

**TOWN OF CASTLE ROCK/ BOW MAR OWNERS, INC. & BOW MAR SOUTH, INC.
SPOT WATER LEASE AGREEMENT**

THIS SPOT WATER LEASE AGREEMENT (“Agreement”) is entered into _____, 2023 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 North Wilcox Street, Castle Rock, Colorado 80104 and Bow Mar Owners, Inc. (“Bow Mar Owners”) whose address is: 5380 Lakeshore Drive, Littleton, Colorado 80123, and Bow Mar South, Inc. (“Bow Mar South”) whose address is: c/o KC & Associates, LLC, P.O. Box 270487, Littleton, Colorado 80127 (collectively referred to as “Bow Mar”) as Lessees. Hereinafter, the Town, Bow Mar Owners and Bow Mar South may be 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 2023; and

WHEREAS, Bow Mar 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 the South Platte River from inflow diversions to the Patrick, Upper Tule, and Lower Tule Reservoirs.

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 Bow Mar agree as follows:

1. Water Rights Lease. The Town hereby leases to Bow Mar a total of 115 acre-feet (AF) annually of the Surplus Water (“Leased Spot Water”), which will be made available from June 1, 2023 through October 31, 2023, with deliveries not to exceed 2 AF per day.

2. Deliveries.

A. Amount. The Town shall provide Bow Mar 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 Bow Mar on the following monthly schedule: 30.60 AF in June, 31.31 AF in July, 26.04 AF in August, 15.30 AF in September, and 6.51 AF in October. Actual day-to-day deliveries of Leased Spot Water to the Bow Mar 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. Bow Mar 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. Release from Chatfield Reservoir into the main stem of the South Platte River.

C. Acceptance of Deliveries. Subject to the non-refundable payment obligation below, Bow Mar 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. Bow Mar 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. Bow Mar 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. Bow Mar shall pay to the Town **\$7,700.00** for the minimum lease of twenty (20) AF of Leased Spot Water. Additional leased quantities shall be paid at the rate of \$385 per acre-foot. Payment for the minimum lease quantity shall be made within ten days following mutual execution of this Agreement and is non-refundable. Payment for other quantities leased shall be made thirty (30) days following the issuance of an invoice from Castle Rock.

B. Lease Development Fee. Bow Mar will be responsible for a \$2,500 lease development fee to cover the Town staff time and costs to develop the Spot Water Lease. The Lease Development Fee (\$2,500) is due to the Town at the time of execution of this Agreement, which is not effective until such payment is made.

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, Bow Mar 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. Lessees’ Obligations. Bow Mar’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 North Wilcox Street
Castle Rock, CO 80104

If to Lessees: Bow Mar Owners, Inc.
Attn: President (Ma Williams)
5380 Lakeshore Drive
Littleton, Colorado 80123

Bow Mar South, Inc.
Attn: Kevin Lessmann
c/o KC & Associates, LLC
P.O. Box 270487
Littleton, CO 80127

9. Assignment. Lessees 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 Lessees' rights hereunder, the assignee shall execute an assumption agreement pursuant to which it shall assume Lessees' 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 Bow Mar as lessees 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 _____, 2023 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:

Bow Mar Owners, Inc.

By: _____
Ma Williams, President

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument as acknowledged before me this ___ day of _____, 2023 by
Ma Williams as President of Bow Mar Owners, Inc.

Witness my official hand and seal.
My commission expires:

Notary Public

#S6WRALIF0D2ZIXv1

LESSEE:

Bow Mar South, Inc.

By: _____
Kevin Lessmann

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument as acknowledged before me this ____ day of _____, 2023 by
Kevin Lessmann of Bow Mar South, Inc.

Witness my official hand and seal.
My commission expires:

Notary Public