

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

THIS WATER LEASE AGREEMENT ("Agreement") is entered into this 18th day of June, 2024, by and between the Town of Castle Rock, a home rule municipal corporation by and through the Town of Castle Rock Water Enterprise ("Castle Rock"), as lessor, and the Town of Wiggins, by and through the Wiggins Water Enterprise ("Wiggins"), as lessee. Castle Rock and Wiggins are collectively referred to as "the Parties."

RECITALS

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

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

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

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

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

AGREEMENT

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

1. **Lease of Water.** Castle Rock hereby leases to Wiggins five hundred eighty-four (584) acre-feet (a.f.) of the excess Rothe Recharge Credits ("Leased Water").
2. **Lease Price.** Wiggins shall pay to Castle Rock one hundred thirty-five dollars (\$135.00) per a.f., totaling seventy-eight thousand eight hundred forty dollars (\$78,840) for the Leased Water. Wiggins shall submit payment in full for the Leased Water to Castle Rock on or before July 30, 2024.
3. **Term.** This Agreement shall commence on July 1, 2024 and terminate on June 30, 2025, provided that the parties may renew this Agreement upon written agreement by both parties.

4. **No Warranties or Guarantees.** Subject to sub-paragraphs 4.a. through 4.c. below, Castle Rock shall make available to Wiggins the Leased Water.

a. The Town shall deliver the Leased Spot Water to Wiggins on the following monthly schedule: 41.7 AF in July 2024, 62 AF in August 2024, 41.3 AF in September 2024, 63.3 AF in October 2024, 46.7 AF in November 2024, 43.8 AF in December 2024, 42.5 AF in January 2025, 37.7 in February 2025, 43.6 in March 2025, 52.6 AF in April 2025, 55.3 AF in May 2025, and 53.5 AF in June 2025. Actual day-to-day deliveries of Leased Spot Water to Wiggins will vary and are in the Town's sole discretion, provided that the Town guarantees a minimum of 0.01 AF will be available daily.

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

c. Because of the possibility of drought, mechanical failures, or other extraordinary circumstances, Castle Rock cannot guarantee delivery of water. If Castle Rock cannot deliver to Wiggins the full 584 a.f., Castle Rock shall refund to Wiggins the lease price for any water requested but not delivered at a rate of \$135.00 per a.f. Such a refund shall be Wiggins' sole and exclusive remedy against Castle Rock for any breach or non-performance of any obligation under this Agreement.

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

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

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

8. **Termination.** This Agreement may be terminated by either party, for any reason, with one-hundred and eighty (180) days advance written notice. Because pumping Wiggins's wells creates ongoing augmentation obligations that continue after pumping stops, if Castle Rock terminates under this provision, then notwithstanding termination, the lease shall continue only to the extent necessary for Wiggins to continue to augment ongoing depletions resulting from pumping prior to termination, but in no event shall Castle Rock have an obligation to provide Leased Water after the Termination Date.

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

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

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

If to Wiggins: Town of Wiggins
Attn: Tom Acre, Town Manager
304 Central Avenue
Wiggins, Colorado 80654

With a copy to: Hayes Poznanovic Korver LLC
Attn: Matthew S. Poznanovic, Water Counsel
700 17th Street, Suite 1800
Denver, CO 80202

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 verbal.

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written.

(Remainder of page intentionally left blank; signature page to follow)

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

LESSEE:

ATTEST:

TOWN OF WIGGINS, COLORADO

Deborah Lee, Town Clerk

Christopher Franzen, Mayor

Approved as to form:

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument as acknowledged before me this ____ day of _____, 2022 by
_____ as _____ and _____ as
_____ for the Town of Wiggins.

Witness my official hand and seal.
My commission expires:

Notary Public