

WHEREAS, Town of Castle Rock and Box Elder Creek Properties, LLC have agreed to the terms of the set forth in the Option Agreement, in which the Town will have the option to purchase certain water rights and an 850-acre site for development as a municipal well field and related facilities; and

WHEREAS, on September 6, 2016, the parties approved the First Amendment postponing the price increase on the take-down option to December 1, 2016 to perform additional due diligence activities on other water rights; and

WHEREAS, on October 18, 2016, the option payment in the amount of \$300,000 was authorized and deposited into Escrow in accordance with the Option Agreement; and

WHEREAS, there is a pending water rights application upstream of the Box Elder well field the Town is proposing to purchase that is being dismissed in accordance with the Second Amendment to Option Agreement and Join Escrow Instructions ("Second Amendment"); and

WHEREAS, the Second Amendment provides for closing into escrow, with closing proceeds held until an order of dismissal of the water rights application is granted by the Water Court to protect the Town's interest in said well field.

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

Section 1. Approval. The Second Amendment to Option Agreement and Joint Escrow Instruction between the Town of Castle Rock and Box Elder Creek Properties, LLC, in the form attached as *Exhibit 1* is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Option Agreement by and on behalf of the Town of Castle Rock, Colorado.

Section 2. Exercise of Option. The Town Council hereby authorizes the exercise of the option to purchase the Box Elder Property, in accordance with the terms and conditions set forth in the Option Agreement, as amended, for the purchase price of \$8,313,173.

Section 3. Encumbrance and Authorization for Payment. In order to meet the Town's financial obligations, the Town Council authorizes the expenditure and payment from the 2016 appropriation account #211-4375-443.77-30 (WRCBOP) in an amount not to exceed \$7,713,173, which is the balance owed after the previous option payments totaling \$600,000 have been made.

PASSED, APPROVED AND ADOPTED this 15th day of November 2016, by the Town Council of the Town of Castle Rock, Colorado, on first and final reading by a vote of ____ for and ____ against.

ATTEST:

TOWN OF CASTLE ROCK

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