

**TOWN OF CASTLE ROCK/TOWN OF LOCHBUIE
2022 WATER LEASE AGREEMENT**

THIS WATER LEASE AGREEMENT (“Agreement”) is entered into _____, 2022 by and between the Town of Castle Rock, a home rule municipal corporation, acting by and through the Town of Castle Rock Water Enterprise (“Castle Rock”), as Lessor, whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104 and the Town of Lochbuie, a home rule municipal corporation, acting by and through its Water Activity Enterprise (“Lochbuie”), as Lessee, whose address is: 703 Weld County Road 37, Lochbuie, Colorado 80603, collectively referred to as the Parties.

RECITALS

WHEREAS, Castle Rock owns certain water in the Chatfield Basin that is reusable and fully consumable after its first use for municipal purposes by Castle Rock, a portion of which may, from time to time, be surplus Castle Rock’s needs and obligations (“Surplus Water”); and

WHEREAS, Castle Rock anticipates it will have Surplus Water available from time to time in 2022 at Chatfield Reservoir or at the Plum Creek Water Reclamation Authority (“PCWRA”) outfall; and

WHEREAS, Lochbuie desires to lease, use and successively reuse to extinction a certain portion of the Surplus Water from Castle Rock in accordance with the terms and conditions of this Agreement; and

WHEREAS, Lochbuie owns certain Denver Basin non-tributary groundwater rights in the Dawson, Denver and Arapahoe Aquifers (“Bell Mountain Ground Water”) accessible by the Bell Mountain Wells (Well Permit Nos. 57960-F, 62882-F, and 57962-F) and delivered to East Plum Creek via existing pipeline infrastructure. The decreed quantity of the Bell Mountain Ground Water owned by Lochbuie is as follows:

Dawson Aquifer	200 acre-feet/year
Denver Aquifer	145 acre-feet/year
Arapahoe Aquifer	425.0 acre-feet/year

; and

WHEREAS, Lochbuie anticipates it will have some amount of Bell Mountain Ground Water in excess of the needs of Lochbuie available from time to time in 2022; and

WHEREAS, Castle Rock may, from time to time, desire to lease, use and successively reuse to extinction, a certain portion of the Bell Mountain Ground Water, not to exceed 535 acre-feet, from Lochbuie in accordance with the terms and conditions of this Agreement.

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 Lochbuie agree as follows:

1. If Castle Rock elects to withdraw the Bell Mountain Ground Water, it will provide a minimum of 48 hours' notice to Lochbuie and indicate which Bell Mountain Well(s) will be utilized, the anticipated length of time for that the pumping, the rate of pumping, and volume pumping from each well. After providing due notice, if Castle Rock does not receive a response from Lochbuie within the 48-hour period, Castle Rock shall assume that withdrawal of Lochbuie's water for Castle Rock's benefit is approved. Castle Rock's pumping of the Bell Mountain Ground Water shall be in compliance with the applicable decrees and well permits. This Agreement does not obligate Castle Rock to withdraw any specific quantity of the excess Bell Mountain Ground Water, nor does it obligate Lochbuie to make any specific amount of that water available to Castle Rock if needed by Lochbuie. Castle Rock's withdrawal of the Bell Mountain Ground Water is limited to the quantity of Surplus Water that Castle Rock has available or will make available with an upper limit of 535 acre-feet annually. If Lochbuie needs to deliver Bell Mountain Ground Water for Lochbuie's use, Lochbuie may also take delivery of water from and may, if needed, interrupt Castle Rock's deliveries of Bell Mountain Ground Water. Lochbuie will provide Castle Rock with a minimum 48-hours' notice if Lochbuie intends to deliver water for its own use, and if it needs to interrupt Castle Rock's pumping to accommodate delivery of the Bell Mountain Ground Water for use by Lochbuie. Lochbuie shall provide the same level of detail in its notice to Castle Rock regarding the wells, pumping rate and volume needed from each well.

2. Castle Rock intends to divert the Bell Mountain Ground Water from East Plum Creek at its CR-1 Diversion located near the Plum Creek Water Purification Facility (PCWPF) for treatment and delivery into its municipal distribution system. The Bell Mountain Ground Water is made available for withdrawal by Castle Rock "as is", and Castle Rock acknowledges that such water is suitable for all purposes that Castle Rock shall make of that water.

3. Castle Rock continues to be responsible for the operation and maintenance of the Bell Mountain Wells and for the issuance of invoices to Lochbuie for its share of the costs for such activities. This is more thoroughly described in Section 4.3 of the *Partial Assignment of First Amended and Restated Water Resource Credit Agreement; Plum Creek Delivery System Operating Agreement; Bell Mountain Ranch Homowners' Association Settlement Agreement; Amended and Restated Emergency Interconnect Agreement and Easement Agreement* dated November 15, 2017.

4. Castle Rock shall record pumping rates and volumes of the Bell Mountain Ground Water on a daily basis for water accounting purposes and shall provide a weekly report to Lochbuie on the previous week pumped quantities. If Castle Rock is the only user of the Bell Mountain Wells during this period, Castle Rock shall pay the electrical costs associated with pumping. If other parties request the wells be pumped during this period (Roxborough or Lochbuie), the electrical costs shall be split on a pro-rata basis relative to the quantities of water pumped for each party.

5. In exchange for the Bell Mountain Ground Water that Castle Rock withdraws, Castle Rock shall make available to Lochbuie at Chatfield Reservoir a quantity of Surplus Water using the following formula:

a. $V_{cr} - V_{tl} = V_{loch}$

b. Where:

- i. V_{cr} = Volume of Lochbuie's water pumped at the Bell Mountain wells measured at the various Bell Mountain well flow meters.
- ii. V_{tl} = Transit loss from the Bell Mountain outfall to the Titan Road stream gauge (distance is approximately 19.42 miles; transit loss of 0.5% per mile according to Water Commissioner, thus a 9.71% loss. So, $V_{tl} = V_{cr} \times 0.0971$).
- iii. V_{loch} = Volume of water owed to Lochbuie that can be released from Castle Rock's storage account in Chatfield.

c. Castle Rock would not assess Lochbuie evaporation losses at Chatfield on V_{loch} , however, the water would:

- i. Need to be taken before November 1 of the calendar year in which V_{cr} was taken.
- ii. Carryover storage in Castle Rock's Chatfield account will not be allowed.
- iii. Lochbuie will notify Castle Rock on or before October 15 of the final rate and volume of release of the Surplus Water from Chatfield Reservoir for use by Lochbuie.
- iv. If Lochbuie is not able to physically take the water from the Chatfield storage prior to November 1, Castle Rock will pay Lochbuie \$30 per acre-foot for the remaining amount of V_{loch} .

6. In addition to the exchange of water described in Section 4, and if Castle Rock has Surplus Water available at the PCWRA outfall ("Surplus Effluent"), Lochbuie may request a quantity of Surplus Effluent to be delivered, and Castle Rock shall deliver this quantity of water at \$355 per acre-foot, measured at the PCWRA outfall. This lease price is valid for 2022, and is subject thereafter to annual review by Castle Rock and can be changed by market price evaluations and/or cost of service adjustments.

7. Lochbuie intends to pick up the Surplus Water at United Diversion No. 3 on the South Platte River. The rate of delivery of Surplus Water shall be mutually agreed upon by the Parties.

8. If Lochbuie requests delivery of Surplus Effluent, Castle Rock shall invoice Lochbuie on a quarterly basis for Surplus Effluent taken by Lochbuie and Lochbuie shall make payment within 30 days of receipt. To the extent Lochbuie does not use all of the Surplus Water available at Chatfield Reservoir before November 1, and Castle Rock owes Lochbuie money for the unused Surplus Water, Castle Rock shall credit Lochbuie the amount of the funds owed on Castle Rock's periodic invoice to Lochbuie against any amount then owed by Lochbuie for the operation and maintenance of the Bell Mountain Ground Water wells. If Castle Rock owes

Lochbuie money during any quarter (as calculated in Section 5.c.iv), it shall pay that amount to Lochbuie with the quarterly invoice.

9. Castle Rock shall confirm to Lochbuie that all Surplus Water is decreed to allow Lochbuie to divert, store, inject, use, reuse, and successively reuse to extinction the Surplus Water, and shall confirm to Lochbuie's satisfaction that all Surplus Water has been recognized and is administered by the Colorado State Engineer for all such uses.

10. Surplus Water shall be delivered "as is," but shall be of a quality that meets all standards and effluent limitations specified in Colorado Discharge Permit System Permit No. CO-0038547, as amended, or in any other discharge permit issued by the Water Quality Control Division or by the U.S. EPA authorizing discharges from the Plum Creek Water Reclamation Authority facility; such quality to be measured at the authorized discharge point(s) specified in any such discharge permit. By entering into this Agreement and taking delivery of the Surplus Water, Lochbuie acknowledges that the Surplus Water is suitable for all purposes that Lochbuie shall make of the water, if the Surplus Water meets the requirements of this Section. Lochbuie and any entity providing water to Lochbuie shall be precluded from arguing or otherwise asserting that effluent discharged from the PCWRA and carried in East Plum Creek, Plum Creek and the South Platte River is not of suitable quality to meet the requirement of use to which water delivered to Lochbuie has normally been put. Lochbuie shall have no obligation to take delivery of or pay for any of the Surplus Water that does not satisfy the requirements of this Section.

11. The term of this Agreement shall commence on its execution and expire December 31, 2022. Provided however, by mutual written agreement of the Parties, this Agreement may be renewed on the same or on different terms.

12. Lochbuie's financial obligations under this Agreement are limited to making the payments as described in Sections 5 and 6, above, as applicable, for the Surplus Water it elects to take. Lochbuie's sole source of compensation for the Bell Mountain Ground Water withdrawn by Castle Rock is the right to utilize Surplus Water pursuant to this Agreement and any payments required in Section 5.c.iv.

13. All notices which may be required to be given by either Party to the other shall be made in writing and either hand delivered or sent by first class United States mail, postage prepaid, addressed as follows, or by facsimile, or via electronic means:

If to Castle Rock: Town of Castle Rock
 Attn: Town Attorney
 100 N. Wilcox Street
 Castle Rock, CO 80104

with copy to: Town of Castle Rock
 Attn: Director of Castle Rock Water
 175 Kellogg Court
 Castle Rock, CO 80109

If to Lochbuie: Town of Lochbuie
 Attn: Town Administrator
 703 Weld County Rd. 37
 Lochbuie, CO 80603
 Email: bmc broom@Lochbuie.org

with copy to: Chris Sanchez
 BBA Water Consultants, Inc.
 333 W. Hampden Ave., Suite 1050
 Englewood, CO 80110
 csanchez@bbawater.com

14. 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 oral.

15. The execution of the Agreement by Castle Rock as lessor and Lochbuie as lessee constitutes the execution of a binding lease agreement by those Parties on the terms and conditions contained herein.

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, Dir. of Castle Rock Water

