

**THIRD AMENDMENT TO CONTRACT FOR PURCHASE AND SALE
OF WATER ASSETS AND WATER LINE CAPACITY**

This Third Amendment to Contract for Purchase and Sale of Water Assets and Water Line Capacity (“Third Amendment”) is made _____, 2020 between **PV, LLC**, a Colorado limited liability company, (“**PV**”), 9033 E. Easter Place, Suite 112, Centennial, CO 80112, and the **TOWN OF CASTLE ROCK BY AND THROUGH THE TOWN OF CASTLE ROCK WATER ENTERPRISE** (“**Town**”), 100 N. Wilcox Street, Castle Rock, CO 80104.

WHEREAS, the Town and PV entered into the Contract for Purchase and Sale of Water Assets and Water Line Capacity (“Agreement”) dated February 4, 2020.

WHEREAS, the Town and PV entered into the First Amendment to Contract for Purchase and Sale of Water Assets and Water Line Capacity (“First Amendment”) dated February 7, 2020.

WHEREAS, the Town and PV entered into the Second Amendment to Contract for Purchase and Sale of Water Assets and Water Line Capacity (“Second Amendment”) dated March 6, 2020.

WHEREAS, the COVID-19 pandemic (“Pandemic”) has caused uncertainty as to whether the Town can or will close the transaction.

WHEREAS, the Town and PV seek to amend the Agreement to stay the parties’ deadlines to allow the Town to evaluate the impacts of the Pandemic.

WHEREAS, the Town and PV seek to amend the Agreement to provide contingencies regarding the easements for the Water Rights.

WHEREAS, the Town and PV seek to amend the Agreement to grant PV an option that will survive the termination of the Agreement to purchase the Water Line Agreement, as defined in Section 2.a. of the Agreement, if the Town terminates the Agreement.

WHEREAS, the Town and PV seek to enter a separate Tank Site Easement Option Agreement to grant PV an option to purchase the Tank Site Easement, as defined in Section 2.b. of the Agreement, if the Town terminates the Agreement.

WHEREAS, the Water Line Agreement and the Tank Site Easement are interconnected components of a single system that operate together such that if PV purchases one component PV must purchase the other component.

Now, therefore, the Town and PV agree as follows:

1. A new paragraph 18 shall be added follows:

18. 90-DAY STAY. The Town and PV agree to stay the Agreement for ninety (90) calendar days after the Mutual Execution Date of this Third Amendment (“90-Day Stay”).

During the 90-Day Stay, the Parties are not obligated to conduct any work related to this Agreement. No later than ten (10) calendar days after the end of the 90-Day Stay, PV shall provide written notice (“Notice re Easement Amendments”) to the Town of whether PV approves or rejects the additional easement conditions in paragraph 2 of this Third Amendment (“Easement Amendments”). If PV approves the Easement Amendments, then Easement Amendments in paragraph 2 shall apply without further action of the Parties. If PV rejects the Easement Amendments, then no later than ten (10) calendar days after receipt of the Notice re Easement Amendments, the Town shall provide PV with written notice of whether the Town terminates the Agreement or will proceed under paragraph 3 of this Third Amendment (“Response re Easement Amendments”). If the Town does not terminate the Agreement, the deadlines in paragraph 3 of this Third Amendment shall apply without further action of the Parties.

2. If PV accepts the Easement Amendments pursuant to paragraph 1 of this Third Amendment, the following shall apply.

A. Paragraphs 7 and 7.c. (but not other subparagraphs of paragraph 7) shall be amended and restated as follows:

7. **Inspection Period.** Except as to the Town as specified in paragraph 8, as amended, related to Amended Final Permits and in paragraph 9, as amended, related to Easements, the Town and PV shall each have ninety (90) calendar days after the date of the Notice re Easement Amendments (“Inspection Period”) to conduct any and all due diligence investigations and inspections either desires regarding the Water Assets and Water Line Capacity, at each party’s sole expense.

c. Except as to the Town as specified in paragraph 8, as amended, related to Amended Final Permits and in paragraph 9, as amended, related to Easements, either party may terminate this Agreement by giving written notice of termination to the other prior to the end of the Inspection Period if the Water Assets or Water Line Capacity are deemed, in that party’s sole discretion, unsatisfactory for any reason or for no reason. Upon termination, each party shall thereupon be released from all further obligations under this Agreement and the Earnest Money plus accrued interest shall be refunded to the Town. Failure of a party to make a timely objection prior to the end of the Inspection Period shall constitute an acceptance by such party, except for the Town as specified in paragraph 8, as amended, related to Amended Final Permits and in paragraph 9, as amended, related to Easements.

B. Paragraph 8 (but not the subparagraphs of paragraph 8) shall be amended and restated as follows.

8. **Contingent on Acceptable Amended Final Permits.** No later than thirty (30) calendar days after the date of the Notice re Easement Amendments, PV shall apply for and shall diligently pursue applications for Amended Final Permits. The

Town's obligation to close on the Water Assets is specifically contingent on PV obtaining Amended Final Permits from the Commission, each containing terms and conditions acceptable to the Town, in its sole discretion.

C. Paragraph 9 shall be amended and restated as follows:

9. **Easements, Title Commitment and Policy.**

a. **Conditions re Easements for Wells.**

i. **Well No. 31542.** PV owns an easement for the operation, maintenance, repair and replacement ("O&M") of Well No. 31542 and appurtenances as recorded in Weld County at Reception No. 1591374 on June 12, 1972 in the NE ¼ of Section 27, Township 1 North, Range 63 West of the 6th P. M on the south and east side of the Prospect Lateral. It does not currently own a deeded easement for the O&M of Well No. 31542 in the NE ¼ of Section 27, Township 1 North, Range 63 West of the 6th P. M. on the north and west side of Prospect Lateral. PV shall obtain new deeded easements from: 1) the owner of the land on which Well No. 31542 is located (south and east of Prospect Lateral), free and clear of all liens and encumbrances; and 2) the owner of land located north and west of Prospect Lateral for the O&M of Well No. 31542, free and clear of all liens and encumbrances ("31542 Well Easements"). The 31542 Well Easements shall: be in the form of easement conveyed from PV Water Holdings to PV LLC in Weld County at Reception No. 3687443 on April 16, 2010 ("Easement Form"); include a legal description of the easement; and depict the easement. The 31542 Well Easements shall together be a semicircle at least 150 feet from the existing well to Weld County Road 6. PV may, in its discretion, vacate the remaining portion of the existing easement, except the pipeline easement 1 rod wide across the NE ¼ of Section 27 and NW ¼ of Section 26.

ii. **Well No. 8533.** PV owns a deeded easement for the O&M of Well No. 8533 and appurtenances reserved in the Warranty Deed recorded in Weld County at Reception No. 2317022 on January 5, 1993 and conveyed to PV by a deed recorded at Reception No. 3514966 on November 1, 2007 ("Existing Easement"). PV shall obtain a new deeded easement from the owner of the land on which Well No. 8533 is located, free and clear of all liens and encumbrances ("8533 Well Easement"). The 8533 Well Easement shall be: in the Easement Form; include the legal description of the easement; and depict the easement. The 8533 Well Easement shall be a circle centered on the well such that the total easement has a

300 foot radius when combined with the easement recorded at Reception No. 3687443 on April 16, 2010 for Parcel A-2. PV may, in its discretion, vacate the remaining portion of the existing easement.

iii. **Notice.** Upon acquisition of the 31542 Well Easements and the 8353 Well Easement free and clear of all liens and encumbrances, PV shall provide written notice to the Town that it has met the conditions in subparagraphs 9.a.i and 9.a.ii and shall provide a copy of such easements recorded in Weld County along with any necessary subordination agreements with the landowners' lenders. Upon notice, the legal descriptions of the easements shall be automatically included in **EXHIBIT C-1**.

b. **Easements Title Commitment.** Within five (5) calendar days of the notice described in paragraph 9.a.iii., PV shall provide the Town with a title insurance commitment from a nationally recognized title insurance company for all recorded Easements associated with the Water Assets as described in **EXHIBIT C-1**, as amended by paragraph 9.a.iii, except those added pursuant to paragraph 9.c. below herein. For all Easements, the Town shall have twenty (20) calendar days from the date the last title insurance commitment for the Easements is provided to the Town ("Title Objection Deadline") to object to any title exceptions appearing in the title insurance commitments. In the event that Town fails to object in writing to any matters appearing in the title insurance commitments on or before the Title Objection Deadline, all title exceptions appearing therein, other than the standard preprinted title exceptions, shall be deemed "Permitted Exceptions" and title to the Easements shall be conveyed, subject to such Permitted Exceptions. If Town objects to any matters ("Defects") appearing in the title insurance commitments on or before the Title Objection Deadline, PV shall have the right, but not the obligation, to cure any Defects to which objection is made. If all Defects are not cured on or before the Closing Date, Town may elect to either: 1) waive such Defect, in which case the Defect shall become a "Permitted Exception;" or 2) terminate this Agreement, each party shall thereupon be released from all further obligations under this Agreement, and Earnest Money plus accrued interest shall be refunded to the Town. Promptly following the Closing, PV, at its sole cost and expense, shall cause to be delivered to Town Owner's Easements Title Insurance Policies insuring title. Said Easements Title Insurance Policies shall be in the minimum permissible insurable amount.

c. **Other Easements for Irrigation Pipelines and Facilities.** Within thirty (30) calendar days after the date of the Notice re Easement Amendments, PV shall provide the Town with a map depicting the location of existing infrastructure and deeded easements for the operation,

maintenance, repair and replacement of pipelines, irrigation infrastructure and appurtenances on the NE ¼ of Section 27, the NW¼ of Section 26, and the S ½ of Section 23, all in Township 1 North, Range 63 West of the 6th P.M. for irrigating the S ½ of Section 23. For these irrigation easements, the Town shall have until the Title Objection Deadline to terminate this Agreement. Upon termination, each party shall thereupon be released from all further obligations under this Agreement and Earnest Money plus accrued interest shall be refunded to the Town. Failure of a party to make a timely objection prior to the end of the Title Objection Deadline shall constitute an acceptance by the Town and the legal descriptions of the easements shall be automatically included in **EXHIBIT C-1**.

D. Paragraph 10 (but not its subparagraphs) shall be amended and restated as follows:

10. **Closing.** The closing of the transaction contemplated by this Agreement (“Closing”) shall take place on a mutually acceptable date within sixty (60) calendar days after all of the following have occurred: i) the completion of the contingencies related to Amended Final Permits described in paragraph 8, as amended; and ii) the completion of the Inspection Period described in paragraph 7, as amended; and iii) the completion of the Title Objection Deadline described in paragraphs 9.b. and 9.c. , as amended. Closing shall occur 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:

E. Revised Exhibit C (labeled C-1) is attached hereto.

3. If PV rejects the Easement Amendments and the Town does not terminate the Agreement pursuant to paragraph 1 of this Third Amendment, the following shall apply.

A. Paragraphs 7 and 7.c. (but not other subparagraphs of paragraph 7) shall be amended and restated as follows:

7. **Inspection Period.** Except as to the Town as specified in paragraph 8, as amended, related to Amended Final Permits and in paragraph 9, as amended, related to Easements, Town and PV shall each have ninety (90) calendar days after the date of the Response re Easement Amendments (“Inspection Period”) to conduct any and all due diligence investigations and inspections either desires regarding the Water Assets and Water Line Capacity, at each party’s sole expense.

c. Except as to the Town as specified in paragraph 8, as amended, related to Amended Final Permits and in paragraph 9, as amended, related to Easements, either party may terminate this Agreement by giving written notice of termination to the other prior to the end of the Inspection Period if the Water Assets or Water Line Capacity are deemed, in that party’s sole discretion, unsatisfactory for any reason or for no reason. Upon termination, each party shall thereupon be released from all further

obligations under this Agreement and the Earnest Money plus accrued interest shall be refunded to the Town. Failure of a party to make a timely objection prior to the end of the Inspection Period shall constitute an acceptance by such party, except for the Town as specified in paragraph 8 related to Amended Final Permits and in paragraph 9 related to Easements.

B. Paragraph 8 (but not the subparagraphs of paragraph 8) shall be amended and restated as follows.

8. **Contingent on Acceptable Amended Final Permits.** No later than thirty (30) calendar days after the date of the Response re Easement Amendments, PV shall apply for and shall diligently pursue applications for Amended Final Permits. The Town's obligation to close on the Water Assets is specifically contingent on PV obtaining Amended Final Permits from the Commission, each containing terms and conditions acceptable to the Town, in its sole discretion.

C. Paragraph 9. and 9.a (but not the other subparagraphs of paragraph 9) shall be amended and restated as follows.

9. **Easements Title Commitment and Policy.**

a. **Easements Title Commitment.** No later than thirty (30) calendar days after the date of the Response re Easement Amendments, PV shall provide Town with a title insurance commitment for all recorded Easements identified in **EXHIBIT C-2** associated with the Water Assets by a nationally recognized title insurance company. The Town shall have a period of twenty (20) calendar days following receipt of the title insurance commitment ("Title Objection Deadline") to object to any title exceptions appearing in the title insurance commitment. In the event that Town fails to object in writing to any matters appearing in the title insurance commitment on or before the Title Objection Deadline, all title exceptions appearing therein, other than the standard preprinted title exceptions, shall be deemed "Permitted Exceptions" and title to the Easements shall be conveyed, subject to such Permitted Exceptions. If Town objects to any matters ("Defects") appearing in the title insurance commitment on or before the Title Object Deadline, PV shall have the right, but not the obligation, to cure any Defects to which objection is made. If all Defects are not cured on or before the Closing Date, Town may elect to either: 1) waive such Defect, in which case the Defect shall become a "Permitted Exception;" or 2) terminate this Agreement, each party shall thereupon be released from all further obligations under this Agreement, and Earnest Money plus accrued interest shall be refunded to the Town.

D. Paragraph 10 (but not the subparagraphs of paragraph 10) shall be amended and restated as follows:

10. **Closing.** The closing of the transaction contemplated by this Agreement (“Closing”) shall take place on a mutually acceptable date within sixty (60) calendar days after all of the following have occurred: i) the completion of the contingencies related to Amended Final Permits described in paragraph 8, as amended; and ii) the completion of the Investigation Period described in paragraph 7, as amended; and iii) the completion of the Title Objection Deadline described in paragraphs 9.a, as amended. Closing shall occur 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:

E. Revised Exhibit C (labeled C-2) is attached hereto.

4. **WATER LINE AGREEMENT OPTION.** If Town terminates the Agreement under any provision allowing termination, PV shall have the option for thirty (30) days following the date of the Town’s notice of termination to purchase the Water Line Agreement, as defined in section 2.a of the Agreement (“Water Line Agreement Option”), exercisable by written notice to Town in conformance with paragraph 17.b of the Agreement.

A. The consideration for the Water Line Agreement shall be two million two hundred thousand dollars (\$2,200,000.00) and the assumption of the Town’s duties under the Water Line Agreement, including but not limited to the requirement to pay sixty-three thousand ninety-eight dollars and fifty eight cents (\$63,098.58) annually to Keenesburg beginning on May 25, 2021 and continuing until the final payment on May 25, 2032. If Town approves the proposed Tank Site Easement Option Agreement, PV may only exercise the Water Line Agreement Option if it simultaneously exercises the Tank Site Easement Option.

B. Closing on the Water Line Agreement shall occur concurrently with the closing on the Tank Site Easement within thirty (30) days after the PV’s written notice to exercise the Water Line Agreement Option and the Tank Site Easement Option at a mutually acceptable time and place. Closing shall occur even if PV has not completed the inspection period described in paragraph 7.c of the Agreement. At Closing, PV and the Town shall perform in conformance with paragraphs 10 b, c, d, and i, and PV shall pay the consideration for the Water Line Agreement in immediately available funds.

C. PV’s consideration for this Water Line Agreement Option was PV’s willingness to enter into this Third Amendment to address COVID-19 related-issues. The parties agree that, without this Water Line Agreement Option, PV may have refused to sign the Third Amendment.

D. Only this paragraph 4 of the Third Amendment shall survive the Town’s termination of the Agreement.

5. All other provisions of the Agreement, the First Amendment and the Second Amendment shall remain in full force and effect. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment and this Third Amendment, the provisions of this Third Amendment shall control.

SELLER:

PV, LLC

By: Pioneer Holdco, LLC, a Delaware limited liability company, its sole member

By: _____
Joel H. Farkas, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

Subscribed and sworn to before me by Joel H. Farkas, Manager of Pioneer Holdco, LLC, member of PV, LLC this _____ day of _____, 2020.

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

By: _____
Jason Gray, Mayor

Date: _____, 2020

ATTEST:

By: _____
Lisa Anderson, Town Clerk

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark W. Marlowe, Director
Castle Rock Water

EXHIBIT C-1

EASEMENTS

Castle Rock, its successors and assigns, shall have the right to use in common with PV, its successors and assigns, the following easements:

Well 8533-FP

To be determined per paragraph 9.a of the Third Amendment on Lot A, Recorded Exemption No. 1477-29-3-RE-1442

Well 8533-FP, Well 8534-FP and Well 8535-FP

Those easements located in West ½ of Section 29, Township 1 North, Range 63 West, 6th P.M., Weld County, described in that Easement Deed recorded at Reception No. 3541694 on March 14, 2008 and re-recorded to correct a legal description at Reception No. 3687443 on April 16, 2010, Weld County Clerk and Recorder.

Well 31542-FP (former Permit No. 5945-F)

The easement 1 rod wide across the NE ¼ of Section 27 and NW ¼ of Section 26, Township 1 North, Range 63 West, 6th P.M., recorded at Reception No. 1591374 on June 12, 1972, Weld County Clerk and Recorder.

To be determined per paragraph 9.a of the Third Amendment in the NE ¼ of Section 27, Township 1 North, Range 63 West, 6th P.M.

To be determined per paragraph 9.c of the Third Amendment in the NW ¼ of Section 27 and the South ½ of Section 23 all in Township 1 North, Range 63 West, 6th P.M. used for irrigation of the South ½ of Section 23.

EXHIBIT C-2
EASEMENTS

Castle Rock, its successors and assigns, shall have the right to use in common with PV, its successors and assigns, the following easements:

Well 8533-FP

The easements reserved in the Warranty Deed recorded in Weld County at Reception No. 2317022 on January 5, 1993 and conveyed to PV by a deed recorded at Reception No. 3514966 on November 1, 2007, Weld County Clerk and Recorder.

Well 8533-FP, Well 8534-FP and Well 8535-FP

Those easements located in West ½ of Section 29, Township 1 North, Range 63 West, 6th P.M., Weld County, described in that Easement Deed recorded at Reception No. 3541694 on March 14, 2008 and re-recorded to correct a legal description at Reception No. 3687443 on April 16, 2010, Weld County Clerk and Recorder.

Well 31542-FP (former Permit No. 5945-F)

The easements described in that deed recorded at Reception No. 1591374 on June 12, 1972, Weld County Clerk and Recorder.