

**WATER LEASE AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK AND THE TOWN OF WIGGINS**

THIS WATER LEASE AGREEMENT (“Agreement”) is entered into this _____, by and between the Town of Castle Rock, a home rule municipal corporation by and through the Town of Castle Rock Water Enterprise (“Castle Rock”), as lessor, and the Town of Wiggins (“Wiggins”), as lessee. Castle Rock and Wiggins are collectively referred to as “the Parties.”

RECITALS

WHEREAS, Castle Rock owns 60.4 percent of the first 1,275 acre-feet (a.f.), up to 770 a.f. annually, of recharge credits decreed in Case No. 89CW27, District Court, Water Division No. 1, (“Rothe Recharge Credits”).

WHEREAS, pursuant to Case No. 89CW27, Castle Rock and other owners operate the Sublette Recharge Project (“Project”), which diverts water from the South Platte River at the Riverside Canal into recharge ponds that accrete water to the South Platte River to generate recharge credits.

WHEREAS, recharge credits from the Project are used by Castle Rock and the other owners to augment depletions from alluvial wells, pursuant to Case No. 89CW27.

WHEREAS, Case No. 89CW27 authorizes the lease of excess recharge credits to third parties for use in judicially approved plans for augmentation.

WHEREAS, Wiggins desires to lease excess Rothe Recharge Credits for augmentation of Wiggins’ tributary well pumping pursuant to Case No. 11CW131 and Castle Rock desires to lease such excess Rothe Recharge Credits to Wiggins.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Castle Rock and Wiggins agree as follows:

1. **Lease of Water.** Castle Rock hereby leases to Wiggins the following excess Rothe Recharge Credits: one hundred and eighty (180) acre-feet (a.f.) in the first year; three hundred (300) a.f. in the second year; and three hundred (300) a.f. in the third year (“Leased Water”). Regardless of the date of mutual execution of this Agreement, for the purposes of this Agreement, the first year shall begin on the date that the condition precedent described in paragraph 2 is fulfilled (“Fulfillment Date”). The second year and third year shall begin on the second and third anniversaries of the Fulfillment Date.

2. **Condition Precedent to Payment and Water Delivery.** Wiggins’ payment obligations in paragraph 3 and Castle Rock’s delivery obligations in paragraph 5 are contingent on the Leased Water being accepted as an augmentation source in Wiggins’ plan for augmentation in Case No. 11CW131. Within thirty (30) days of the mutual execution of this Agreement, Wiggins shall file notice pursuant to paragraph 19.1 of Case No. 11CW131 to include the Leased Water as an augmentation source.

a. If no objection is filed to the notice within the thirty-five (35) day period, then this condition precedent shall be deemed fulfilled.

b. If an objection is filed to the notice within the thirty-five (35) day period, then Wiggins shall diligently attempt to resolve the objections. Wiggins shall obtain approval from Castle Rock of any terms and conditions to be placed on use of the Leased Water for augmentation. If the objection is resolved in a manner acceptable to both Wiggins and Castle Rock, then this condition precedent shall be deemed fulfilled.

c. If Wiggins does not obtain approval of the Leased Water as an augmentation source with terms and conditions acceptable to Castle Rock or within eighteen (18) months of the mutual execution of this Agreement, then this Agreement shall automatically terminate.

3. **Lease Price.** Wiggins shall pay to Castle Rock: nine thousand dollars (\$9,000) in the first year, which is fifty dollars (\$50) per a.f. of Leased Water; and thirty thousand dollars (\$30,000) in the second and in the third years, which is one hundred dollars (\$100) per a.f. per year. Wiggins' lease payment for the first year shall be due thirty (30) days after the Fulfillment Date. Wiggins' lease payment for the second and third years shall be due on the second and third anniversaries of the Fulfillment Date.

4. **Term.** This Agreement shall terminate automatically on December 31, 2020, unless specifically renewed in writing by both parties pursuant to the terms and conditions contained in such renewal.

5. **No Warranties or Guarantees.** Subject to sub-paragraphs 5.a. through 5.c. below, Castle Rock shall make available to Wiggins the Leased Water.

a. Within seven (7) days of the date of this Agreement and within seven (7) days of the anniversary of the Fulfillment Date, Castle Rock shall provide to Wiggins a written estimate of the monthly volumes of Leased Water available for use by Wiggins during the subsequent twelve (12) months.

b. Castle Rock will make the Leased Water available to Wiggins on an "as is" basis. The decreed uses of the Leased Water include augmentation as set forth in Case No. 89CW27. It shall be the responsibility of Wiggins to obtain any additional approvals necessary to use the Leased Water for Wiggins' intended purposes, including but not limited to the approvals by the Colorado Division of Water Resources and the District Court, Water Division No. 1. Castle Rock shall cooperate with Wiggins in obtaining any required additional approvals from any entity. Castle Rock makes no warranties or guarantees that such approvals can be obtained.

c. Because of the possibility of drought, mechanical failures, or other extraordinary circumstances, Castle Rock cannot guarantee delivery of water. If Castle Rock cannot deliver to Wiggins the full 180 a.f. in the first year or 300 a.f. in the second and third years, Castle Rock shall refund to Wiggins the lease price for any water requested but not delivered at a rate of \$50 per a.f. in the first year and \$100 per a.f. in the second and third years. Such a refund shall be Wiggins' sole and exclusive remedy against Castle Rock for any breach or non-performance of any obligation under this Agreement.

6. **Remedy for Non-Payment.** If Wiggins fails to make any payment when due, Castle Rock may, after sixty (60) days written notice to Wiggins and Wiggins' failure to make payment, declare this Agreement terminated and notify the Water Commissioner that the Leased Water is no longer available for augmentation in Case No. 11CW131.

7. **Accounting and Measurement.** Wiggins shall provide Castle Rock with accounting showing the monthly volume of the Leased Water actually used to augment well pumping before the tenth (10th) day of each month following such well pumping. Wiggins shall install and maintain flow measurement devices on any wells augmented using the Leased Water. Castle Rock may verify at any time the accuracy of the flow measurement devices used by Wiggins.

8. **No Carryover and No Credit Toward Payments.** Leased Water not used by Wiggins for augmentation in any year shall not carry over for the benefit of Wiggins into the next year. In addition, Wiggins shall not be entitled to a credit or a refund for payments made for Leased Water Wiggins did not actually use on an annual basis.

9. **Reimbursement of Expenses.** Upon mutual execution of this Agreement, Wiggins shall reimburse Castle Rock for its reasonable, out-of-pocket legal expenses in this matter, up to two thousand dollars (\$2,000).

10. **Termination.** This Agreement may be terminated by either party, for any reason, with one hundred and eighty (180) days advance written notice.

11. **Notice.** All notices required to be given by either Party to the other shall be made in writing and: hand delivered; sent by first class United States mail, postage prepaid, addressed as follows; or via electronic mail as follows:

If to Town: Town of Castle Rock
 Attn: Robert J. Slentz, Town Attorney
 100 N. Wilcox Street
 Castle Rock, CO 80104
 Phone: (303) 660-1028
 bslentz@crgov.com

With a copy to: Town of Castle Rock
 Attn: Mark Marlowe, Utilities Director
 175 Kellogg Court
 Castle Rock, CO 80109
 Phone: (303) 733-6001
 mmarlowe@crgov.com

If to the Town of Wiggins:

With a copy to:

12. **Entire Agreement.** This Agreement represents the entire agreement between the Parties on the matters set forth herein and supersedes all prior negotiations, representations or agreements respecting said matters whether written or verbal.

13. **Binding Agreement.** The execution of the agreement by Castle Rock, as lessor, and Wiggins, as lessee, constitutes the execution of a binding lease agreement by those Parties on the terms and conditions contained herein.

