

**TOWN OF CASTLE ROCK/ CHATFIELD EAST PROPERTY OWNERS ASSOC.
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 the Chatfield East Property Owners Association, Inc. (“Association”) as Lessee, whose address is: P.O. Box 192, Littleton, Colorado 80160, 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”);

WHEREAS, the Town anticipates it will have Surplus Water available from time to time in 2022 and 2023; and

WHEREAS, the Association desires to lease a certain portion of the Surplus Water from the Town in accordance with the terms and conditions of this Agreement for use in a Substitute Water Supply Plan (“SWSP”) as an additional source of water to replace depletions to Plum Creek from pumping and use of water from Denver aquifer wells on individual lots in the Chatfield East Subdivision pursuant to the Decrees in case Nos. W-8568-77 and 89CW068.

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 the Association agree as follows:

1. Water Rights Lease. The Town hereby leases to the Association a total of 21.045 acre-feet (AF) annually of the Surplus Water (“Leased Spot Water”), which will be made available from November 1, 2022 through October 31, 2023, with deliveries not to exceed 2 AF per day.

2. Deliveries.

A. Amount. The Town shall provide the Association each day with flow measurement data at the discharge point for the Leased Spot Water for the preceding day. Notwithstanding the notice requirements below, the Town may provide flow measurement data by phone, fax, email or other suitable means to assure effective delivery management. The Town shall deliver the Leased Spot Water to the Association on the following monthly schedule: 1.765 AF in November 2022, and 1.75 AF each month in December 2022 through October 2023. Actual day-to-day deliveries of Leased Spot Water to the Association 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. The Association may verify at any time the accuracy of the flow measurement device used by the Town to measure the Leased Spot Water at the discharge point.

B. Location. The point of delivery of the Leased Spot Water shall be at Chatfield Reservoir.

C. Acceptance of Deliveries. Subject to the non-refundable payment obligation below, the Association may either accept or decline delivery of any portion of the Leased Spot Water the Town delivers to Chatfield Reservoir in accordance with this Agreement. Acceptance of delivery will be confirmed only by inclusion of Leased Spot Water in substitute water supply plan or augmentation plan accounting described below.

D. Accounting. The Association must provide the Town with a weekly accounting of the water beginning on the 1st of each month it uses this supply as a replacement source. The Association must supply the Town its augmentation accounting on a monthly basis, no later than the fifteenth day of the month following the month of accounting, or on a more frequent basis and at the times required to report to the water commissioner or division engineer as required by the Division of Water Resources.

3. Fees and Costs.

A. Lease Rate. The Association shall pay to the Town \$355.00 per acre foot for each acre-foot of Leased Spot Water measured at Chatfield Reservoir and used for replacement of depletions by the Association. The total amount owed for delivery of the Leased Spot Water is \$7,470.98, payable at the time of execution of this Agreement. The Town will reconcile the accounting for deliveries made through December 31 each year and send an invoice to the Association for the balance due or refund as necessary.

4. Quality of Leased Water. Leased Water shall be delivered "as is," but shall be of a quality that meets all standards and effluent limitations specified in Colorado Discharge Permit System Permit No. CO-0038547, as amended, or in any other discharge permit issued by the Water Quality Control Division or by the U.S. EPA authorizing discharges from the Plum Creek Water Reclamation Authority facility, such quality to be measured at the authorized discharge point(s) specified in any such discharge permit. By entering into this Agreement and utilization of the Leased Spot Water, The Association acknowledges that water meeting the requirements of this paragraph is suitable for replacement purposes and will accept such water as meeting the terms of this Agreement.

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

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

7. 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 Lessee: Chatfield East Property Owners Association
Attn: Nina McVicker
P.O. Box 192
Littleton, Colorado 80160

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

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 the Association 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 Lease shall be binding on the Parties' respective successors and assigns.

12. Controlling Law. This Lease 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

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument as 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

LESSEE:

Chatfield East Property Owners Association

By: _____
Kathy Kirchner, President

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument as acknowledged before me this __ day of _____, 2022 by Kathy Kirchner as President of Chatfield East Property Owners Association.

Witness my official hand and seal.
My commission expires:

Notary Public