



# Town of Castle Rock

## Agenda Memorandum

**Agenda Date:** 5/19/2020

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**Item #:** 15. **File #:** TMP 2020-306

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**To:** Honorable Mayor and Members of Town Council

**From:** Mark Marlowe, P.E., Director Castle Rock Water

### **Resolution Approving the Third Amendment for Purchase and Sale of Water Assets and Water Line Capacity**

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#### **Executive Summary**

Castle Rock Water is seeking Town Council approval for the Third Amendment to the Purchase and Sale of Water Assets and Water Line Capacity Agreement (Agreement) by Resolution (**see Attachment A**). This Agreement was originally approved by Resolution No. 2020-014 at the February 4, 2020 Town Council meeting. The First Amendment (made on February 7, 2020, **see Attachment C**) changed the name of the title company to be used for the transfer of the earnest money and the Second Amendment (made on March 6, 2020, **see Attachment D**) changed the Title Objection Deadline date. These amendments were non-substantive in content and were not brought to Council.

The main purpose of this Third Amendment is to effectuate a 90-day suspension of the diligence activities associated with the Agreement due to the uncertainty of the COVID-19 pandemic. This 90-day stay will allow the Town to evaluate economic conditions and determine whether to proceed with the purchase of additional Lost Creek water rights. The 90-day stay would begin on the mutual execution date of the amendment. Additionally, this amendment provides that:

- The seller apply for and obtain acceptable amended final well permits from the Colorado Groundwater Commission;
- The seller provides certain easements for the wells and appurtenant structures to the satisfaction of the Town; and
- The seller provides an acceptable title insurance commitment for the recorded easements and water assets.

An additional provision gives the seller the option to purchase the Town's capacity in the Keenesburg Pipeline if the Town decides not to proceed with the purchase of the Lost Creek water rights contemplated in the Agreement. This pipeline capacity was originally acquired from PV, LLC as part of a previous water transaction in 2017. This option would also include the tank site easement located near the Town of Keenesburg, Colorado. Since the tank site easement is a real property

interest, a separate, but connected agreement (Tank Site Easement Option Agreement) is also included as part of this Council consideration, and by code, must be approved by ordinance. Staff have determined that regardless of whether additional Lost Creek water rights are purchased, the pipeline capacity in the Keenesburg Pipeline and the tank site easement will not be used for the Town's Box Elder Creek renewable water project so sale of these assets for what the Town originally paid, \$2,232,500 is beneficial. The Third Amendment and the Tank Site Easement Option Agreement specify that PV, LLC must purchase both items if they want to exercise either option.

For further reference, copies of the February 4, 2020 Town Council memorandum and the first and second amendments to the agreement are being included with this memorandum as **Attachment B**.

### **History of Past Town Council, Boards & Commissions, or Other Discussions**

In 2011, staff was directed by Town Council to evaluate other potential water supply projects (Alternative Source of Water Supply Projects) to ensure that Castle Rock fully understood the options available in addition to WISE. The Town developed a Request for Proposals (RFP) process that could accomplish that in a public, transparent process.

Through various public meetings in 2012, Town Council considered the risks, benefits, and costs of all of the proposals submitted including a hybrid option that couples the WISE project with one of the other proposals. As a result of these meetings, Town Council directed staff to focus efforts on a scaled back (hybrid) renewable water project (2,000 - 4,000 acre-foot solution) and explore in more detail, the hybrid option. Staff has been providing Town Council regular updates to the progress of the hybrid water supply option.

On April 1, 2014, Town Council approved the 5-1/2 year option agreement for the Box Elder Creek Well Field and Farm. The Town paid \$350,000 to date to extend the option to October 1, 2016.

On August 19, 2014, Town Council approved the Rothe Water Rights Purchase for up to 770 AF of water rights to be used as augmentation water for the Box Elder Creek Well Field. This purchase closed on September 17, 2014 for a total cost of \$5,460,000.

On October 1, 2014, the Town paid its second option payment for the Box Elder Well Field of \$100,000. This payment extended the due diligence period to October 1, 2015.

On October 22, 2014, staff provided the Utilities Commission with an update of the Alternate Source of Supply Projects.

On December 16, 2014, staff provided an update to Town Council on the Alternate Source of Water Supply Projects.

On April 21, 2015, staff provided an update to Town Council on the Alternate Source of Water Supply Projects.

On June 24, 2015, staff provided the Utilities Commission with the details of the surface use lease agreement for the Rothe Property. Utilities Commission recommended moving forward and finalizing

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the lease agreement with the adjacent landowner, Sublette, Inc.

On August 18, 2015, Town Council approved a Surface Use Agreement with Sublette, Inc. to use the Rothe Property for recreation activities, while managing the property on the Town's behalf.

On December 9, 2015, staff updated the Utilities Commission on the status of the WISE and Box Elder projects, including the 1041 Permit process being considered by Weld County and associated with the Box Elder project.

On January 5, 2016, staff provided an update to Town Council on the Alternate Source of Supply Projects.

On May 25, 2016, the Utilities Commission unanimously recommended that Town Council enter into a Purchase and Sale Agreement with PV, LLC.

On July 27, 2016, the Utilities Commission unanimously recommended that Council enter into a Purchase and Sale Agreement with PV, LLC and Pioneer Metropolitan District No. 3/Town of Keenesburg for the purchase of water rights and pipeline capacity as both agreements were contractually connected.

On August 16, 2016, Town Council approved the Purchase and Sale Agreement with PV, LLC for the purchase of up to 1,100 AF of Lost Creek water and also approved the Contract for Purchase and Sale of Water Line Capacity in the Keenesburg Well Water Transmission Line.

On September 6, 2016, Town Council approved an amendment to the Box Elder Option Agreement extending the closing option date from October 1 to December 1.

On October 18, 2016 Town Council approved the \$300,000 payment, the next installment of the option on the Box Elder well field.

On October 26, 2016 the Utilities Commission recommended Town Council approve the closing on the Box Elder well field prior to December 1, 2016.

On November 15, 2016 Town Council approved the closing on the Box Elder well field property.

On March 31, 2017, the Town closed on 1,035.8 AF of Lost Creek water from PV, LLC.

Castle Rock Water staff presented this agreement to the Castle Rock Water Commission at their meeting held on January 22, 2020, and the Castle Rock Water Commission voted unanimously to recommend approval of the resolution by Town Council.

On February 4, 2020, Town Council approved the Purchase and Sale Agreement with PV, LLC for the purchase of 455.7 AF of Lost Creek Water and the transfer of the Town's interest in the Keenesburg Pipeline and Tank Site Easement.

**Budget Impact**

If the Town were to terminate the Agreement without purchasing the water assets from PV, LLC, and PV, LLC exercises the Water Line Agreement Option and the Tank Site Easement Option, Castle Rock Water would realize a payment of \$2,232,500 that would be credited to the Water Resources Capital Asset Disposals/Proceed-Sale of Assets revenue account 211-4375-392.10-00 <WRKP>.

If the purchase and sale agreement proceeds as originally intended, the Town would pay \$3,750,000 for the purchase of 455.7 AF of PV, LLC. This would be paid from the Alternative Source of Supply account 211-4375-443.77-30 <WRPVWR>, which currently has a balance of \$4,277,610.

Additionally, upon closing, the Town must pay our water broker (Stillwater Resources) a brokerage fee of \$187,500 in accordance with our Water Brokerage Agreement. This fee would also be drawn from account 211-4375-443.77-30.

### **Staff Recommendation**

Staff recommends that Town Council approve the Third Amendment for Purchase and Sale of Water Assets and Water Line Capacity by Resolution. Staff also recommends that Town Council approve the Ordinance approving the Tank Site Easement Option Agreement on First Reading.

### **Proposed Motion**

*"I move to approve the Resolution as introduced by title."*

### **Attachments**

- Attachment A: Resolution
- Exhibit A-1: Third Amendment for Purchase and Sale of Water Assets and Water Line Capacity
- Attachment B: Agenda Memorandum from February 4, 2020 Town Council Meeting for Resolution 2020-014
- Attachment C: Fully Executed First Amendment for Purchase and Sale of Water Assets and Water Line Capacity
- Attachment D: Fully Executed Second Amendment for Purchase and Sale of Water Assets and Water Line Capacity