

**FIRST AMENDMENT TO CONSTRUCTION CONTRACT
BETWEEN THE TOWN OF CASTLE ROCK AND
HYDRO RESOURCES – ROCKY MOUNTAIN, INC.
(Pumping Equipment for Wells CR-232 and CR-233)**

THIS FIRST AMENDMENT is dated as of 17th day of November, 2020, by and between the Town of Castle Rock, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”) and Hydro Resources – Rocky Mountain, Inc., a Delaware corporation (“Contractor”), 13027 County Road, Unit C, Fort Lupton, Colorado 80621.

RECITALS:

A. The Town and the Contractor are parties to a Construction Contract dated March 3, 2020 (the “Contract”) whereby Contractor will supply equipment and services for two new Town groundwater wells designated CR-232 and CR-233 on the terms and conditions specified in the Contract Documents. The Town has not issued a Notice to Proceed under the Contract.

B. After execution of the Contract, the Town has identified the need to address certain additional matters concerning the Contractor’s responsibilities under the Contract Documents and to clarify certain other provisions of the Contract.

C. The Contractor has reviewed the Town’s request and has determined the suggested modifications do not materially increase either the Scope of Work or the Contract Price and are reasonable and necessary due to the novel aspects of some elements of the Work.

D. Consequently, the Town and the Contractor agree that the Contract Documents shall be modified as provided in this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the Town and the Contractor agree as follows:

Section 1. Amendment. The section of the Contract entitled “Scope of Work” is amended by the addition of the following addendum:

PILOT TESTING ADDENDUM

1. **Scope of Pilot Testing.** The Aquifer Storage and Recovery Downhole Hydraulic Generation Valve (the “Valve”) and the Siemens GH180 600-Horsepower Variable Frequency Drive (the “Drive”) will be tested through the installation of the Valve and the Drive in Town wells CR-232 and CR-233 (the “Wells”). Such testing shall determine whether the Valve and the Drive are operating in accordance with the specifications agreed to by the Town and the Contractor. (See *Exhibit 1* – the “Specifications”) Pilot testing of the Valve and Drive will begin upon their installation in the Wells and will be ongoing as water supply is made available for Aquifer Storage and Recovery (“ASR”). Pilot testing will include the testing needed for the Environmental Protection Agency (“EPA”) ASR Permit, and will include the general goal of determining the applicability of the Valve and

Drive to the broader use with the Town's well field and ASR long-term project goals. A more detailed Scope of Work for testing will be developed by the Town and the Contractor within three months following the effective date of this First Amendment.

2. **Maintenance and Operation.** The Contractor, at its sole cost and expense, shall provide any and all maintenance needed for the Valve and the Drive system during the term of the Contract. In the event, that the Valve and the Drive should malfunction and cause damage to the pump, motor, valve and/or controls of the Wells, the Contractor will replace and install new equipment of the same caliber at the Contractor's sole cost and expense. If a failure should occur due to the malfunction of the Valve and the Drive, the Contractor will do what is reasonably necessary to restore the Wells to full operating condition, including, but not limited to, the installation of temporary pumping equipment: (i) within five (5) working days of the initial failure during the Town's high water demand season and (ii) within three (3) weeks of initial failure during the Town's lower water demand season. An extension of time may be requested by the Contractor and agreed to by the Town based upon the lack of availability of equipment on a case-by-case basis; provided, however, that the Contractor acknowledges and agrees that time is of the essence during the town's high water demand season.
3. **Technical Support and Troubleshooting.** The Contractor will provide the Town with all necessary technical support and troubleshooting for the operations of all equipment during the pilot testing period. This will include all downhole pumping equipment, drive and coding needed to complete the operations of the Valve and the Drive.
4. **Data Sharing and Analysis.** The Town and the Contractor agree to share all data collected from the pilot testing and to complete an ASR and power generation analysis upon its completion.
5. **Performance Requirement.** In order for the Valve to be determined functional, the Valve will need to be able to complete the following tasks in accordance with the Specifications:
 - a. Open and close properly;
 - b. Maintain the appropriate downhole pressure;
 - c. Maintain the correct recharge rate;
 - d. Allow the correct pumping rate to pass through the valve; and
 - e. Generate measurable and expected power for the given flow rates.

The measured friction losses from the Valve will be compared to the calculated (modeled) friction losses and will be deemed successful if at or above 75%.

In the event that the Valve does not function properly or either Party terminates the Contract, the Contractor, at its sole cost and expense, will complete the following work:

- a. Remove the downhole equipment.
- b. Complete a video of each Well to insure that damage did not occur to the well infrastructure.

- c. Perform a pumping test on existing pumping equipment to determine if functionality is within 10% of the design range.
- d. Replace the pump and motor if either is damaged or malfunctioning.
- e. Replace the Valve with agreed-upon functioning ASR equipment.
- f. Install the replaced and/or existing equipment.
- g. Complete a startup to determine if new equipment is functioning as designed.

A pumping test will be used to determine the functionality of the pump and motor and the results will be compared to the pump curve. If the results, are within 10% of the original pumping design, the equipment will be deemed functional. The Parties shall turn over all data produced up to the date of termination in a manner agreed upon in writing.

- 6. **Contractor Reservation.** The Town acknowledges that the Contractor retains all right, title, and ownership in and to the Valve and the Drive (including any images, icons, graphics, animations, video, audio, music and text incorporated into the Valve and the Drive), as well as all software associated with the Valve and the Drive throughout the pilot testing period. Accordingly, during such period, the Town is granted an exclusive license to test and evaluate the Valve and the Drive, which shall remain in place and continue in operation under the Contractor's specifications. Upon expiration or termination of this Agreement, any and all data sharing between the Town and the Contractor shall cease unless otherwise agreed upon in writing by the Parties.
- 7. **Acceptance.** Upon the completion of the pilot testing, if it is determined that the Valve and the Drive have operated according to the Specifications and are fully functional, the Valve, the Drive, and all software and appurtenances required to operate and maintain the Valve and the Drive will be accepted by the Town and become Town property. All operation and maintenance costs incurred after acceptance will be the responsibility of the Town.
- 8. **Confidentiality of Proprietary Data.** The Town acknowledges that the Valve and the Drive, as well as the design, functionalities, and performance characteristics of the Valve and the Drive, the data obtained as a result of the Town's evaluation of the Valve and the Drive, and any other verbal or written information supplied by the Contractor to the Town concerning the Valve and the Drive during the pilot testing period (collectively, the "Valve and Drive Information"), are the proprietary property of the Contractor. The Town agrees to maintain confidentiality of the Valve and the Drive and the Valve and Drive Information during the term of this Contract in the same manner that it maintains its own confidential information (but with no less reasonable degree of care), and specifically shall:
 - a. Not share the Valve or the Drive with, or disclose the Valve and Drive Information to any third party without the proper written consent of the Contractor; or
 - b. Not copy, modify, adapt, merge, reverse engineer, reverse compile, disassemble, sell, rent or lease, loan or sublicense the Valve and Drive or the Valve and Drive Information in whole or part.

The protection on dissemination of the confidential information imposed by this Agreement shall not apply to the Town's good faith determination that disclosure is required under the provisions of the Colorado Open Records Law, §24-72-201, *et seq.* C.R.S., or compelled by the order of a court of competent jurisdiction.

Section 2. Amendment. The section of the Contract entitled "Completion of Work" is amended to read as follows:

The Contractor must begin work covered by the Contract within 30 calendar days, and must complete work within three (3) years from and including the date of Notice to Proceed, according to the General Conditions.

In addition to the provisions set forth in the General Conditions concerning termination, this Contract shall terminate on December 31 of the then current fiscal year in the event funds to support payment under the Contract are not appropriated for the ensuing calendar year ("Event of Non-Appropriation"). The Town's only obligation in the event of termination for an Event of Non-Appropriation shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 3. Contract Price. Nothing in this First Amendment shall result in an adjustment to the Contract Price as stated in the Contract and in Town Council Resolution No. 2019-130 approving the Contract.

Section 4. Ratification. Except to the extent expressly modified by this First Amendment, the Contract is and shall remain in full force and effect. To the extent of any inconsistency between this First Amendment and the Contract, the terms and conditions of this First Amendment shall control.

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Executed as of this 17th day of November, 2020

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

Michael J. Hyman, Town Attorney

Mark Marlowe, Director Castle Rock Water

CONTRACTOR:

HYDRO RESOURCES – ROCKY MOUNTAIN, INC.

By: _____
Title: _____

(Insert either the Corporate or Partnership Certificate, as appropriate)

Executed as of this 17th day of November, 2020

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APPROVED AS TO CONTENT

Michael J. Hyman, Town Attorney

Mark Marlowe, Director Castle Rock Water

CONTRACTOR:

HYDRO RESOURCES – ROCKY MOUNTAIN, INC.

By: 
Title: Regional Manager

(Insert either the Corporate or Partnership Certificate, as appropriate)