



Castle Rock Water Commission Agenda - Final-Amended

Todd Warnke
John Wright
Bill Leung
Kathryn Gienger
David Hammelman
Tony Rathbun
Kevin McHugh

Wednesday, October 26, 2022

6:00 PM

Castle Rock Water
175 Kellogg Ct., Bldg. 171
Castle Rock, CO 80109

This meeting is open to the public and will be held in a hybrid format in accordance with Town Council Electronic Participation, Connected, and Hybrid Meeting Policy. The in-person meeting will be held at 175 Kellogg Ct. Bldg. 171 Castle Rock CO 80104 or this meeting can be accessed online at:

<https://crgov.webex.com/crgov/j.php?MTID=m1590fb34ff1a7be9a2948ccb985f275f>

the Meeting password: VWpGJAzJ345 (89745295 from video systems) or phone in by calling (720) 650-7664, meeting code #248500823376##. One or more Council members may also attend this meeting, during which the items listed herein will be discussed.

6:00 pm CALL TO ORDER / ROLL CALL

COUNCIL UPDATE

COMMISSION COMMENTS

ADMINISTRATIVE BUSINESS

1. [WC 2022-089](#) Approval of the September 28, 2022 Meeting Minutes

Attachments: [Attachment A: Sept Meeting Minutes - Draft](#)

2. [WC 2022-090](#) November/December Meeting Dates

ACTION ITEMS (HIGH PRIORITY / TIME CRITICAL)

3. [WC 2022-091](#) Resolution Waiving Formal Written Bidding Requirements on the Basis of a Sole Source with Calgon Carbon for the Plum Creek Water Purification Facility Granulated Activated Carbon Filter Media Replacement [Plum Creek Water Purification Facility in Castle Rock, CO]

Attachments: [Exhibit 1: Agreement](#)
[Attachment B: Sole Source Justification](#)

4. [WC 2022-092](#) Resolution Approving a Services Agreement with W.W. Wheeler & Associates for Phase 2 of the Quantification of East Plum Creek and Cherry Creek Basin Lawn Irrigation Return Flows [Various sites throughout Town]

Attachments: [Exhibit 1: LIRF Agreement](#)
 [Attach B: Location Map](#)
 [Attach C: Sole Source](#)

5. [WC 2022-093](#) Ordinance Approving the 2023 Agricultural Lease Agreement between Town of Castle Rock and Ruppel Farms, LLC [Weld County, Colorado]

Attachments: [Exhibit 1: Lease Agreement](#)
 [Attachment B: Location Map](#)

6. [WC 2022-094](#) Resolution Approving the 2022 Town of Castle Rock/Central Colorado Water Conservancy District Spot Water Lease Agreement [Chatfield Reservoir, Douglas County]

Attachments: [Exhibit 1: Lease Agreement](#)

DIRECTOR FOLLOW-UP AND INFORMATIONAL / UPDATE ITEMS

7. [WC 2022-098](#) Low Income Assistance Program
8. [WC 2022-095](#) Update on Direct Potable Reuse Regulations
9. [WC 2022-096](#) Operational Change - Assistant Director of Operations
10. [WC 2022-097](#) Upcoming Town Council Items

COMMISSIONER MEETING COMMENTS



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 1. **File #:** WC 2022-089

To: Members of the Castle Rock Water Commission

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

Approval of the September 28, 2022 Meeting Minutes
Town Council Agenda Date: NA

Executive Summary

Attached are the meeting minutes for the September 28, 2022 Water Commission Board meeting.

Proposed Motion

"I move to approve the Minutes as presented"

Attachments

Attachment A: Draft September 26, 2022 Meeting Minutes

**Water Commission Mtg.
September 28, 2022**

Present: Council Member Caryn Johnson, Commissioners Todd Warnke, John Wright, Kathryn Gienger, Kevin McHugh, Bill Leung, David Hammelman, and Tony Rathbun

Absent: NA

Staff: Mark Marlowe, Nichol Bussey, Paul Rementer, Matt Benak, Heather Justus, and Maryjo Woodrick.

Visitors: None

Start: 6:02 pm

End: 8:10 pm

Council Report

Time was allowed for Council Member Johnson to share an update on Town Council items.

Commissioner Comments

Time was allowed for Commissioner Comments.

Approval of the August 31, 2022 Meeting Minutes

It was moved by John Wright and seconded by Kathryn Gienger to approve the meeting minutes for the August 31, 2022 meeting as written. The motion passed 7-0.

Resolution Approving a Construction Contract with Hydro Resources – Rocky Mountain, Inc. for the Drilling of the EPC OS Wells located north of PCWPF *[Open space north of Plum Creek Water Purification Facility]*

Ms. Justus explained that the purpose of this project is to drill three new wells north of the Plum Creek Water Purification Facility (PCWPF). This location is ideal as it is in an open space area and will not affect homes only businesses. These wells will supply water to PCWPF as well as the Meadows Treatment Plant.

The wells will be drilled one in each aquifer (Arapahoe, Denver, & Dawson) the anticipated production is 0.7 – 0.9 million gallons per day. The wells will also be designed as ASR wells.

Hydro Resources was selected as the vendor through a sole source process. The drilling will cost \$4,483,540. The total cost of the project is estimated at \$10,386,243 (this includes the design phase). Project will start in the Fall 2022 with an estimated completion date of Spring 2024.

Commissioner Rathbun asked for clarification as to why Hydro was selected. Ms. Justus explained that there are only three companies that do this type of project in the area and staff felt Hydro met the needs of the project best.

Bill Leung moved to recommend Town Council approval of the Resolution as presented. Kevin McHugh seconded the motion. Passed unanimously 7-0.

Resolution Approving an Agreement for Purchase and Sale of Ridgeway Pipeline Capacity between the Town of Castle Rock and Stonegate Village Metropolitan District [Northern Douglas County near Parker, CO]

Mr. Marlowe shared that this project is part of the WISE project as well as the future Boxelder Project. This pipeline will be critical to moving water back to the Town of Castle Rock.

Mr. Benak explained where the pipeline is and how it will connect to CRW infrastructure and that it was built as part of the WISE infrastructure. Stonegate Metro District (SMD) was an original participant in the Ridgeway pipeline project, SMD has determined that they don't need to use their capacity, as they receive their water supply from other sources.

Currently, Castle Rock Water (CRW) can take 4 MGD, with this purchase CRW will be able to take 6.5 MGD which will get CRW very close to the maximum amount that they are allowed to take which is 7.4 MGD. The cost of the 2.5 MGD is \$3,272,988.

Commissioner Rathbun asked if this was a one-time purchase or if it would be an on-going cost. Mr. Benak explained that yes it is a one-time cost and that CRW will then own the capacity into perpetuity.

Commissioner McHugh asked how getting the water worked? Mr. Benak explained how the WISE project worked and how we receive the water.

Kevin McHugh moved to recommend Town Council approval of the Resolution as presented. Tony Rathbun seconded the motion. Passed unanimously 6-0-1 (Kathryn Gienger abstained).

Resolution Approving a Purchase Agreement between the Town of Castle Rock and Roxborough Water and Sanitation District for Water Rights and Other Infrastructure [Northern and Central Douglas County]

Mr. Benak reported that this is an update on an item that was shared with Water Commission earlier in 2022. Some updates have been made and additional information has become available so staff wanted to bring it back to Water Commission.

As part of this agreement CRW will receive 424 acre feet (AF) of water per year, 50AF of renewable water and all the existing infrastructure. The total cost will be \$2.27M.

Commissioner Rathbun clarified that there are no substantive changes to the agreement just adjusted the agreement to include the costs? Mr. Benak replied that yes it is the same agreement with additional information added.

John Wright moved to recommend Town Council approval of the Resolution as presented. Bill Leung seconded the motion. Passed unanimously 7-0.

An Ordinance Amending titles 3, 4, and 13 of the Castle Rock Municipal code by Changing Stormwater Development Impact Fees, Water Resources System Development Fees, Water System Development Fees, Wastewater System Development Fees, Water Resources, Stormwater and Wastewater Rates, Meter Set Fees; and Making Certain Editorial Updates to Such Titles [Entire Town of Castle Rock and extraterritorial service areas]

Ms. Bussey shared the presentation that was given to Town Council. The major points that she shared were:

- Existing customers rate increase in the water fund 4.5%
- System development fee (SDF) rate increase in the water fund 10%
- Existing customers rate increase in the wastewater fund 0%
- SDF rate increase in wastewater 10%
- Existing customers rate increase in stormwater 4.5%
- SDF rate increase in stormwater 10% (in both Cherry Creek & Plum Creek)
- Existing customers rate increase for water resources 7.5%
- SDF rate increase for water resources 15%

Ms. Bussey also shared that CRW plans to hire five (5) new positions in 2023.

Kevin McHugh moved to recommend Town Council approval of the Resolution as presented. David Hammelman seconded the motion. Passed unanimously 7-0.

Annexation Policy Update

Mr. Marlowe shared that he is working on an update to the Annexation Policy. It will not change code just clarify and make clear the expectations moving forward.

2023 Water Efficiency Master Plan Update

Mr. Benak explained that it is time for CRW to update the Water Efficiency Master Plan. He shared the schedule for receiving feedback from the community and then updating the plan. Once a draft plan is ready staff will present the plan to Water Commission and then Town Council.

Mr. Benak encouraged everyone to take the survey, the link was shared with the board members and is available to anyone who is interested in sharing feedback.

Regional Wastewater Proposal Update

Mr. Marlowe shared an update on the Regional Wastewater Proposal.

Update on State Water Plan

Mr. Marlowe shared an update on the State Water Plan.

Upcoming Town Council Items

This is a standing item that will be used to share information about projects that are being worked on at the time of the meeting but that staff doesn't have information ready yet.

Mr. Marlowe shared that staff are working on an agreement with Dana Kepner for Flexnet Infrastructure Software. The software is for our future AMI system.

Commissioner Meeting Comments

Time was allowed for Commissioner Comments.



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 2. **File #:** WC 2022-090

To: Members of the Castle Rock Water Commission

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

November/December Meeting Dates

Town Council Agenda Date: NA

Executive Summary

The regular meetings of the Castle Rock Water commission are the fourth Wednesday of each month. In November the meeting is on November 23rd which is the day before the Thanksgiving Holiday. In December the meeting is on December 28th which is the week between Christmas and New Year.

I would like to suggest one meeting to replace the November/December meetings

Suggested Dates:

November 30, 2022

December 7, 2022

December 14, 2022

Proposed Motion

"I move to cancel the November and December regularly scheduled Water Commission meetings and schedule Special meeting on _____."



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 3. **File #:** WC 2022-091

To: Members of the Castle Rock Water Commission

From: Mark Marlowe, P.E., Director of Castle Rock Water
Shawn Griffith, Operations Manager

Resolution Waiving Formal Written Bidding Requirements on the Basis of a Sole Source with Calgon Carbon for the Plum Creek Water Purification Facility Granulated Activated Carbon Filter Media Replacement *[Plum Creek Water Purification Facility in Castle Rock, CO]*

Town Council Agenda Date: November 15, 2022

Executive Summary

Castle Rock Water (CRW) staff requests Town Council approval of a Resolution approving a services and acquisition agreement with Calgon Carbon (**see Attachment A**) to remove and replace the Granulated Activated Carbon (GAC) media from eight gravity filter vessels at the Plum Creek Water Purification Facility (PCWPF), in the amount of \$613,164, plus a 5% contingency of \$30,659, for a total authorization amount of \$643,823. PCWPF is CRW's advanced treatment plant for purifying reuse water. Reuse water is a key water supply for CRW that will eventually make up approximately 30% of CRW's total supply. GAC filtration is one of the advanced treatment processes used to purify reuse water. GAC media needs to be replaced or regenerated on a regular cycle, estimated to be every two to three years. CRW has been monitoring the performance of the existing GAC media and has determined that replacement or regeneration is coming due. Full replacement and / or regeneration of the GAC media will take approximately five months.

Discussion

GAC is a porous adsorption filter media that is extremely useful for removing a variety of synthetic and organic compounds, contaminants, micro-pollutants, disagreeable tastes and odors that are often found in drinking water treatment sources. Depending on filter operating time and contaminant loading, GAC eventually degrades and loses its ability to bind with pollutants, at which time the GAC needs to be replaced and / or regenerated.

In 2021, as part of the new advanced treatment processes (ATP), CRW began using GAC, with the installation of eight gravity filter vessels, each filled with 40,000 pounds of carbon media. Recent testing and calculations show that the media performance is degrading and contaminants are beginning to break through the filters, indicating that the media should be replaced. The ATP design engineering firm, Burns and McDonnell, predicted that the GAC media would last about two to three

years, which appears to be correct.

CRW is seeking to participate in Calgon Carbon's Custom Municipal Reactivated (CMR) program, which revitalizes the spent media for reuse. The process requires the removal of the spent media from the first two GAC vessels, which is then replaced with new or virgin F300 GAC media. The spent media from the first two vessels are then transported to Arizona for regeneration. The product is regenerated by baking the media, without oxygen, to temperatures above 1,700 degrees Fahrenheit. At that point, a portion, equaling 20% of virgin GAC, is added to the regenerated batch, to complete the lot. The regenerated CMR media is then transported back to Castle Rock.

Calgon Carbon will then remove the spent media from the next two vessels and replace that media with the recently regenerated CMR media. This process will continue until all of the media is exchanged in the eight vessels. The CMR turnaround is expected to take five weeks per cycle to remove, regenerate, and reinstall the media in two vessels. The entire project is scheduled to be completed by April 15, 2023, before demand season begins.

The final CMR load is considered a swing load, that Calgon Carbon will store at their facility in Arizona for use two years later, when the GAC vessel's media replacement cycle begins again in 2025. The cost for the swing load is not included in this purchase.

Load Type	Volume (lbs.)	Price
Virgin	80,000	\$179,691
CMR	240,000	\$433,473
Total		\$613,164

The purchase with Calgon Carbon will be conducted through an approved sole source justification, **(see Attachment B)**, as they are the only provider found with the ability to regenerate and store CMR GAC for future replacement.

Budget Impact

Funding for this purchase will come from Water Resources/Plant Operations Division/Repair & Maintenance account which has a current balance of (\$88,397). Therefore, a budget transfer from the following two accounts will be necessary:

Fund Name	Account Number	Budget Transfer Amount	Account Balance After Transfer	Cost	Account Balance after Purchase
CIP Operations & Maintenance	211-4375-443.40-90	\$582,163	\$0.00		
CIP Water Rights Acquisition	211-4375-443.75-47	\$250,057	\$6,369,943		

Item #: 3. File #: WC 2022-091

Water Resources Repair & Maintenance Equipment Account	211-4360-443.40-32	\$832,220	-\$88,397	\$643,823	\$100,000
Totals		\$832,220		\$613,164	

Proposed Motion

"I move to recommend to Town Council approval of Resolution as presented"

Attachments

Attachment A: Resolution (Not Attached)
Exhibit 1: Agreement
Attachment B: Sole Source Justification

TOWN OF CASTLE ROCK
EQUIPMENT AND SERVICES ACQUISITION AGREEMENT
(PCWPF Granulated Activated Carbon Filter Media Replacement)

DATE: October 18, 2022

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

CALGON CARBON CORPORATION, a Delaware corporation, 3000 GSK Drive, Moon Township, Pennsylvania 15108 (“Contractor”).

RECITALS:

- A. The Town wishes to engage Contractor to provide the services more fully described in the following Agreement and Exhibits.

TERMS:

Section 1. Scope of Services. Contractor shall perform all of the services and provide all materials as set forth on *Exhibit 1* (“Work”). Contractor shall complete the Work consistent with standards and practices of the profession.

Section 2. Total Obligation. The Town’s total obligation to Contractor under this Agreement for the Work shall not exceed \$613,164.00, unless authorized in writing by the Town.

Section 3. Payment. Contractor shall invoice Town upon completion of the Work. Town may withhold payment in whole, or in part for the Work found by the Town to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, not in conformance with all applicable federal, state, and local laws, ordinances, rules and regulations, or if Contractor is in default of Section 6, below. Town shall remit payment, whether whole or in part within 15 days receipt of such invoice.

Section 4. Completion. Contractor understands time is of the essence in this Agreement. Contractor shall commence the Work on or about November 20, 2022 and complete the Work not later than February 28, 2023. Contractor shall devote adequate resources to assure timely completion of the Work in accordance with the standards specified in this Agreement. Contractor shall perform the Work under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 10 days written notice to Contractor. The Town’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 5. Subcontractors. Contractor may utilize subcontractors to assist with specialized works as necessary to complete the Work. Contractor will submit any proposed subcontractor and the description of subcontractor services to the Town for its prior approval.

Section 6. Inspection and Warranty. Town reserves the right to inspect the Work provided under this Agreement at all reasonable times and places during the term of this Agreement. Alternatively, the Town may refuse the Work and cancel all or any part of this Agreement if Contractor fails to deliver all or any part of the Work in accordance with the terms and conditions of this Agreement. Failure by the Town to inspect and test the Work shall not relieve Contractor of such responsibility. Any acceptance by the Town shall not be deemed a waiver or settlement of any defect or nonconformity in such Work. If Town elects to accept nonconforming or defective Work, Town, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Town for the nonconformity or defect.

Contractor expressly warrants that all materials and/or equipment furnished under this Agreement shall be free from defects in materials or workmanship, are installed properly and in accordance with the manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor, shall, at its option, repair or replace any material and/or equipment that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the Town all written manufacturer warranties relating to the supplies and to deliver such written warranties to the Town.

Section 7. Risk of Loss. With respect to any equipment provided under this Agreement, risk of loss shall not pass to the Town until such equipment has been received and accepted by the Town, pursuant to Section 6, above, at the destination specified by the Town. Contractor assumes full responsibility for packing, crating, marking, transporting, and liability for loss or damage in transit, notwithstanding any agreement by the Town to pay freight, express or other transportation charges.

Section 8. Annual Appropriation. The continuance of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Town. If the Town fails to appropriate sufficient monies to provide for the continuance of the Agreement, the Agreement shall terminate on the final day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 9. Assignment. This Agreement shall not be assigned by Contractor without the written consent of the Town.

Section 10. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other

address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 11. Insurance. Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Contractor shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable,

shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Contractor's insurance agent and submitted at the time of execution of this Agreement as ***Exhibit 2*** as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.

Section 12. Colorado Governmental Immunity Act. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$424,000 per person, \$1,195,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 13. Indemnification. Contractor expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Contractor.

Section 14. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 15. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 16. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 17. Time of the Essence. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

Section 18. Default and Remedies. In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

Section 19. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 20. Governing Law. This Agreement shall be governed by the laws of the State of Colorado in the Douglas County District Court.

Section 21. Independent Contractor. Contractor has completed the Affidavit of Independent Contractor Status, attached as *Exhibit 3*, and submitted same at the time of execution of this Agreement. In addition to the Affidavit, Contractor and the Town hereby represent that Contractor is an independent contractor for all purposes hereunder. Contractor represents and warrants that they are free from the Town's direction and control in the performance of their work or services and that they have an independent business doing the specific type of work or services which are the subject of this Agreement. More specifically, Contractor represents and warrants that the Town does not control what work or services they will perform or the manner in which such work or services will be performed. As such, Contractor is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of the Town.

Section 22. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Contractor, and nothing contained



in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by electronic mail.

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 of Castle Rock Water

CONTRACTOR:

CALGON CARBON CORPORATION

By: _____

Its: _____

EXHIBIT 1

SCOPE OF WORK AND FEE SCHEDULE

Contractor shall remove and replace the Granulated Activated Carbon (“GAC”) media from eight gravity filter vessels at the Plum Creek Water Purification Facility, as follows:

GAC Volume: 80,000 (Virgin F300)
GAC Turnkey Exchange Pricing: \$179,691.00

ITEMS INCLUDED:

- Product: F300 Virgin Carbon
- Quantity: 80,000 lbs
- Driver and equipment (trucks, hoppers, hoses, etc), except utilities detailed below
- Scope: 80,000 lb exchange to be completed by Calgon.
- Disposal of spent carbon

ITEMS NOT INCLUDED IN THIS OFFER:

- Water for exchange
- Drainage area
- Field Service

GAC Volume: 240,000 (Custom Municipal React)
GAC Turnkey Exchange Pricing: \$433,473.00

ITEMS INCLUDED:

- Product: Custom reactivated carbon with up to 20% makeup. If additional makeup carbon is required, it will be provided at \$1.75/lb
- Quantity: 240,000 lbs
- Driver and equipment (trucks, hoppers, hoses, etc), except utilities detailed below
- Scope: 240,000 lb exchange to be completed by Calgon.
- Disposal of spent carbon

ITEMS NOT INCLUDED IN THIS OFFER:

- Water for exchange
- Drainage area
- Field Service

Total Price: \$613,164

SPECIFICATIONS:

Bulk trucks sufficient to complete the exchange of 320,000 lbs of carbon at the Castle Rock water treatment plant will be provided by Calgon. Customer to supply water, utilities, and drainage necessary for exchange. Calgon will deliver in 80,000 lb increments approximately every 5 weeks. The first delivery will be virgin carbon (80,000 lbs) and 3 subsequent deliveries (80,000 lbs each) will be custom reactivated material. The virgin delivery will provide a swingload which will last perpetually unless or until carbon quality deteriorates to the point that Castle Rock decides to replace it. Calgon will warehouse the swingload for Castle Rock for a reasonable period of time.

EXHIBIT 2



CERTIFICATE OF LIABILITY INSURANCE

6/1/2023

DATE (MM/DD/YYYY)
10/13/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies Three City Place Drive, Suite 900 St. Louis MO 63141-7081 (314) 432-0500	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No.):
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Zurich American Insurance Company		16535
INSURED 1425462 Calgon Carbon Corporation 3000 GSK Drive Moon Township PA 15108	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CALCA CERTIFICATE NUMBER: 19034040 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	N	GLO 0111179 05	6/1/2022	6/1/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMPIOP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	N	BAP 0111180 05	6/1/2022	6/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC 0111177 05 (Ded) WC 0111178 05 (Retro)	6/1/2022	6/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Town of Castle Rock. Its officers and employees are included as additional insureds on a Primary and Non-contributory basis if required by written contract with respect to General Liability and Automobile Liability per the terms and conditions of the policy.


CERTIFICATE HOLDER	CANCELLATION See Attachments
19034040 Town of Castle Rock 100 N. Wilcox Street Castle Rock CO 80104	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 

EXHIBIT 3

TOWN OF CASTLE ROCK AFFIDAVIT OF INDEPENDENT CONTRACTOR STATUS

I, [REDACTED], an authorized representative of CALGON CARBON CORPORATION, holding legal authority to sign this Affidavit declare under oath that I am 18 years or older and have the capacity to sign this Affidavit.

In accordance with Section 8-70-115, C.R.S., I certify the following:

- With respect to the Agreement, I represent and warrant that it is my express intention to be employed as an independent contractor of the Town of Castle Rock (the “Town”) for purposes of performing the work or services which are the subject of the Agreement. I understand and confirm that the Town reasonably relied on this intention in entering into the Agreement.
- The Town does not require I work exclusively for the Town, except that I may choose to work exclusively for the Town for a finite period of time specified in the document.
- The Town does not establish a quality standard for the work or services performed pursuant to the Agreement, except that the Town may provide plans and specifications regarding the work but cannot oversee the actual work or provide instruction as to how the work is performed.
- The Town does not pay a salary or hourly rate but rather a fixed or contract rate, as noted in the terms and conditions of the Agreement, and any Exhibits made part of the Agreement.
- The Town cannot terminate the work or services performed during the contract period unless otherwise agreed to in the terms and conditions of the Agreement.
- I am not provided with anything, if at all, more than minimal training from the Town.
- The Town does not provide me with tools or benefits for the performance of the work or services which are the subject of the Agreement, except materials and equipment may be supplied.
- The Town does not dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established in the Agreement.



- The Town does not pay me personally but rather makes checks payable to the trade or business name of the entirety for which I am employed and who is a party to the Agreement; and the Town does not combine their business operations in any way with the entity's business, but instead maintains such operations as separate and distinct.
- I understand that if a professional license to practice a particular occupation under the laws of the State of Colorado requires the exercise of a supervisory function with regard to the work of services performed under this Agreement, such supervisory role shall not affect the independent contractor relationship with the Town.
- **I UNDERSTAND THAT I AM NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY ME OR THE ENTITY FOR WHICH I AM EMPLOYED.**
- **I UNDERSTAND THAT I AM OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THE AGREEMENT.**

CONTRACTOR/CONSULTANT/VENDOR

CALGON CARBON CORPORATION

By: _____

Name

STATE OF COLORADO)

) ss.


COUNTY OF _____)

The foregoing instrument as acknowledged before me this ____ day of _____,
20__ by _____ as _____ of the above mentioned
Contractor/Consultant/Vendor.

Witness my official hand and seal.

My commission expires:

Notary Public

	SUBJECT: APPENDIX J – SOLE SOURCE JUSTIFICATION FORM	Approval Date 1/1/2018
	DIVISION AND POLICY NUMBER PURCHASING	Revision Date 9/16/2022

COMMODITY OR SERVICE _____

VENDOR _____

AMOUNT OF PURCHASE \$ _____

REQUESTORS NAME _____

DEPARTMENT _____

DEPARTMENT DIRECTOR's Approval _____

FINANCE DEPARTMENT's Approval _____

TOWN MANAGER's (or Designee) Approval _____

TOWN COUNCIL's Approval, when necessary _____

PURCHASING POLICY EXCEPTION ITEM	CHECK ONE
1. Item(s) or service has been formally awarded to a vendor by the State of Colorado, MAPO, or other cooperative purchasing group and the product meets the needs of the Town of Castle Rock.	<input type="checkbox"/>
2. The product or service is of a unique nature, or allows for standardization with existing equipment and will provide exceptional value to the Town of Castle Rock.	<input type="checkbox"/>
3. Emergency purchases where the well-being of the citizens, employees or Town property may be endangered if the purchase is delayed.	<input type="checkbox"/>
4. Town of Castle Rock currently has a contract in place with a vendor for like products or services and the compatibility and/or continuity of those products or services are paramount to the success of the department or Town function.	<input type="checkbox"/>

Per Municipal Code 3.02.060:

Purchases over one thousand dollars (\$1,000.00) and up to and including five thousand dollars (\$5,000.00) require three (3) verbal bids unless approved by the Town Manager on the basis of sole source, emergency or unresponsive bidders.

Purchases over five thousand dollars (\$5,000.00) and up to seventy-five thousand dollars (\$75,000.00) require three (3) informal written bids unless approved by the Town Manager on the basis of sole source, emergency or unresponsive bidders.

Purchases over seventy-five thousand dollars (\$75,000.00) require formal written sealed bids unless waived by the Town Manager for purchases up to and including two hundred fifty thousand dollars (\$250,000.00) or by Town Council for purchases over two hundred fifty thousand dollars (\$250,000.00) on the basis of sole source, emergency or unresponsive bidders.

The requesting department must provide written justification to the Finance Department for review and forward it to the Accounting Manager. **Attach additional sheets as necessary.**



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 4. **File #:** WC 2022-092

To: Members of the Castle Rock Water Commission

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, P.E., Water Resources Manager
Lauren Moore, Water Resources Program Analyst

Resolution Approving a Services Agreement with W.W. Wheeler & Associates for Phase 2 of the Quantification of East Plum Creek and Cherry Creek Basin Lawn Irrigation Return Flows *[various sites throughout Town]*
Town Council Agenda Date: November 1, 2022

Executive Summary

Castle Rock Water is seeking Town Council approval of a Resolution (**Attachment A**) for a Services Agreement (**Exhibit 1**) with W.W. Wheeler & Associates (Wheeler) for Phase 2 of the quantification of East Plum Creek and Cherry Creek Basin Lawn Irrigation Return Flows (LIRFs). The scope of work will include a continuation of Phase 1 monitoring, data collection, and modeling as well as an oversight of construction of the five remaining monitoring wells, well permitting, filing water court applications, and a conceptualized plan for Phase 3.

The total scope of this agreement is not to exceed \$336,000. Work on Phase 2 will begin in November 2022 and continue through December 2023 at which time it is anticipated Phase 3 will begin.

History of Past Town Council, Boards & Commissions, and Other Discussions

On March 7, 2019, the Town Manager approved the Phase 1 Services Agreement with Wheeler for the 2019 Town of Castle Rock LIRF Quantification Project.

Discussion

Castle Rock Water (CRW) has identified LIRFs as a significant contributor (approximately 5%) to the Town's long-term water supply as a source of augmentation water for the Town's alluvial wells when pumped out-of-priority. While the Town is currently claiming LIRFs for two of the five geologically defined zones, CRW will need to quantify the volume and timing of return flows in the remaining zones (3, 4, & 5) to fully claim these rights. As part of Phase 1, which was completed in late 2021, 25 monitoring wells were constructed in addition to three existing monitoring wells, and transducers were deployed in order to begin the collection of continuous water level data as required for

quantification. Additionally, stream flow monitoring locations were selected and field sampling is conducted monthly. Phase 2 will continue forward with the work completed in Phase 1.

Phase 2 will include a continuation of the preliminary monitoring program established in Phase 1, the completion of the remaining five monitoring wells in Red Hawk and Sapphire Point neighborhoods (**Attachment B**), modeling of the timing and quantity of these return flows in both the Plum Creek and Cherry Creek basins, as well as completing and submitting water court applications. Phase 3 will see the water court applications through their entirety in water court for approval.

CRW intends to sole source (**Attachment C**) this work with Wheeler as a Phase 1 work was bid out through Rocky Mountain Bid Net in 2019 and Wheeler was the only firm to submit a bid at that time. Additionally, Wheeler has worked with the Town since 1982 and has represented the Town in at least eight major water rights cases and supported the Town as opposers in approximately 50 water court cases to protect the Town's water rights. Over these three decades, Wheeler has developed a deep knowledge of the Town's water rights and water resources. Wheeler also has a deep knowledge of general water rights and water resources in the Plum Creek and Cherry Creek Basins. Wheeler's knowledge of water rights and water resources will be invaluable to staff's complete understanding of the requirements for claiming LIRFs and will be pivotal in the selection of well site locations in compliance with water rights and best practices.

Specific to the Town's project needs, Wheeler has over 30 years of experience in LIRF quantifications. Previous work done by this team includes LIRF quantification for East Cherry Creek Valley and Woodmen Hills Metro District. Additionally, Wheeler provides the annual support needed to continue claiming Zone 1 and 2 LIRFs utilizing their pioneering quantification methodology. Wheeler's work in Phase 2 of the LIRF quantification project will provide the knowledge and infrastructure needed to complete a monitoring plan program that will allow the Town to claim LIRFs once completed.

Budget Impact

Funding for the project is available in the approved 2022 Budget. Funding for the project will come from the following account: Other Professional Services 211-4340-443.30-70, which has a balance of \$2,524,487. Town staff will use the funds to complete Phase 2 of this project and a breakdown of funding is provided in the table below. Wheeler's proposed fee is \$336,000. Staff requests an additional \$16,800.00 contingency (5%) be authorized for a total authorization of \$352,800.00.

Project Account	Contract Amount	Contingency	Total Authorization
211-4340-443.30-70 (Other Professional Services)	\$336,000	\$16,800	\$352,800

Proposed Motion

"I move to recommend to Town Council approval of the Resolution as presented"

Item #: 4. File #: WC 2022-092

Attachments

Attachment A: Resolution (Not Attached)

Exhibit 1: Agreement

Attachment B: Location Map

Attachment C: Sole Source



**TOWN OF CASTLE ROCK
SERVICES AGREEMENT
(LIRF Quantification Project Phase 2)**

DATE: _____.

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (the "Town").

W.W. WHEELER & ASSOCIATES, INC., a Colorado corporation, 3700 South Inca Street, Englewood, Colorado 80110 ("Consultant").

RECITALS:

- A. The Town wishes to engage Consultant to provide the services more fully described in the following Agreement and Exhibits.

TERMS:

Section 1. Scope of Services. Consultant shall provide services in accordance with the scope of services attached as *Exhibit 1* ("Services").

Section 2. Payment. Consultant shall invoice Town upon completion of the Services rendered in accordance with the rate and fee scheduled identified in *Exhibit 1*. The Town shall pay such invoices within 30 days receipt of such invoice. In no event shall the cumulative payment to Consultant exceed \$336,000.00, unless authorized in writing by Town.

Section 3. Completion. Consultant shall commence the Services on November 1, 2022 and complete the Services December 31, 2023. Consultant shall devote adequate resources to assure timely completion of the Services. Consultant shall perform the Services under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 30 days written notice to Consultant. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination. Consultant shall turn over all work product produced up to the date of termination.

Section 4. Annual Appropriation. The continuance of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Town. If the Town fails to appropriate sufficient monies to provide for the continuance of the Agreement, the Agreement shall terminate on the final day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.



Section 5. Subcontractors. Consultant may utilize subcontractors to assist with specialized works as necessary to complete the Services. Consultant will submit any proposed subcontractor and the description of their services to the Town for approval.

Section 6. Assignment. This Agreement shall not be assigned by Consultant without the written consent of the Town.

Section 7. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 8. Insurance. Consultant agrees to procure and maintain, at his own cost, the following policy or policies of insurance. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Consultant shall procure and maintain, and shall cause each subcontractor of the Consultant to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Consultant's owned, hired and/or non-owned vehicles



assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable, shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Consultant's insurance agent and submitted at the time of execution of this Agreement as ***Exhibit 2*** as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Consultant to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Consultant to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Consultant from the Town.

Section 9. Colorado Governmental Immunity Act. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$424,000 per person, \$1,195,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 10. Indemnification. Consultant expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any



person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Consultant or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Consultant.

Section 11. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 12. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 13. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 14. Time of the Essence. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

Section 15. Default and Remedies. In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

Section 16. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 17. Governing Law. This Agreement shall be governed by the laws of the State of Colorado in the Douglas County District Court.

Section 18. Independent Contractor. Consultant has completed the Affidavit of Independent Contractor Status, attached as *Exhibit 3*, and submitted same at the time of execution of this Agreement. In addition to the Affidavit, Consultant and the Town hereby represent that Consultant is an independent contractor for all purposes hereunder. Consultant represents and warrants that they are free from the Town's direction and control in the performance of their work



or services and that they have an independent business doing the specific type of work or services which are the subject of this Agreement. More specifically, Consultant represents and warrants that the Town does not control what work or services they will perform or the manner in which such work or services will be performed. As such, Consultant is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Consultant shall not create any indebtedness on behalf of the Town.

Section 19. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by electronic mail.

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

CONSULTANT:

W.W. WHEELER & ASSOCIATES, INC.

By: _____

Its: _____

EXHIBIT 1

SERVICES AND FEE SCHEDULE

Consultant's Services include a continuation of Phase 1 monitoring, data collection, and modeling as well as an oversight of construction of the 5 remaining monitoring wells, well permitting, filing water court applications, and a conceptualized plan for Phase 3. More specifically, Consultant's Services are as follows:

Phase 2 Kickoff and Planning Meetings. This task includes the LIRF planning meeting that was held in November 2021 at Castle Rock, together with additional planning meetings, including discussions of specific options for groundwater modeling strategies. (Wheeler, Hydrokinetics, Principia & Town)

Surface Streamflow. We will continue to make streamflow measurements and calculations in an effort to provide documentation of the "gaining" nature of streamflow along East Plum Creek and along Cherry Creek that may be consistent with accretions of LIRF in those two streams. To that end, we will perform the following tasks. We have noted whether Wheeler, Hydrokinetics, or Principia will be predominantly responsible for completion of each task.

1. Continue with once-per-month monitoring of streamflow at the two locations in the East Plum Creek basin and three locations in the Cherry Creek basin. To the extent possible, we will avoid making these measurements during periods of wet weather. If there are months of unusually high streamflow, we may skip those months. This work is currently being billed to Wheeler's On-Call work. (Wheeler)
2. Cherry Creek apparently carries substantial underflow, and we presume that such underflow is probably a greater amount at the downstream monitoring location near Bayou Gulch, compared with the underflow at the Cherry Creek near Franktown gage. We will estimate the amount of underflow at those two locations on Cherry Creek. (Hydrokinetics)
3. Incorporate the results of this streamflow monitoring program in the draft report in Task 20 below. (Wheeler)

Additional LIRF Monitoring Well Construction and Related Work

4. Assist Town staff in selecting four additional monitoring well sites in the Red Hawk area. (Wheeler and Hydrokinetics)
5. Prepare well permit applications for 5 additional monitoring wells. (Hydrokinetics)
6. Observe construction of one Sapphire Point monitoring well. (Hydrokinetics)
7. Observe construction for four Red Hawk monitoring wells. (Hydrokinetics)
8. Remove sediment from 28 existing wells and five new wells by water jetting. (Hydrokinetics)
9. Recover the existing transducer in the BP Dawson well, if possible. (Hydrokinetics)
10. Deleted item.
11. Revise technical memo to include the five new monitoring wells. (Hydrokinetics)

Obtain Monthly Data from Monitoring Wells

We understand that this task will be performed by Town staff. (Town)

Review Data, Estimate Losses, and Estimate the Timing of LIRF to East Plum Creek and Cherry Creek

12. Assemble the available data to confirm if sufficient data is available to develop concepts for the modeling that will be used to confirm whether LIRF accrues to East Plum Creek, to determine whether there are significant losses in such return flow, and to identify the lagged timing of LIRF in the East Plum Creek basin, including unit response functions. Depending on the modeling inputs and results, the Town's service area in the basin may need to be broken down into several different zones, each with their own set of unit response functions. (Principia, Hydrokinetics, and Wheeler)

13. Same as Task 12 for the Cherry Creek basin. (Principia, Hydrokinetics, and Wheeler)

Prior to completing the analyses for Tasks 12 and 13, we cannot foresee whether the assembled data will be fully adequate to support the calculations of any losses of LIRF and/or the timing of LIRF to East Plum Creek and Cherry Creek. To the extent it is determined that additional data requirements are identified in Tasks 12 and 13, a supplemental scope of work and estimated cost schedule will be submitted to the Town for the acquisition of additional data that may be needed.

14. Based on the results of Task 12, estimate any losses of return flows and analyze the timing of return flows to East Plum Creek. We presume that the analysis will result in development of sets of unit response functions (URFs) for various sections of the Town's water service area in the East Plum Creek basin, probably excluding the timing related to the Zone 1 and Zone 2 areas that have already been the subject of decrees. We anticipate that data from the Town's GIS will be needed to calculate the numbers of water accounts in numerous geographic bands within each of the modeled areas. (Principia)

15. Same as Task 14, but for the Cherry Creek basin. We presume that the modeling in the Cherry Creek basin would be divided among the sub-basins for Willow Creek, Mitchell Gulch, McMurdo Gulch, and Scott Gulch. (Principia)

Random Sample Calculations for LIRF Quantification

It is noted that Castle Rock's existing decrees for Zones 1 and 2 LIRF credit in the East Plum Creek basin requires a new random sample of accounts within those two zones each five years. The next five-year random sample for Zones 1 and 2 is due to be completed during the winter of 2023-2024. The decrees require such random sample to come from accounts in Zones 1 and 2, so it does not appear that the existing random sample can be combined for use in Zone 3, unless there is Water Court approval of this minor change.

16. Town staff will select a random sample of at least 100 residential accounts in Zone 3 of the East Plum Creek basin, plus selected irrigated parks and school grounds. Similarly, the Town will select a random sample of at least 100 residential accounts in the Cherry Creek basin, plus selected irrigated parks and school grounds. (Town and Wheeler)
17. Determine the irrigated and tree canopy area for each selected account and calculate the average LIRF quantity for the accounts in the samples, in accordance with the Cottonwood Curve methodology, using the most recent three years of monthly meter data for these accounts provided by the Town. (Wheeler)

18. Calculate the amount of LIRF deep percolation and surface return flow for Zone 3 areas in the East Plum Creek basin, extrapolated to include all of the residential lawns, together with selected parks and school grounds, using the most recent three years of monthly meter data for these accounts provided by the Town. (Wheeler)
19. Calculate the amount of LIRF deep percolation and surface return flow for the Cherry Creek basin, extrapolated to include all of the residential lawns, together with selected parks and school grounds. (Wheeler)
20. Cherry Creek return flows consist of the sub-basins of Willow Creek, Mitchell Gulch, McMurdo Gulch, and Scott Gulch. Calculate the amount of deep percolation and surface return flows within each of those sub-basins basins, based on data provided by Town staff concerning the relative numbers of water accounts in each sub-basin. (Wheeler)
21. Apply the results of the groundwater modeling to calculate the monthly timing of LIRF deep percolation and surface return flows to East Plum Creek and to Cherry Creek. (Wheeler and Principia)

Prepare Preliminary Engineering Reports

22. Prepare draft preliminary engineering reports to support the potential Water Court applications, assuming there will be separate reports for Zone 3 return flows in the East Plum Creek basin and for Cherry Creek. We do not know at this time if this will be a combined report, or if there will be separate reports by Wheeler, Hydrokinetics, and Principia, but these reports will be coordinated in content. These reports will summarize the information developed per the Tasks set forth above. (Wheeler, Hydrokinetics, and Principia)
23. After receiving comments, finalize the preliminary reports. (Wheeler, Hydrokinetics, and Principia)

Assist with Preparation of Water Court Applications

The purpose of the applications will be to seek Water Court approval of the Town's LIRF claims in the East Plum Creek basin and in the Cherry Creek basin. We presume that the application in the East Plum Creek basin would include a claim to use of Zones 1 and 2 LIRF in the Meadows for purposes in addition to augmentation of certain Denver Basin wells.

24. Provide engineering input for the Water Court applications, including any supporting maps. (Wheeler, Hydrokinetics, and Principia)

Continued Engineering Support after Filing the Water Court Applications

This would be the subject of a separate Phase 3 scope of work.

PROPOSED PROJECT SCHEDULE

The conceptual schedule for completion of the Phase 2 scope of work includes the following:

Activity	Proposed Schedule	Comments
Streamflow monitoring and calculations	April 2022-Dec 2023	Monitoring by Wheeler, underflow calculations by Hydrokinetics
Complete the remaining monitoring wells	Sept 2022-March 2023	Town staff and its drilling contractor, with assistance by Hydrokinetics
Obtain monthly data from monitoring wells	April 2022 - Dec 2023	Town staff
Groundwater modeling to calculate LIRF unit response functions	Jul - Nov 2023	Principia, with assistance by Wheeler and Hydrokinetics
Random sample calculations for residential and selected irrigation accounts	Jan - Apr 2023	Wheeler, with assistance by Town Staff
Prepare preliminary engineering reports to support Water Court applications	Sept - Nov 2023	Wheeler, Hydrokinetics & Principia
Assist with preparation of Water Court applications	Nov - Dec 2023	Wheeler, Hydrokinetics & Principia assistance to Castle Rock legal counsel
File Water Court applications	Dec 2023	Castle Rock legal counsel

COST PROPOSAL

Table 1 is a summary of the estimated costs for each task, which includes estimated person-hours, and the estimated effort by Wheeler, Hydrokinetics, and Principia.

Wheeler	\$139,382
Hydrokinetics	130,005
Principia	58,900
Reimbursed expenses	7,380
Total	\$335,667
Round to	\$336,000

TABLE 1
CASTLE ROCK LIRF QUANTIFICATION PROJECT - PHASE 2
FEE SCHEDULE FOR W. W. WHEELER & ASSOCIATES PROJECT TEAM
INCLUDING SUBCONSULTANTS HYDROKINETICS, INC AND PRINCIPIA MATHEMATICA, INC.

Task No.	Task Name	Total Hours (including subs)	Wheeler Labor Cost	Hydrokinetics Labor Cost	Principia Labor Cost	Expenses	Total
	Project Kickoff and Planning						
0	Planning meetings	61	\$3,596	\$2,790	\$6,600	\$500	\$13,486
	Surface Streamflow Measurements						
1	Future once-per-month streamflow monitoring	102	\$13,572	\$0	\$0		\$13,572
2	Cherry Creek underflow calculations	80	\$1,798	\$14,160	\$0		\$15,958
3	Incorporate results of streamflow monitoring program into draft report	36	\$5,911	\$1,560	\$0		\$7,471
	Task Group Totals	218	\$21,281	\$15,720	\$0	\$1,780	\$38,781
	Additional LIRF Monitoring Well Construction and Related Work						
4	Assist Town staff in selecting additional monitoring well sites in Red Hawk area	45	\$4,494	\$4,875	\$0		\$9,369
5	Prepare well permit applications for 5 additional monitoring wells	12	\$0	\$2,340	\$0		\$2,340
6	Observe construction of one Sapphire Point monitoring well	26	\$0	\$5,070	\$0		\$5,070
7	Observe construction for 4 Red Hawk monitoring wells	100	\$0	\$19,500	\$0		\$19,500
8	Remove sediment from 28 existing wells and five new wells by water jetting	160	\$0	\$31,200	\$0		\$31,200
9	Recover the existing transducer in the BP Dawson Well, if possible	2	\$0	\$390	\$0		\$390
10	Deleted item	0	\$0	\$0	\$0		\$0
11	Revise technical memo to include the five new monitoring wells	17	\$0	\$3,315	\$0		\$3,315
	Task Group Totals	362	\$4,494	\$66,690	\$0	\$3,200	\$74,384
	Review Data, Estimate Losses and Timing of Return Flows						
12	Assemble data for East Plum Creek basin, and evaluate	108	\$5,139	\$8,780	\$8,750		\$22,669
13	Assemble data for Cherry Creek basin, and evaluate	108	\$5,139	\$8,780	\$8,750		\$22,669
14	Estimate losses of return flows and analyze the timing of return flows to East Plum Creek	64	\$3,596	\$1,560	\$8,750		\$13,906
15	Estimate losses of return flows and analyze the timing of return flows to Cherry Creek	53	\$1,124	\$1,560	\$8,750		\$11,434
	Task Group Totals	333	\$14,997	\$20,680	\$35,000	\$200	\$70,877
	Random Sample Calculations for LIRF Quantification						
16	Town staff select random samples of accounts to be used in the LIRF quantification, plus selection of ten parks and school areas	6	\$1,348	\$0	\$0		\$1,348
17	Determine irrigated areas and tree canopy areas for lawns in the random samples	216	\$27,764	\$0	\$0		\$27,764
18	Calculate LIRF deep percolation and surface return flow in the East Plum Creek basin for Zone 3	16	\$3,596	\$0	\$0		\$3,596
19	Calculate the LIRF deep percolation and surface return flow in the Cherry Creek basin	16	\$3,596	\$0	\$0		\$3,596
20	Calculate the LIRF deep percolation and surface return flow for Willow Creek and Mitchell, McMurdo, and Scott gulches	12	\$2,697	\$0	\$0		\$2,697
21	Apply the groundwater modeling results to calculate the monthly timing of LIRF to East Plum Creek and each stream in the Cherry Creek basin	108	\$17,045	\$0	\$1,800		\$18,845
	Task Group Totals	374	\$56,044	\$0	\$1,800	\$1,100	\$58,944
	Prepare Preliminary Engineering Reports						
22	Prepare draft engineering reports to support the potential Water Court applications	256	\$28,459	\$10,975	\$10,000		\$49,434
23	Finalize the preliminary engineering reports	49	\$4,240	\$3,200	\$2,800		\$10,240
	Task Group Totals	305	\$32,699	\$14,175	\$12,800	\$400	\$60,074
	Assistance with Preparation of Water Court Applications						
24	Provide engineering input for the Water Court applications	96	\$6,271	\$9,950	\$2,700	\$18,921	\$37,842
	Task Group Totals	96	\$6,271	\$9,950.00	\$2,700.00	\$200	\$19,121
	Project Totals:	1749	\$139,382	\$130,005	\$58,900	\$7,380	\$335,667

Castle Rock LIRF Project - Phase 2
Work Breakdown Schedule
9/30/2022

Task	Sub-Task		Position / Rate / SubTotals												Project Team Sub-Task Total
			Wheeler					Hydrokinetics, Inc.			Principia Mathematica, Inc.				
			Chief Engineer	Senior Engineer	Project Engineer	Assistant Engineer	Technician III	Wheeler Sub-Task Total	Senior Project Engineer	Project Engineer	Hydrokinetics Sub-Task Total	Senior Project Engineer	Project Engineer	Principia Sub-Task Total	
			\$224.72	\$192.92	\$178.08	\$120.84	\$93.28		\$205.00	\$195.00		\$225.00	\$200.00		
			Gary	Bret	Christine	John		S. Mefford	P. O'Brien		W. Schreuder	S. Cole			
Project Kickoff															
	0	Planning meetings	16					\$3,596	6	8	\$2,790	16	15	\$6,600	\$12,986
	Task Group Fees Totals		16	0	0	0	0	\$3,596	6	8	\$2,790	16	15	\$6,600	\$12,986
	Task Group Expenses Totals							\$200		300	\$200			\$100	\$500
Surface Streamflow Monitoring															
	1	Future once-per-month streamflow monitoring	12			90		\$13,572			\$0			\$0	\$13,572
	2	Cherry Creek underflow calculations	8					\$1,798	12	60	\$14,160			\$0	\$15,958
	3	Incorporate results of streamflow monitoring program into draft report	16	12				\$5,911		8	\$1,560			\$0	\$7,471
	Task Group Fees Totals		36	12	0	90	0	\$21,281	12	68	\$15,720	0	0	\$0	\$37,001
	Task Group Expenses Totals							\$1,280		300	\$500				\$1,780
Monitoring Well Construction and Related Work															
	4	Assist Town staff in selecting additional monitoring well sites in Red Hawk area	20					\$4,494		25	\$4,875			\$0	\$9,369
	5	Prepare well permit applications for 5 additional monitoring wells						\$0		12	\$2,340			\$0	\$2,340
	6	Observe construction of one Sapphire Point monitoring well						\$0		26	\$5,070			\$0	\$5,070
	7	Observe construction for 4 Red Hawk monitoring wells						\$0		100	\$19,500			\$0	\$19,500
	8	Remove sediment from 28 existing wells and five new wells by water jetting						\$0		160	\$31,200			\$0	\$31,200
	9	Recover the existing transducer in the BP Dawson Well, if possible						\$0		2	\$390			\$0	\$390
	10	Deleted item						\$0			\$0			\$0	\$0
	11	Revise technical memo to include the five new monitoring wells						\$0		17	\$3,315			\$0	\$3,315
	Task Group Fees Totals		0	0	0	0	0	\$4,494	0	317	\$66,690	0	0	\$0	\$71,184
	Task Group Expenses Totals							\$200			\$3,000			\$0	\$3,200
Review Data, Estimate Losses and Timing															
	12	Assemble data for East Plum Creek basin	16	8				\$5,139	20	24	\$8,780	30	10	\$8,750	\$22,669
	13	Assemble data for Cherry Creek basin	16	8				\$5,139	20	24	\$8,780	30	10	\$8,750	\$22,669
	14	Estimate losses and timing of return flows to East Plum Creek	16					\$3,596		8	\$1,560	30	10	\$8,750	\$13,906
	15	Estimate losses and timing of return flows to Cherry Creek	5					\$1,124		8	\$1,560	30	10	\$8,750	\$11,434
	Task Group Fees Totals		53	16	0	0	0	\$14,997	40	64	\$20,680	120	40	\$35,000	\$70,677
	Task Group Expenses Totals							\$200			\$0			\$0	\$200
ing Calculations															
	16	Town staff select random samples of accounts, plus selection of ten parks and school areas	6					\$1,348			\$0			\$0	\$1,348
	17	Determine irrigated areas and tree canopy areas for lawns in the random samples	16			200		\$27,764			\$0			\$0	\$27,764
	18	Calculate the LIRF deep percolation and surface return flow in the East Plum Creek basin for Zone 3	16					\$3,596			\$0			\$0	\$3,596

Castle Rock LIRF Project - Phase 2
Work Breakdown Schedule
9/30/2022

Task	Sub-Task		Position / Rate / SubTotals												Project Team Sub-Task Total	
			Wheeler					Hydrokinetics, Inc.			Principia Mathematica, Inc.					
			Chief Engineer	Senior Engineer	Project Engineer	Assistant Engineer	Technician III	Wheeler Sub-Task Total	Senior Project Engineer	Project Engineer	Hydrokinetics Sub-Task Total	Senior Project Engineer	Project Engineer	Principia Sub-Task Total		
			\$224.72	\$192.92	\$178.08	\$120.84	\$93.28		\$205.00	\$195.00		\$225.00	\$200.00			
			Gary	Bret	Christine	John		S. Mefford	P. O'Brien		W. Schreuder	S. Cole				
Assist with Water Court Application	Prepare Preliminary Engineering Reports	19	Calculate the LIRF deep percolation and surface return flow in the Cherry Creek basin	16				\$3,596			\$0			\$0	\$3,596	
		20	Calculate the LIRF deep percolation and surface return flow for Willow Creek and Mitchell, McMurdo, and Scott gulches	12				\$2,697			\$0			\$0	\$2,697	
		21	Apply the groundwater modeling results to calculate the monthly timing of LIRF to East Plum Creek and each stream in the Cherry Creek basin	20	40		40	\$17,045			\$0	8		\$1,800	\$18,845	
		Task Group Fees Totals		86	40	0	240	\$56,044	0	0	\$0	8	0	\$1,800	\$57,844	
		Task Group Expenses Totals						\$1,000			\$0			\$100	\$1,100	
		22	Prepare draft engineering reports to support the potential Water Court applications	60	40	24		\$28,459	25	30	\$10,975	40	5	\$10,000	\$49,434	
		23	Finalize the preliminary engineering reports	12	8			\$4,240	8	8	\$3,200	8	5	\$2,800	\$10,240	
		Task Group Fees Totals		72	48	24	0	\$32,699	33	38	\$14,175	48	10	\$12,800	\$59,674	
		Task Group Expenses Totals						\$300			\$0			\$100	\$400	
Assist with Water Court Application																
		24	Provide engineering input for the Water Court applications	16	10		8	\$6,271	20	30	\$9,950	12		\$2,700	\$18,921	
		Task Group Fees Totals		16	10	0	0	\$6,271	20	30	\$9,950	12	0	\$2,700	\$18,921	
		Task Group Expenses Totals						\$100			\$0			\$100	\$200	
		Grand Total - Fees		279	126	24	330	40	\$139,382	111	525	\$130,005	204	65	\$58,900	\$328,287
		Grand Total Expenses							\$3,280			\$3,700			\$400	\$7,380

W. W. Wheeler & Associates, Inc. (2022 rates)

Name	Positon	Target Rate
	Admin Assistant	\$84.00
	Assistant Engineer	\$112.00
	Associate Engineer	\$140.00
	CAD Draftsman	\$89.00
	Chief Engineer	\$212.00
	Junior Engineer	\$102.00
	Project Engineer	\$154.00
	Senior Engineer	\$168.00
	Senior Project Engineer	\$182.00
	Senior WR Engineer	\$197.00
	Senior Geo Engineer	\$197.00
	Staff Engineer	\$127.00
	Technician I	\$59.00
	Technician II	\$73.00
	Technician III	\$88.00

Hydrokinetics (2022 rates)

Scott Mefford	\$205.00
Patrick O'Brien	\$195.00

Principia Mathematic (2022 rates)

Willem Schreuder	\$225.00
Steve Cole	\$200.00



EXHIBIT 2

CONSULTANT'S CERTIFICATION OF INSURANCE

Client#: 1086027

WWWHE

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/01/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services, LLC P.O. Box 7050 Englewood, CO 80155 800 873-8500		CONTACT NAME: PHONE: 800 873-8500 FAX: (A/C, No, Ext): E-MAIL: den.certificate@usi.com ADDRESS:	
INSURED W. W. Wheeler & Associates, Inc. 3700 S. Inca Street Englewood, CO 80110		INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Casualty Insurance Company NAIC # 29424 INSURER B: Hartford Ins Co of the Midwest 37478 INSURER C: XL Specialty Insurance Company 37885 INSURER D: Hartford Accident and Indemnity Co 22357 INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NR	TYPE OF INSURANCE	ADOL	SUBR	POLICY NUMBER	POLICY EFF	POLICY EXP	LIMITS
CTR		NR	NR		(MM/DD/YYYY)	(MM/DD/YYYY)	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X	X	34SBWDX4201	08/03/2022	08/03/2023	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMPROP AGG \$4,000,000 \$
D	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	34UEGZG2800	08/03/2022	08/03/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10000	X	X	34SBWDX4201	08/03/2022	08/03/2023	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	34WEGIN4524	08/03/2022	08/03/2023	<input checked="" type="checkbox"/> PER <input type="checkbox"/> STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability Claims Made			DPR9997035	08/03/2022	08/03/2023	\$2,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

As required by written contract or written agreement, the following provisions apply subject to the policy terms, conditions, limitations and exclusions: The Certificate Holder and owner are included as Automatic Additional Insured's for ongoing and completed operations under General Liability; Designated Insured under Automobile Liability; and Additional Insureds under Umbrella / Excess Liability but only with respect to liability arising out of the Named Insured work performed on behalf of the certificate holder and owner. (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

Town of Castle Rock 175 Kellogg Court Castle Rock, CO 80109	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

EXHIBIT 3**TOWN OF CASTLE ROCK
AFFIDAVIT OF INDEPENDENT CONTRACTOR STATUS**

I, _____, an authorized representative of **W.W. WHEELER & ASSOCIATES, INC.**, holding legal authority to sign this Affidavit declare under oath that I am 18 years or older and have the capacity to sign this Affidavit.

In accordance with Section 8-70-115, C.R.S., I certify the following:

- With respect to the Agreement, I represent and warrant that it is my express intention to be employed as an independent contractor of the Town of Castle Rock (the “Town”) for purposes of performing the work or services which are the subject of the Agreement. I understand and confirm that the Town reasonably relied on this intention in entering into the Agreement.
- The Town does not require I work exclusively for the Town, except that I may choose to work exclusively for the Town for a finite period of time specified in the document.
- The Town does not establish a quality standard for the work or services performed pursuant to the Agreement, except that the Town may provide plans and specifications regarding the work but cannot oversee the actual work or provide instruction as to how the work is performed.
- The Town does not pay a salary or hourly rate but rather a fixed or contract rate, as noted in the terms and conditions of the Agreement, and any Exhibits made part of the Agreement.
- The Town cannot terminate the work or services performed during the contract period unless otherwise agreed to in the terms and conditions of the Agreement.
- I am not provided with anything, if at all, more than minimal training from the Town.
- The Town does not provide me with tools or benefits for the performance of the work or services which are the subject of the Agreement, except materials and equipment may be supplied.
- The Town does not dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established in the Agreement.



- The Town does not pay me personally but rather makes checks payable to the trade or business name of the entirety for which I am employed and who is a party to the Agreement; and the Town does not combine their business operations in any way with the entity's business, but instead maintains such operations as separate and distinct.
- I understand that if a professional license to practice a particular occupation under the laws of the State of Colorado requires the exercise of a supervisory function with regard to the work of services performed under this Agreement, such supervisory role shall not affect the independent contractor relationship with the Town.
- **I UNDERSTAND THAT I AM NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY ME OR THE ENTITY FOR WHICH I AM EMPLOYED.**
- **I UNDERSTAND THAT I AM OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THE AGREEMENT.**

CONTRACTOR/CONSULTANT/VENDOR

W.W. WHEELER & ASSOCIATES, INC.

By: _____

Name

STATE OF COLORADO)

) ss.

COUNTY OF _____)

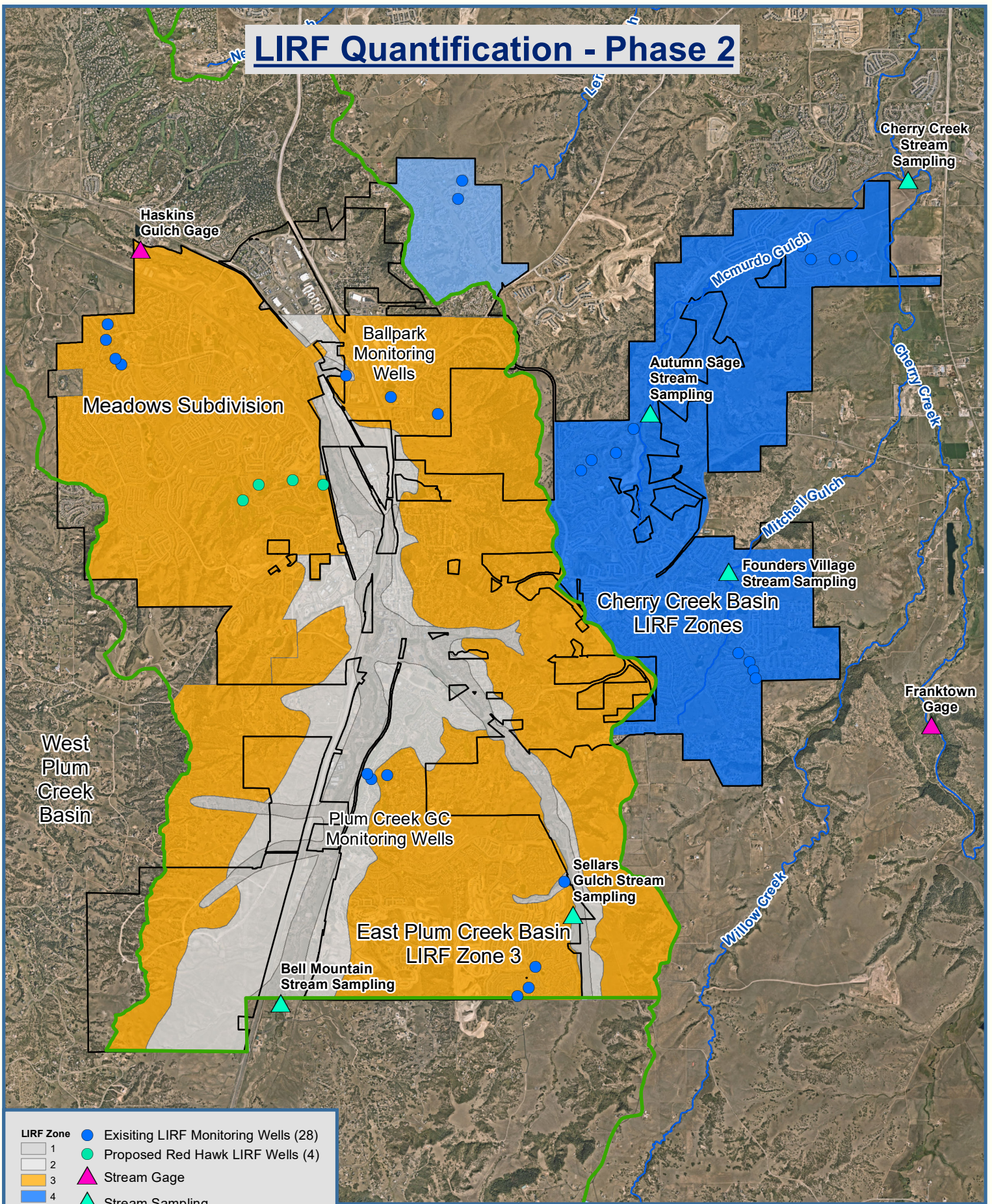
The foregoing instrument as acknowledged before me this ____ day of _____, 20__ by _____ as _____ of the above mentioned Contractor/Consultant/Vendor.

Witness my official hand and seal.


My commission expires:

Notary Public

LIRF Quantification - Phase 2



Date: 9/15/2022

	SUBJECT: APPENDIX J – SOLE SOURCE JUSTIFICATION FORM	Approval Date 1/1/2018
	DIVISION AND POLICY NUMBER PURCHASING	Revision Date N/A

COMMODITY OR SERVICE _____

VENDOR _____

AMOUNT OF PURCHASE \$ _____

REQUESTORS NAME _____

DEPARTMENT _____

DEPARTMENT DIRECTOR's Approval _____

FINANCE DEPARTMENT's Approval _____

TOWN MANAGER's (or Designee) Approval _____

PURCHASING POLICY EXCEPTION ITEM	CHECK ONE
1. Item(s) or service has been formally awarded to a vendor by the State of Colorado, MAPO, or other cooperative purchasing group and the product meets the needs of the Town of Castle Rock.	<input type="checkbox"/>
2. The product or service is of a unique nature, or allows for standardization with existing equipment and will provide exceptional value to the Town of Castle Rock.	<input type="checkbox"/>
3. Emergency purchases where the well-being of the citizens, employees or Town property may be endangered if the purchase is delayed.	<input type="checkbox"/>
4. Town of Castle Rock currently has a contract in place with a vendor for like products or services and the compatibility and/or continuity of those products or services are paramount to the success of the department or Town function.	<input type="checkbox"/>

Per Municipal Code 3.02.060:

Purchases over \$1,000 and up to \$5,000 require three (3) verbal bids unless approved by the Town Manager on the basis of sole source, emergency or unresponsive bidder.

Purchases over \$5,000 and up to \$75,000 require three (3) informal written bids unless approved by the Town Manager on the basis of sole source, emergency or unresponsive bidders.

Purchases over \$75,000 require formal written sealed bids unless waived by the Town Council on the basis of sole source, emergency or unresponsive bidders.

The requesting department must provide written justification to the Finance Department for review and forward it to the Accounting Manager. **Attach additional sheets as necessary.**



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 5. **File #:** WC 2022-093

To: Members of the Castle Rock Water Commission

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, P.E., Water Resources Manager
Lauren Moore, Water Resources Program Analyst

Ordinance Approving the 2023 Agricultural Lease Agreement between Town of Castle Rock and Ruppel Farms, LLC [Weld County, Colorado]
Town Council Agenda Date: November 1, 2022

Executive Summary

Castle Rock Water is seeking Town Council approval of an ordinance (**Attachment A**) for an agricultural lease with Ruppel Farms, LLC (Ruppel's) for the Box Elder Well Field property. The Town closed on the Box Elder property on Dec. 30, 2016 and are interested in continuing to work with the farmer that has previously farmed the land. The Ruppel's will lease 560 acres of farmland for three years including grazing rights for a total price of \$14,608.75. The annual rent and grazing fees were increased by the Consumer Price Index (CPI) increase from December 2019 (prior lease execution date) to September 2022. The price is reasonable for leased farmland in this location based on available data regarding other farm leases in the area. Either party may terminate the agreement with 120 days' notice.

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

February 22, 2017, Castle Rock Water Commission recommended the agreement be taken to Town Council for approval.

March 28, 2017, Town Council unanimously approved the Agricultural Lease with Ruppel Farms, LLC.

November 5, 2019, Town Council unanimously approved the First Reading for the 2020 Agricultural Lease with Ruppel Farms.

December 3, 2019, Town Council unanimously approved the Second Reading for the 2020 Agricultural Lease with Ruppel Farms.

Discussion

As part of the Town's hybrid renewable water solution, the Town purchased Box Elder Farm and closed on the property on December 30, 2016. This farm is located approximately six miles east of Lochbuie, CO in southern Weld County as shown in **Attachment B**. The water rights associated with this property have the potential to serve as a supply and/or augmentation source, along with the Lost Creek Basin wells, for the increased water demands that the Town will face as population growth continues. Should the Town obtain additional water rights in the South Platte River basin, this property is located along a section of Box Elder Creek, which may prove to be a useful diversion point for a northern water supply.

Rupple Farms, LLC, had a crop share lease with the previous property owner, Box Elder Properties, LLC, from January 1, 2011 through December 31, 2016, for 700 farmable acres. Up to 650 out of 850 acres were cultivated while areas with structures and riparian areas along Box Elder Creek remained uncultivated and/or grazed. The current lease of 560 acres with grazing rights, which began on January 1, 2020, expires at the end of this year and Castle Rock Water would like to renew for another three-year term.

Rupple Farms, LCC utilizes irrigation water from Henrylyn Irrigation District (HID) and Farmers Reservoir and Irrigation Company (FRICO) and it is estimated that approximately 200 acres can be irrigated and 360 acres can be dry farmed. The lease rate will be \$23 per acre farmed, up to 560 acres annually. Additionally, a \$1,728.75 grazing right can be leased each year for up to 60 head of livestock. The farmer will reimburse the Town for annual assessments to Henrylyn Irrigation District (HID) and FRICO. The value of a cash lease with this area of land farmed, including grazing rights is \$14,608.75 with the tenant paying all annual assessments. The key terms of the agreement are as follows:

- 3-year cash lease;
- Town will pay all property taxes and assessments against the real estate and personal property on the farm as well as insurance premiums for the structures and liability insurance coverage;
- Town will provide Tenant with limited power of attorney to administer the farm's participation in government programs;
- Town may purchase the existing irrigation pivot installed by the Tennant for fair market value at the end of the lease if it is not extended or the Tenant may remove it;
- Tenant's participation in Agricultural Risk Coverage Program (ARC-CO) and other government program participation is the sole responsibility of the tenant (The Town will execute documents as necessary);
- Lease can be terminated by either party 120 days prior to the termination date;
- All crops and proceeds from the crops shall be the Tenant's;
- Tenant shall furnish all labor, power, machinery and movable equipment, and all related operation and maintenance expenses to operate the farm;
- Repairs such as replacing well pumps, well screens, and pivot gear boxes on the pivots owned by Castle Rock shall be the responsibility of Castle Rock with support from the Tenant with managing contractors installing and replacing equipment;

- Tenant shall cut the weeds along ditches, roads, and property boundaries whenever necessary to prevent reseeding;
- Tenant shall be responsible for reimbursing the Town all paid annual assessments which include but are not limited to FRICO assessments, HID, Chemigation Permit renewals, etc.;
- Hunting and grazing rights; and
- Tenant will have the right to call on the FRICO and HID water rights.

This farm lease will show the surrounding community that the Town is willing to work with the nearby neighbors. The Town will also be good neighbors by the fact that we are not letting the property become overrun with weeds and we are choosing to continue to farm it. The Town will also be able to generate some revenue from the property.

Budget Impact

If Council approves the agreement, Castle Rock Water would receive \$14,608.75 plus reimbursement for the total cost of annual assessments for FRICO, HID, and Chemigation Permits. The revenue will be deposited into Water Resources Fund Capital Leases account 211-4375-393.70-00.

Proposed Motion

"I move to recommend to Town Council approval of the Ordinance as presented"

Attachments

Attachment A:	Ordinance (Not Attached)
Exhibit 1:	Lease Agreement
Attachment B:	Location Map

AGRICULTURAL LEASE AGREEMENT

This Lease is made this ____ day of _____, 2022 by and between the Town of Castle Rock, a Colorado municipal corporation, acting by and through the Town of Castle Rock Water Enterprise, whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Lessor”) and Ruppel Farms, LLC, a Colorado limited liability company, whose address is 29020 East 163rd Place, Brighton, Colorado 80603 (“Lessee”).

RECITALS

A. Lessor is the owner of approximately 850 acres of land located in Weld and Adams Counties, Colorado, as depicted in the attached *Exhibit 1* (“Property”).

B. Lessee desires to lease a portion of the Property for agricultural purposes and Lessor desires to lease to Lessee up to 560 acres of the Property depicted in the attached *Exhibit 2* and the water rights described in the attached *Exhibit 3* (collectively the “Leased Property”).

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Lease. Subject to the terms and conditions set forth in this Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the Leased Property, for cultivating crops, and grazing of livestock.

Section 2. Term. The Lease will be for three-yearar term, effective January 1, 2023 and extending through December 31, 2025 (“Lease Term”). The period January 1 through December 31 shall be referred to as a Lease Year. The Lease Term may be extended upon a mutually acceptable agreement between the Parties. Neither party shall be liable to the other party if a party elects not to renew this Lease.

Section 3. Rental Rate. Lessee shall pay annual rent, due on May 1 of each Lease Year, based on the number of acres of farmed land at \$23 per acre (“Rent”). The Rent due for the first Lease Year (1/1/20 – 12/31/20) shall be \$12,880 based on Lessee’s desire to farm not more than 560 acres. The amount of Rent due for the second and third Lease Years will be calculated based upon the number of acres of farmed land, as determined by Lessee, multiplied by a rate of \$23 per acre.

In addition, Lessee shall pay to Lessor \$1,728.75 each Lease Year for the right to graze up to 60 head of livestock on the Property (“Grazing Right Payment”). The Grazing Right Payment shall be paid to Lessor concurrently with the annual Rent payment. Payment amounts include an interest element of 4.5%. An amortization schedule will be provided 30 days prior to May 1 of each lease year.

Section 4. Annual Assessments. Lessee shall reimburse Lessor all paid assessments, renewals. Lessor will provide a copy of any assessments, notice or invoice to Lessee and payment to Lessor shall be due within thirty (30) days of receipt of the assessment or notice by Lessee.

Section 5. Use of the Leased Property.

A. The Leased Property shall be used solely for agricultural farming purposes, livestock grazing and hunting, as further provided in Section 7 below. Lessee agrees to properly cultivate and farm, in a reasonable and good stewardship manner, all lands within the Leased Property. All crops and crop proceeds shall be the separate property of Lessee.

B. Lessee shall be responsible for all labor, power, machinery, and moveable equipment, operation and maintenance expenses to operate the farm. Lessee's participation in the Agricultural Risk Coverage Program (ARC-CO) and other government programs shall be at the sole discretion and responsibility of Lessee. Lessor shall provide any necessary documentation or approvals necessary to enable Lessee to participate in such programs. By execution of this Agreement, Lessor grants to Lessee a limited power of attorney to administer the Leased Property in such governmental programs, provided Lessee has given notice to Lessor of any programs that it intends to participate in.

C. Lessee shall take no actions on the Property which may result in contamination of the Property, including the groundwater upon, under, or near the Property.

D. Lessor shall have the option to purchase the existing irrigation pivot installed by Lessor. The purchase price for the irrigation pivot shall be fair market value. If Lessor does not elect to purchase the irrigation pivot, Lessee shall remove the irrigation pivot upon termination of the Lease.

E. Lessor, its agents, contractors, and guests shall have the right of entry for the following purposes including, but not limited to, inspection the Property, construction of improvements, hydrologic testing, and surveying. Lessor shall provide Lessee with adequate notice of such intended use of the Property. Lessee agrees to provide access, unlock gates as necessary, and provide notification to Lessor of any damage to the Property related to such guest, agent or contractor's use of the Property.

Section 6. Use of Water Rights. Lessee shall have the right to call on water rights described in *Exhibit 3*. These rights shall be used for irrigation use only and such irrigation use may only take place on the Leased Property. Lessee's use of the water rights shall be in accordance and in conformance with the terms and conditions of any and all court decrees for the water rights.

Section 7. Grazing Rights. Lessee shall have the right to graze up to 60 head of livestock on the Property. Lessee shall at all time maintain adequate fencing for containment of livestock.

Section 8. Hunting Rights. Lessor hereby grants to Lessee (to include Lessee's partners, officers, directors, employees, family members, and invitees), the exclusive and unrestricted rights to all legal and appropriate hunting activities on the Property. Lessor agrees

not to lease, license, or give permission to any other party for hunting purposes on the Property during the term of this Lease. Lessee may enter upon the lands at any time, without notice to Lessor, to legally hunt or to prepare for hunting. Lessee may not cause crop or property damage during granted occupancy for hunting purposes, and shall be liable for any such damages. Lessee may use all roads as they may exist from time to time to access the property. Lessee may construct temporary hunting blinds and pits, providing that for all dug pits: 1) they be installed after farming activities are completed each fall and removed and backfilled prior to farming activities in the spring; 2) that Lessor is notified of the locations of such pits; 3) that such pits are not located on center pivot wheel tracks, over buried electrical or pipeline services, or on existing roadways; 4) that such pits are marked appropriately with flagging and/or reflectors when not in use; and 5) that such pits will be closed and covered when not in use to help prevent potential accidents, and/or damages to, or by cattle that may from time to time be grazing on the Property. Lessor makes no assurances or warranties as to the suitability and/or huntable conditions existing on the Property. Lessee understands that farming operations, variables and decisions not under Lessee's control, such as low water supplies and crop selections, may from time to time limit the huntability of the Property.

Section 9. Maintenance of the Property. During the term of the Lease, and to the reasonable satisfaction of Lessor, Lessee shall maintain the Property in good repair and condition. Lessee shall not, without the prior written permission of Lessor, remove or allow any other person to remove from the property any of the pumps, sprinkler, pipelines, electrical connections, fences, buildings, trees, shrubbery, or any of the improvements of any kind. Lessee shall mow weeds or grasses, including but not limited to perennial noxious weeds regularly and shall maintain free from blockage debris or other obstruction all ditches, pipelines and roads on, or abutting the Property.

Lessor, at its sole expense, shall be responsible for repair and or replacement of well pumps, well screens, and pivot gear boxes owned by Lessor. Lessee agrees to provide support in managing contractors for such repairs and/or replacements.

Section 10. Insurance. Lessor, at its expense, shall maintain hazard insurance coverage on the Property, insuring all structures and personal property owned by Lessor located on the Property.

Section 11. No Ownership Interest in the Property. Lessee acknowledges that Lessee has no interest in the Property, other than as specifically set forth in this Lease, and otherwise claims no right, title, or interest in the Property. Effective on the termination Date, and without any further notice or writing, Lessee hereby quitclaims unto Lessor any and all right to use and any and all right, title and interest in and to the Property.

Section 12. Surrender of Leased Property. At the expiration of, or upon the termination of this Lease, or upon a breach by the Lessee of any of the covenants, terms or conditions contained in this Lease, Lessee shall quit and surrender the possession and occupancy of the Leased Property in as good condition as careful use and natural wear and decay may permit.

Section 13. Risk of Operation/No Joint Venture. The relationship created by this Lease Agreement shall be strictly as lessor and lessee, and not as partners or joint ventures, in any respect whatsoever. Lessor shall bear no portion of any loss, cost, or expense incurred by Lessee in connection with Lessee's operations on the Property under this Lease.

Section 14. Indemnification. Lessee shall exercise its privileges under this Lease at its own risk. Lessee shall indemnify and hold Lessor harmless from and against all liability for damages, costs, losses, and expenses resulting from, arising out of, or in any way connected with the use of the Property by Lessee, including by way of example and not by way of limitation, any governmental fines or penalties.

Lessee shall procure and maintain the following policies of insurance:

A. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

B. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Lessor's owned, hired and/or non-owned vehicles assigned to or used in on the Property. The policy shall contain a severability of interests provision.

The policies required above shall be endorsed to include Lessor, its officers and employees, as an additional insured.

Section 15. No Guarantee. Lessee acknowledges that Lessor cannot and does not guarantee the actual physical availability or water quality of the water rights.

Section 16. No Assignment or Sublet. Lessee shall not sell or assign this Lease, or otherwise sublet the Leased Property without the prior written consent of Lessor, which consent shall be given or withheld at the Lessor's sole discretion. Failure to obtain Lessor's consent to any such assignment or sublet shall be considered a breach, shall be under penalty of forfeiture of all the rights of Lessee under this Lease, and Lessor may, in its sole option, immediately terminate this Lease.

Section 17. Default and Remedies. In the event either party should default in performance of its obligations under this Lease, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

Section 18. Notices. Any notices required or permitted to be given hereunder shall be in writing, and shall be deemed to be given and effective when delivered by facsimile, electronic mail, express mail, or the third day after depositing in the US mail, addressed to the Parties as follows:

If to Lessor: Town of Castle Rock
 Castle Rock Water
 175 Kellogg Court
 Castle Rock, Colorado 80109

With copy to: Town Attorney
 Town of Castle Rock
 100 N. Wilcox Street
 Castle Rock, Colorado 80104

If to Lessee: Ruppel Farms, LLC
 29020 East 163rd Place
 Brighton, Colorado 80603

Section 19. Entire Agreement. This Lease constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended without written consent of both Parties. This Lease supersedes any and all existing leases on the Property.

Section 20. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original. Said counterparts shall constitute one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument. Executed copies may be delivered by facsimile or electronic mail and upon receipt will be deemed originals and binding upon the Parties, regardless of when originals are delivered.

Section 21. Binding Effect. This Lease shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person other than Lessee and Lessor, and their personal successors, assigns, and transferees.

Section 22. Binding Law, Severability. This Lease shall be governed by laws of the State of Colorado. Whenever possible, each provision of this Lease shall be interpreted so as to be effective and valid under Colorado law. If any provision of this Lease is, for any reason and/or to any extent, invalid or unenforceable, then neither the remainder of this Lease in with the provision appears or the application of the provision to other persons or other circumstances shall be affected by such invalidity or unenforceability.

LESSEE:

RUPPLE FARMS, LLC,
a Colorado limited liability company

By: _____

Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____day of _____, 2022 by _____ as _____ for Rurple Farms, LLC, a Colorado limited liability company.

Witness my official hand and seal.

My commission expires: _____

Notary Public

LESSOR:

ATTEST:

TOWN OF CASTLE ROCK acting by and
through the Town of Castle Rock Water
Enterprise

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director of Castle Rock Water

STATE OF COLORADO)
) *ss.*
COUNTY OF)

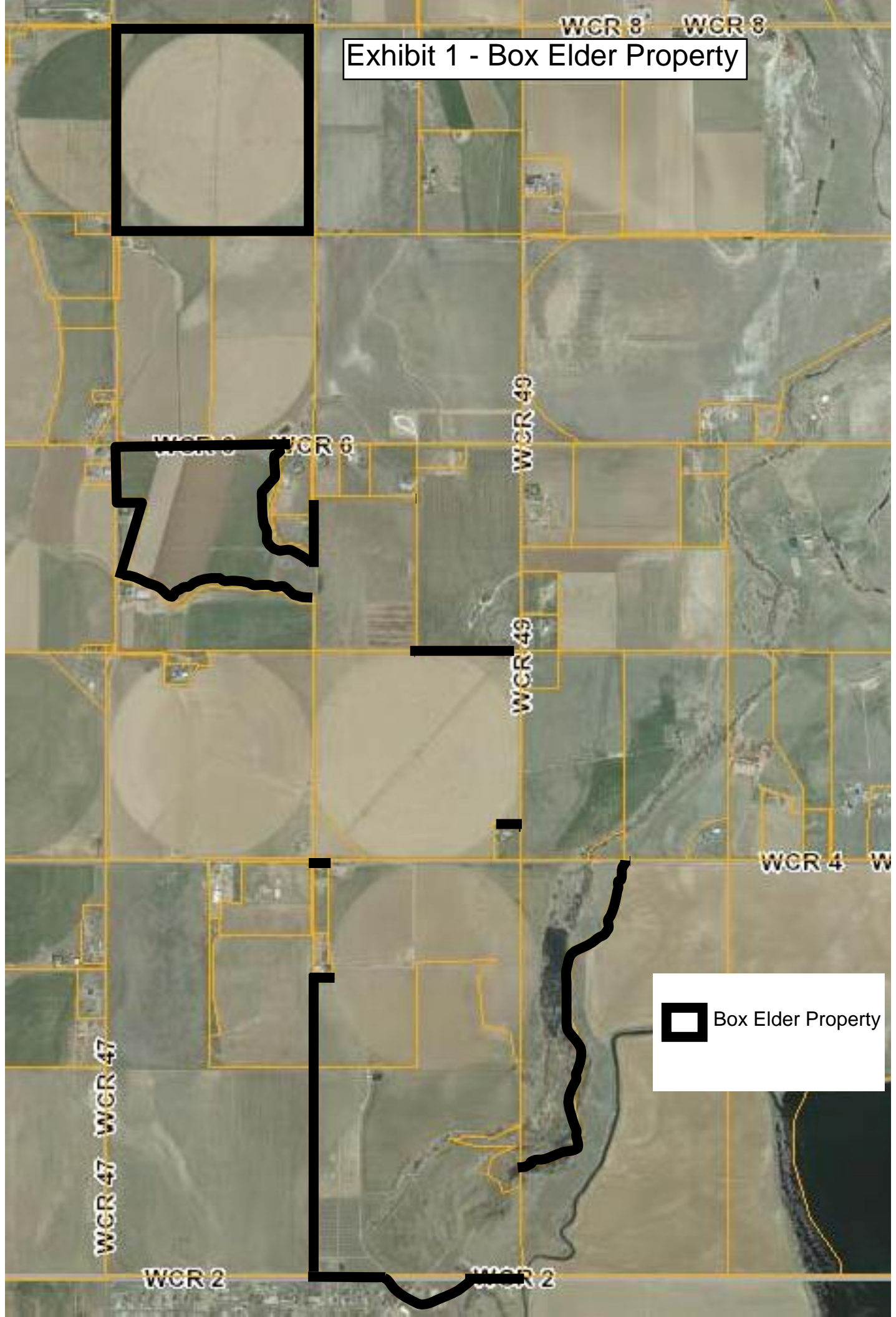
The foregoing instrument was acknowledged before me this ____day of _____, 2022 by Lisa Anderson as Town Clerk and Jason Gray as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: _____

Notary Public

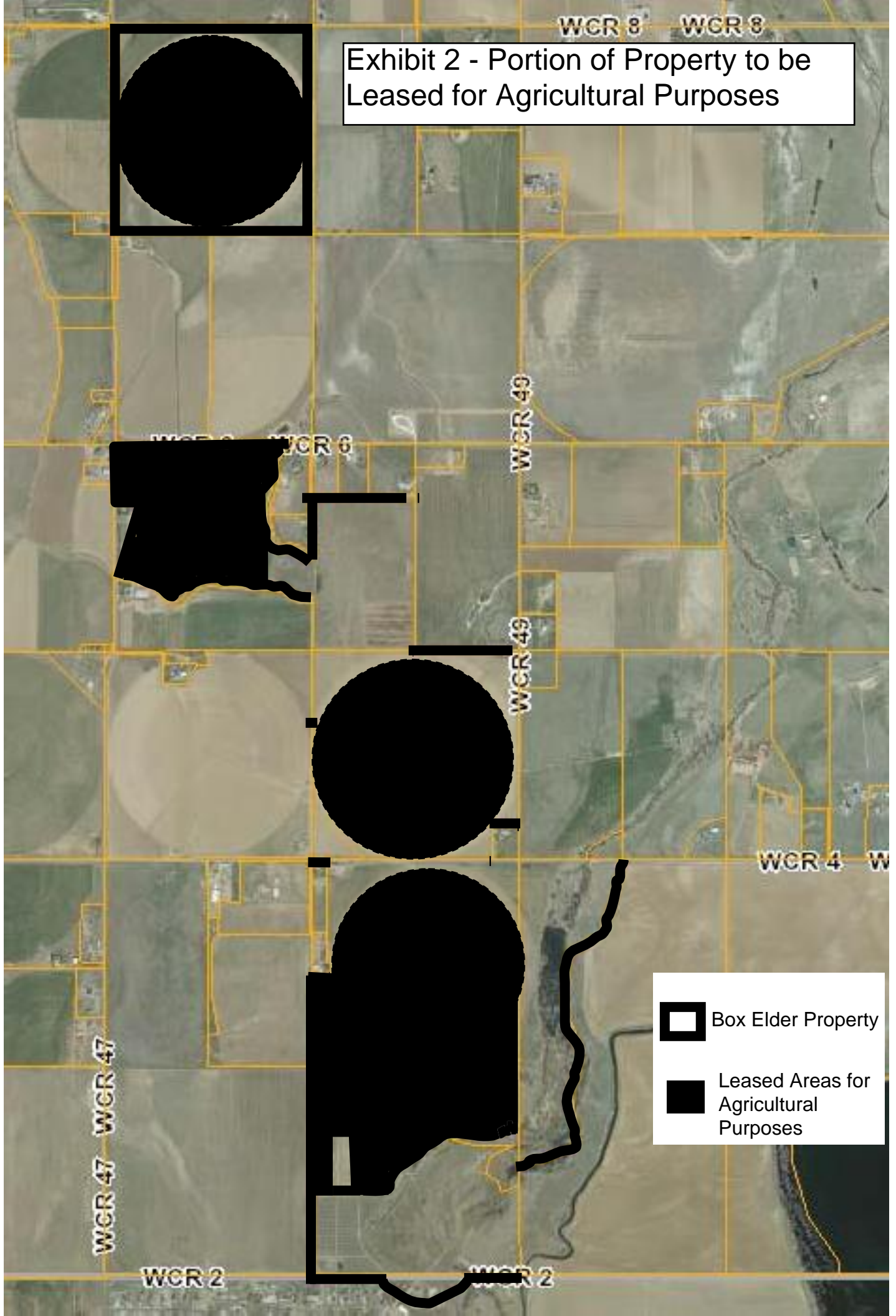
Exhibit 1 - Box Elder Property



Box Elder Property

WCR 8 WCR 8

Exhibit 2 - Portion of Property to be
Leased for Agricultural Purposes

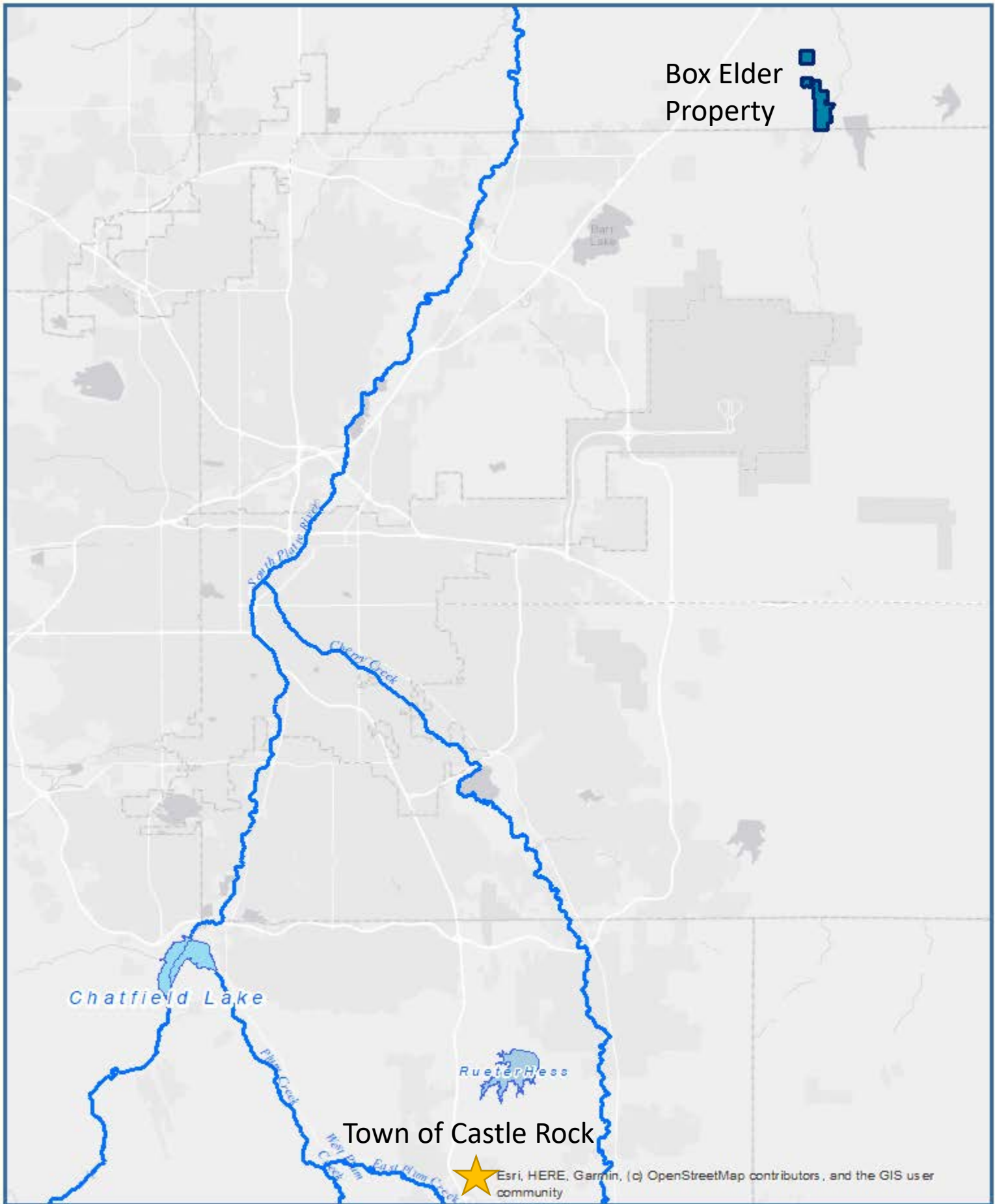


-  Box Elder Property
-  Leased Areas for Agricultural Purposes

Exhibit 3

Water Rights on the Property

- non-renewable water rights without existing well structures on the property;
- 300 acre-feet (AF) of consumptive use Henrylyn Irrigation District (HID) water rights; and
- Five shares of FRICO-Barr water rights.



Box Elder
Property

Chatfield Lake

Rueter-Hess

Town of Castle Rock



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community



0 12,500 25,000 50,000 Feet

Date: 10/5/2022

1 inch = 25,120 feet



Disclaimer: The data presented has been compiled from various sources, each of which introduces varying degrees of inaccuracies or inconsistencies. Such discrepancies in data are inherent and in applying this product the Town of Castle Rock assumes no liability for its use or accuracy. Questions or comments regarding the cartographic composition of this map, including, but not limited to, errors, omissions, corrections, and/or updates, should be directed to the Utilities Department, Town of Castle Rock, (720) 733-6266. Copyright 2022, Town of Castle Rock, Utilities Mapping.

**CASTLE ROCK
UTILITIES MAP
(INTERNAL USE ONLY)**



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 6. **File #:** WC 2022-094

To: Members of the Castle Rock Water Commission

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, P.E., Water Resources Manager
Lauren Moore, Water Resources Program Analyst

Resolution Approving the 2022 Town of Castle Rock/Central Colorado Water Conservancy District Spot Water Lease Agreement [*Chatfield Reservoir, Douglas County*]
Town Council Agenda Date: November 1, 2022

Executive Summary

Castle Rock Water is seeking Town Council approval of a resolution (**Attachment A**) for a spot water lease with Central Colorado Water Conservancy District (Central). In anticipation of continued drought conditions next year, Central wishes to lease some of the Town's surplus water stored in Chatfield Reservoir to increase their storage supplies within Chatfield and have additional water upon which to make projections for their well pumping augmentation plans. While the Town currently owns 719 acre-feet (AF) of storage in Chatfield, the Colorado Water Conservation Board (CWCB) allows for rental of the remaining permitted amount, for a total of 2,000 AF of storage. The Town currently has approximately 275 AF of water stored in the reservoir with additional reusable supplies expected to increase substantially over the winter months.

If Council approves this lease, up to 500 AF of water may be released from the Town's Chatfield Reservoir storage account as a book-over into Central's Chatfield Reservoir storage account during 2023. This release may occur between January 1, 2023 and December 31, 2023. The Town will assess a \$90 per AF price for the water, with payment required within 30 days from requested releases. The potential revenue for this lease is up to \$45,000. The agreement will terminate at the end of 2023.

Discussion

Castle Rock Water has a strategic goal to strive to maintain sustainable rates and fees, and demonstrate fiscal responsibility, accountability, and transparency. One of the tactics to achieve this goal is to maximize leasing opportunities for idle water rights. Over the past four years, the Town has generated over \$630,000 by leasing idle water rights to downstream users (see **Table 1** below). Until these water rights can be fully utilized by the Town, Staff will continue to seek out users that can put these rights to beneficial use.

Item #: 6. File #: WC 2022-094

Table 1. Revenue generated from leasing idle water rights to downstream users over the past four years.

2018	2019	2020	2021
\$29,019.13	\$30,606.65	\$70,699.75	\$499,449.73

The Town currently owns 719 AF of storage space in Chatfield Reservoir and plans to eventually reach 2,000 AF of storage by 2031. As part of the option agreement the Town has with CWCB, the Town will purchase blocks of storage over the next 10 years. The Town recently purchased 129 AF in 2022, bringing the Town's total storage to 719 AF. The Town will then have two deferrals remaining until the full storage space is realized within the 10-year period.

As mentioned in the Executive Summary, the Town has been able to store excess supplies in Chatfield Reservoir over the past year, which have exceeded the purchased storage amounts (719 AF). Since the Town does not physically have a way to utilize these excess storage supplies at this point in time, CWCB has developed, and Town Council has approved, a lease agreement with the Town to lease the optioned storage space for \$50/AF. With a current annual lease rate for 1,281 AF (2,000 AF minus 719 AF), the Town will pay the State \$64,050 in 2022. The spot lease with Central would allow the Town to further maximize storage space within the reservoir and in addition to other similar leases, will help to cover the annual lease option of storage space with CWCB.

Budget Impact

If Council approves the agreement, Castle Rock Water would potentially receive up to \$45,000 of additional revenue in 2023. The revenue will be deposited into the Water Resources Fund Capital Leases account 211-4375-393.70-00.

Proposed Motion

"I move to recommend to Town Council approval of the Resolution as presented"

Attachments

Attachment A: Resolution
Exhibit 1: Agreement

**TOWN OF CASTLE ROCK/CENTRAL COLORADO WATER CONSERVANCY
DISTRICT
SPOT WATER LEASE AGREEMENT**

THIS SPOT 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 the Castle Rock Water Enterprise (“Town”), as Lessor, whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104 and Central Colorado Water Conservancy District (“Central”), as Lessee, whose address is 3209 W 28th St, Greeley, CO 80634, collectively referred to as the Parties.

RECITALS

WHEREAS, the Town owns certain water in the Chatfield Basin that is reusable and fully consumable after its first use for municipal purposes by the Town. From time to time, a certain amount of this water is surplus to the needs and obligations of the Town (“Surplus Water”); and

WHEREAS, the Town anticipates it will have Surplus Water available from time to time in 2023; and

WHEREAS, Central desires to lease a certain portion of the Surplus Water from the Town in accordance with the terms and conditions of this Agreement for municipal use.

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, the Town and Central agree as follows:

1. Water Rights Lease. The Town hereby leases to Central Surplus Water up to 500 AF total (“Leased Spot Water”), which may be made available as follows:

A. Between January 1, 2023 and December 31, 2023 with no additional water released thereafter.

2. Deliveries.

A. Amount. The Town may have water available within its Chatfield Storage Account to lease up to 500 AF to Central in 2023. The Leased Spot Water will be withdrawn from the Town’s Storage Account upon coordination with the Colorado Department of Natural Resources – Division of Water Resources.

B. Location. Release will consist of a book-over from Castle Rock’s Chatfield Storage Account into Central’s Chatfield Storage Account.

C. Delivery to Central. Central will take delivery of the Leased Spot Water within its Chatfield Storage Account. Deliveries will be made by mutual agreement of the Parties.

D. Accounting. Central must provide the Town with a copy of the water accounting showing the date(s) and quantities of the release of Leased Spot Water. This information will also be used to confirm and update the Town's Chatfield accounting forms.

3. Lease Rate. Leased quantities shall be paid at the rate of \$90 per acre-foot. Payment for quantities leased shall be made thirty (30) days following the issuance of an invoice from Castle Rock. The Town shall invoice Central and payment shall be remitted to Castle Rock Water; 175 Kellogg Court; Castle Rock, CO 80129; ATTN: Matt Benak, Water Resources Manager.

4. Quality of Leased Spot Water. Leased Spot 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 (PCWRA) facility, such quality to be measured at the authorized discharge point(s) specified in any such discharge permit. By entering into this Agreement and utilization of the Leased Spot Water, Central acknowledges that water meeting the requirements of this paragraph is suitable for its purposes and will accept such water as meeting the terms of this Agreement.

5. Lease Term. The term of this Agreement shall commence upon its execution and expire December 31, 2023. By mutual written agreement of the Parties, this Agreement may be renewed on the same or on different terms.

6. Central's Obligations. Central's obligations under this Agreement are limited to making the payments as described in paragraph 3 above.

7. Town's Obligations. The Town shall allow Central to divert, store, use, reuse, and successively reuse to extinction and make all decreed uses of all Leased Spot Water, and shall confirm to Central's satisfaction that all Leased Spot Water is decreed for all such uses and has been recognized and is administered by the Colorado State Engineer for all such uses.

8. Notice. 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 Town:

Town of Castle Rock (Castle Rock Water)
Attn: Water Resources Manager (Matt Benak)
175 Kellogg Court
Castle Rock, CO 80109

with copy to: Town of Castle Rock
Attn: Town Attorney (Mike Hyman)
100 N. Wilcox Street
Castle Rock, CO 80104

If to Central: Central Water and Sanitation District
Attn: Randy Ray, Executive Director
3209 W 28th St
Greeley, CO 80634

9. Assignment. Central may not assign its rights hereunder without the prior written consent of the Town, which may be withheld in the Town's sole discretion. In the event that the Town consents to an assignment of Central's rights hereunder, the assignee shall execute an assumption agreement with the Town and Central pursuant to which it shall assume Central's obligations hereunder. The terms of such assumption agreement must be approved by the Town.

10. 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 oral.

11. Binding Effect. The execution of the Agreement by the Town as Lessor and Central as Lessee constitutes the execution of a binding lease agreement by the Parties on the terms and conditions contained herein and may not be modified except in writing signed by both Parties. This Agreement shall be binding on the Parties' respective successors and assigns.

12. Enforcement. In the event either Party commences any action to enforce the terms and provisions of the Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and all costs incurred in connection with such action, including, but not limited to, expert witness fees.

13. Controlling Law. This Agreement shall be governed under, and construed pursuant to the laws of the State of Colorado.

(signature page to follow)

LESSOR:

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

LESSEE:

Central Water and Sanitation District

By: _____
Randy Ray, Executive Director

STATE OF COLORADO)
) *ss.*
COUNTY OF DOUGLAS)

The foregoing instrument as acknowledged before me this ____ day of _____,
2022 by _____ as _____ of the Central Colorado Water Conservancy
District.

Witness my official hand and seal.
My commission expires:

Notary Public



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 7. **File #:** WC 2022-098

To: Members of the Castle Rock Water Commission

From: Mark Marlowe, P.E., Director of Castle Rock Water
Nichol Bussey, Business Solutions Manager
Paul Rementer, Enterprise Fund Analyst

Low Income Assistance Program
Town Council Agenda Date: NA

Executive Summary

This will be a presentation only.



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 8. **File #:** WC 2022-095

To: Members of the Castle Rock Water Commission

From: Mark Marlowe, P.E., Director of Castle Rock Water
Matt Benak, P.E., Water Resources Manager

Update on State's Direct Potable Reuse Regulations
Town Council Agenda Date: NA

Executive Summary

The State of Colorado expects to double its population by 2050 which will create significant added demands on the limited supplies of our water resources. The Colorado Water Plan delineates a variety of strategies to help address the projected gaps in supply versus demand, and one of those strategies is Direct Potable Reuse (DPR). DPR is defined as the use of a series of water treatment processes that produce purified finished drinking water utilizing a source containing treated wastewater that has not passed through an environmental buffer. Currently, Castle Rock Water (CRW) practices Indirect Potable Reuse (IPR) where reusable water is diverted off of Plum Creek, approximately six miles downstream of the Plum Creek Water Reclamation Authority plant outfall, and is then pumped back to the Plum Creek Water Purification Facility (PCWPF) for treatment and subsequent delivery to our customers. CRW is currently working with a professional engineering consulting firm (CDM-Smith) on a cost-benefit and risk assessment study to evaluate DPR for the Town.

The Colorado Department of Public Health and Environment (CDPHE) has developed a new rule within the Colorado Primary Drinking Water Regulations (Regulation No. 11, Chapter 14) clearly outlining the steps water treatment providers would need to follow to gain approval of a DPR system. These steps include: extensive public outreach; installation of advanced water purification processes; wastewater system monitoring and management; and enhanced monitoring and reporting.

CRW, along with many other water providers, industry experts, university researchers, and staff from CDPHE (along with input from the EPA), helped to formulate the DPR rule over the past several years. On October 11, 2022, the Water Quality Control Commission (WACC) formally considered the rule presented by CDPHE staff. Matt Benak (CRW Water Resources Manager), along with other interested stakeholders also spoke in support of the rule. The WQCC voted to adopt the rule (along with some minor errata that will be made to the final rule) at the upcoming November meeting. The rule will formally go into effect in the first quarter of 2023.

The Water Quality Control Commission is the administrative agency responsible for developing specific water quality policy in Colorado, in a manner

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that implements the broader policies set forth by the Legislature in the Colorado Water Quality Control Act. The WQCC adopts water quality classifications and standards for waters of the state, as well as various regulations aimed at achieving compliance with those classifications and standards.



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 9. **File #:** WC 2022-096

To: Members of the Castle Rock Water Commission

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

Update: Operational Change - Assistant Director of Operations
Town Council Agenda Date: NA

Executive Summary

This will be an informational update.



Town of Castle Rock

Agenda Memorandum

Agenda Date: 10/26/2022

Item #: 10. **File #:** WC 2022-097

To: Members of the Castle Rock Water Commission

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

Upcoming Town Council Items
Town Council Agenda Date: NA

Executive Summary

This item is an informational update only, and is designed to give Commission a preview of time critical items that may need to go to Council prior to review at a Commission Meeting.

Upcoming Items:

There are no items at this time.