

ORDINANCE NO. 2020-006

**AN ORDINANCE APPROVING A TANK SITE EASEMENT OPTION
AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK, COLORADO AND PV,
LLC**

WHEREAS, in conjunction with the Town's acquisition of Lost Creek water rights for the Town's Box Elder Creek long term renewable water project, the Town acquired an easement for a tank site as well as water line capacity in a pipeline near Keenesburg, Colorado,

WHEREAS, the Town has determined that it will not use the tank site or the water line capacity for development of the Box Elder Creek project,

WHEREAS, the Town and PV, LLC entered into a Contract for Purchase and Sale of Water Assets (additional Lost Creek water rights) to the Town and Water Line Capacity to PV, LLC ("Agreement") dated February 4, 2020,

WHEREAS, the Town and PV, LLC are entering into the Third Amendment to the Contract for Purchase and Sale of Water Assets and Water Line Capacity ("Third Amendment") dated May 19, 2020, to address the changes of circumstance due to the 2020 COVID-19 pandemic,

WHEREAS, the Town is evaluating whether to proceed with the purchase of the additional Lost Creek water rights contemplated in the Contract, but PV, LLC wants the option to continue with the purchase of the Water Line Capacity and tank site easement,

WHEREAS, the Third Amendment identifies the purchase price and conditions of PV, LLC's purchase of the Water Line Capacity, and the Tank Site Easement Option Agreement identifies the purchase price and conditions of PV, LLC's purchase of the Tank Site Easement,

WHEREAS, the Third Amendment and the Tank Site Easement Option Agreement make it clear that PV, LLC cannot purchase the Water Line Capacity without also purchasing the Tank Site Easement or the Tank Site Easement without also purchasing the Water Line Capacity,

WHEREAS, pursuant to 14.02.040.B of the Castle Rock Municipal Code any property which is not (i) within Town limits, (ii) contiguous with the Town boundary, and (iii) currently utilized or planned for use in providing municipal services may be conveyed by ordinance.

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

Section 1. Approval. Subject to the satisfaction of the conditions prescribed in the Tank Site Easement Option Agreement, in the form attached as *Exhibit 1* sale of the Tank Site Easement is hereby approved. The Mayor and other proper Town officials are authorized to execute the Agreement by and on behalf of the Town of Castle Rock, Colorado.

Section 2. 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 3. 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.

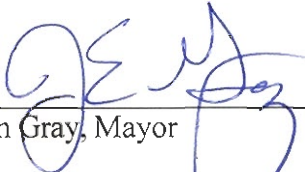
APPROVED ON FIRST READING this 19th day of May, 2020 by a vote of 7 for and 0 against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 2nd day of June, 2020, by the Town Council of the Town of Castle Rock by a vote of _____ for and ___ against.

ATTEST:

TOWN OF CASTLE ROCK

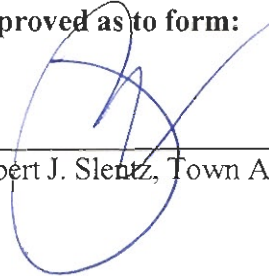
Lisa Anderson, Town Clerk



Jason Gray, Mayor

Approved as to form:

Approved as to content:



Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water

TANK SITE EASEMENT OPTION AGREEMENT

This TANK SITE EASEMENT OPTION AGREEMENT is made June 2, 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 Town and PV entered into the Third Amendment to Contract for Purchase and Sale of Water Assets and Water Line Capacity (“**Third Amendment**”) dated May __, 2020, to address the changes of circumstance due to the 2020 COVID-19 pandemic.

WHEREAS, section 4 of the Third Amendment granted an option for PV to purchase the Water Line Agreement, as defined in section 2.a of the Agreement (the “**Water Line Agreement Option**”).

WHEREAS, the Water Line Agreement and the Tank Site Easement, as defined in Section 2.b of the Agreement, 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. 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 Tank Site Easement, as defined in section 2.b of the Agreement (“**Tank Site Easement Option**”), exercisable by written notice to Town.

A. The purchase price for the Tank Site Easement shall be thirty-two thousand five hundred dollars (\$32,500.00). PV may only exercise the Tank Site Easement Option if it simultaneously exercises the Water Line Agreement Option.

B. Closing on the Tank Site Easement shall occur concurrently with the closing on the Water Line Agreement within thirty (30) days after the PV’s written notice to exercise the Tank Site Easement Option and the Water Line Agreement 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 paragraph 10 b, c, d, and i of the Agreement, and PV shall pay the purchase price for the Tank Site Easement in immediately available funds.

C. PV's consideration for this Tank Site Easement Option Agreement is PV's willingness to enter into the Third Amendment. The parties agree that, without this Tank Site Easement Option Agreement, PV may have refused to sign the Third Amendment.

D. Any notice shall be effective when received by the party or parties. All notices shall be by either: a) certified mail, return receipt requested; b) personal delivery; or c) electronic mail to the parties and the parties' representatives at the following addresses or at such other address as the parties may provide in writing:

To Seller:

PV, LLC
Attn: Joel Farkas
9033 E. Easter Place, Suite 112
Centennial, CO 80112
joelharkas@gmail.com

With a copy to:

Matthew Poznanovic
Petrock Fendel Poznanovic, P.C.
700 17th Street, Suite 1800
Denver, CO 80202
matt@petrockfendel.com

To Buyer:

Town of Castle Rock
c/o Director, Castle Rock Water
175 Kellogg Court
Castle Rock, CO 80109
MMarlowe@crgov.com

With copies to:

Town of Castle Rock
Attn: Town Attorney
100 Wilcox Street
Castle Rock, CO 80104
BSlantz@crgov.com

Lyons Gaddis
Attn: Madoline Wallace-Gross
363 Centennial Parkway, Suite 110
Louisville, CO 80027
mwg@lyonsgaddis.com

PV, LLC

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

By:

[Handwritten Signature]

Joe H. Farkas, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

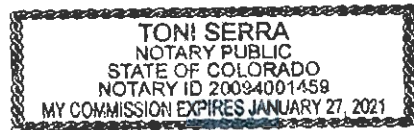
Subscribed and sworn to before me by Joel H. Farkas, Manager of Pioneer Holdco, LLC, member of PV, LLC this 15th day of May, 2020.

Witness my hand and official seal.

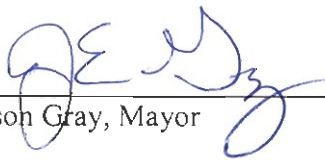
[Handwritten Signature]

Notary Public

My commission expires: 01-27-2021



THE TOWN OF CASTLE ROCK BY
AND THROUGH THE TOWN OF
CASTLE ROCK WATER ENTERPRISE

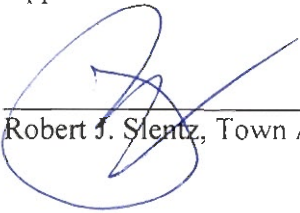
By:  _____
Jason Gray, Mayor

Date: _____, 2020

ATTEST:

By: _____
Lisa Anderson, Town Clerk

Approved as to form:



Robert J. Slentz, Town Attorney

Approved as to content:

Mark W. Marlowe, Director
Castle Rock Water