

TRI-PARTY AGREEMENT REGARDING CHEROKEE RANCH & CASTLE FOUNDATION RIGHTS

THIS AGREEMENT is executed this 21 day of February, 2019, by and between the Town of Castle Rock, a Colorado home rule municipal corporation by and through the Town of Castle Rock Water Enterprise (the “Town”) ; Dominion Water & Sanitation District, acting in its capacity as a Water Activity Enterprise (“Dominion”) and the Cherokee Ranch & Castle Foundation, a Colorado nonprofit corporation (“Foundation”), (jointly “Parties”).

WHEREAS the Town of Castle Rock is a home rule municipal corporation; and

WHEREAS, Dominion is a quasi-municipal corporation and political subdivision of the State of Colorado formed and organized pursuant to Title 32 of the Colorado Revised Statutes; and

WHEREAS, the Foundation owns the property described in **Exhibit A** (“the Property”); and

WHEREAS, the Town owns the following certain real property interests and nontributary and not nontributary water rights:

- the “Cherokee Ranch Easements” described as follows;
 - Easement Agreement dated April 22, 2013, recorded in the public records of Douglas County, Colorado April 29, 2013 at Reception No. 2013034803.
 - Second Amended Easement Deed dated December 28, 2012, recorded in the public records of Douglas County, Colorado at Reception No. 2013005243.
- approximately 1,574 acre feet per year of nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Arapahoe formation (“Arapahoe Water Right”);
- approximately 1,614 acre feet per year of not nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Denver formation (“Denver Water Right”);
- approximately 381 acre feet per year of nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Laramie Fox Hills formation (“LFH Water Right”);

(collectively the “Water Rights”) all of which groundwater underlies the Property; and

WHEREAS, Dominion desires to obtain the option to purchase the Water Rights and Cherokee Ranch Easements, and has negotiated an Option Agreement with the Town, which is attached hereto as **Exhibit B** (“Dominion Option Agreement”).

WHEREAS, the Foundation and the Town are parties to the First Amendment to the First Amended Operating and Maintenance Agreement dated November 16, 2017 (“2017 Amendment”), attached hereto as **Exhibit C**, pursuant to which the Town has granted the

Foundation a right of first refusal (“ROFR”) if the Town receives and accepts a bona fide offer to purchase the Water Rights, or any portion thereof, to consummate the transaction contemplated by the offer on the terms and subject to the conditions set forth in the offer; and

WHEREAS, the Option Agreement between Dominion and the Town provides that Dominion will assume the responsibilities to set forth in the First Amended Operating and Maintenance Agreement dated March 6, 2008 (“2008 O&M Agreement”) between the Foundation and the Town’s predecessors, Bromley District Water Providers, LLC and Robert A. Lembke, as amended by the 2017 Amendment, to provide the Foundation with the option to use capacity in one or more Arapahoe wells to deliver Arapahoe aquifer water owned by the Foundation. The 2008 O&M Agreement is attached hereto as **Exhibit D**.

WHEREAS, Dominion is authorized, pursuant to its service plan, to provide wholesale water services to customers located both within and outside of its boundaries for multiple uses, including for human consumption and household use, commercial, irrigation, industrial and other uses; and

WHEREAS, the Town, Dominion and the Foundation have mutual interests concerning the development of the Water Rights and use of the Cherokee Ranch Easements.

NOW THEREFORE, in consideration of the mutual promises and benefits described herein, the adequacy and sufficiency of which are hereby acknowledged, Dominion, the Town and the Foundation hereby agree as follows:

1. **Partial Waiver and Amendment of Foundation’s Right of First Refusal.** The Foundation hereby agrees as follows:
 - 1.1. The Foundation agrees that a bona fide purchaser that reaches a mutual agreement with the Town may purchase up to 1,074 acre feet of 1,574 acre feet per year decreed to the Arapahoe Water Right and all of the Denver and LFH Water Rights without triggering the Foundation’s ROFR.
 - 1.2. The Foundation shall retain a right of first refusal on 500 acre feet of the Arapahoe Water Right. If a bona fide purchaser elects to purchase a portion of the Water Rights that includes the last 500 acre feet per year of the Arapahoe Aquifer available for purchase from the Town, the Foundation shall be entitled to exercise its right of first refusal and purchase up to 500 acre feet per year of the Arapahoe Water Right at the same price as the purchaser has agreed to pay the Town.
 - 1.2.1. The Foundation may elect to purchase all 500 acre feet, or a lesser amount in a minimum of 100 acre feet increments. The Foundation may purchase up to 500 acre feet of water annually in installments of at least 100 acre feet; provided however that if the Foundation does not make an installment payment in any year after the initial closing, the rights of the Foundation to any remaining increment of the 500 acre feet shall terminate.

- 1.2.2. The Town shall notify the Foundation in writing by Certified U.S. Mail if Dominion elects to purchase a portion of the Water Rights that includes the last 500 acre feet per year of the Arapahoe Water Right. The notice shall include a summary of the price per acre foot that Dominion has offered to the Town.
- 1.2.3. The Foundation must exercise its ROFR by both (i) delivering written notice to the Town of the Foundation's intent to exercise such right, which notice shall be delivered to the Town on or before fifteen (15) days by Certified U.S. Mail following the date the notice of the bona fide offer ("Offer") is delivered to the Foundation, and (ii) delivering a contract executed by the Foundation that includes the relevant terms and conditions (the "Contract") within forty-five (45) days following the date the notice of the Offer is delivered to the Foundation.
- 1.2.3.1. The Contract terms shall identify how much water the Foundation elects to purchase, as well as an installment payment schedule, if any.
- 1.2.3.2. The Contract shall also identify the price per acre foot and the total price to be paid by the Foundation to the Town, which shall be equal to the price contained in the Offer; provided, however that the price to the Foundation may be adjusted as follows: if the Offer price exceeds the actual cost per acre foot expended by the Town on the acquisition of the Water Rights as determined in good faith in the sole discretion of the Town ("Actual Cost"), then the price to the Foundation shall be the Actual Cost. If the Foundation pays the Actual Price, then the Foundation agrees to retain the water for use on the Property and not to sell the subject water to third parties for a minimum of five years after the completion of any installment payments.
- 1.2.3.3. The Contract shall provide for a mutually agreeable closing date on or before 90 days from the date the notice of the Offer is delivered to the Foundation.
- 1.2.4. Failure of the Foundation to exercise its ROFR by timely meeting the deadlines described herein shall result in cancellation of the Foundation's ROFR for that transaction, and the Town shall be entitled to complete the proposed transaction described in the Offer without further obligation to the Foundation. If the terms and conditions of the proposed transaction as described in a particular Offer materially change after the Foundation has declined or failed to exercise its right of first refusal with respect thereto, then the ROFR shall apply to the modified Offer and the Town shall provide a new notice of the modified Offer to the Foundation.
- 1.2.5. With respect to the Dominion Option Agreement, if the Foundation exercises its ROFR for less than 500 acre feet of the Arapahoe Water; or if the Foundation's

right to purchase a portion of the 500 acre feet of Arapahoe Water is terminated by the Foundation's failure to complete an installment payment pursuant to the Contract, then Dominion shall have the right to purchase that portion of the Arapahoe Water not purchased by the Foundation pursuant to the material terms of the Dominion Option Agreement, subject to mutually agreeable changes to the Closing date, and if necessary, an extension of the Option Term, between Dominion and the Town.

1.2.6. Dominion's purchase of the Water Rights shall be adjusted, if necessary, based on the Foundation's exercise of its ROFR.

1.2.7. Section 3. G of the 2017 Amendment is deleted in its entirety.

1.2.8. The Foundation's ROFR shall apply to all Offers received by Town on or before November 16, 2027. The Foundation's ROFR shall be unenforceable and of no force and effect with respect to Offers received by the town after November 16, 2027.

2. **Arapahoe Well Capacity for Foundation.** If (a) Dominion purchases some or all of the Arapahoe water pursuant to the Option Agreement, and (b) if Dominion subsequently constructs an Arapahoe aquifer well, Dominion and the Foundation agree that the 2017 Amendment and the 2008 O&M Agreement are amended as follows to provide the Foundation with the opportunity to use a portion of the well capacity:

2.1. The cost of constructing the initial Arapahoe well shall be borne solely by Dominion.

2.2. Dominion shall notify the Foundation once an Arapahoe well has been completed, and the capacity thereof. The Foundation shall have thirty (30) days to elect whether or not to share the well capacity with Dominion, and shall provide written notice of its election to Dominion within that time.

2.3. If the Foundation elects to share in the initial Arapahoe well capacity with Dominion, Dominion shall reserve 15.5 gallons per minute (gpm) of firm capacity for the Foundation "(Foundation's Firm Capacity)" for the Foundation to pump up to 500 acre feet per year, depending on whether and to what extent the Foundation exercises its right of first refusal as described in Section 1, above. The Foundation shall not be entitled to pump more water from a Dominion well on an annual basis than the amount it ultimately purchases from the Town.

2.4. If the Foundation elects to use the Foundation's Firm Capacity, the Foundation may also, use pumping capacity above 15.5 gpm, to pump its Arapahoe Water; provided, however, that use of capacity above 15.5 gpm shall only be permitted at times when

Dominion is not using all or some portion of the remaining Arapahoe well capacity and pursuant to a schedule acceptable to both Dominion and the Foundation.

- 2.5. The Foundation shall be responsible for paying all operating and maintenance expenses, including without limitation, variable, fixed and capital expenses, associated with its pro rata share of total pumping as set forth in Sections 4 and 5 of the 2008 O&M Agreement. Dominion shall provide an itemized invoice to the Foundation of its operating and maintenance costs at least annually.
- 2.6. The Foundation shall have a right to purchase additional firm pumping capacity of 15.5 gpm in up to three additional Arapahoe wells, if such wells are completed by Dominion or a successor to Dominion.
 - 2.6.1. The total Firm Capacity available to the Foundation if Dominion completes four or more Arapahoe wells is 62 gpm, which may be used to deliver the Foundation's Arapahoe Water.
 - 2.6.2. The Foundation shall pay for any Firm Capacity over and above the initial 15.5 gpm provided for herein based on the Foundation's pro rata share of the total pumping capacity of the well multiplied by the cost of drilling and equipping the well.
3. **Dominion's Option to Provide Water From the Denver Aquifer.** If the Foundation elects to share well capacity pursuant to Section 2.2, and if Dominion has exercised its option to purchase sufficient Denver aquifer water pursuant to the Dominion Option Agreement, then at Dominion's election, it may provide the Foundation with an amount equivalent to the amount the Foundation has purchased in the Arapahoe Aquifer from the Town from the Denver aquifer instead of the Arapahoe aquifer pursuant to the following conditions:
 - 3.1. Dominion must first develop one or more Denver aquifer wells at its sole cost and expense.
 - 3.2. Dominion shall be responsible for augmenting any Denver aquifer pumping attributable to delivery of water to the Foundation.
 - 3.3. The Foundation shall have the right to a firm capacity of 50 gpm to pump its annual entitlement (up to 500 acre feet per year) from one Denver aquifer well.
 - 3.4. The Foundation shall have a right to purchase additional firm pumping capacity of 50 gpm in up to three additional Denver wells, if such wells are completed by Dominion or a successor to Dominion.

- 3.5. The total Firm Capacity available to the Foundation if Dominion completes four or more Denver wells is 200 gpm, which may be used to deliver the Foundation's annual entitlement (up to 500 acre feet per year).
- 3.6. The Foundation and Dominion will complete a no-cost trade of water rights whereby the Foundation shall assign its Arapahoe aquifer water to Dominion by special warranty deed and Dominion shall convey an equal amount of water from the Denver aquifer to the Foundation by special warranty deed.
4. **Option to Purchase Potable Water.**
- 4.1. The Foundation shall have an option to purchase, through a qualified retail provider, up to 20 acre feet per year of potable water supplied through Dominion's wholesale system.
- 4.2. The Foundation's option to purchase potable water shall terminate ten (10) years from the Execution Date of this Agreement.
- 4.3. Dominion shall not be obligated to deliver potable water for the Foundation's benefit until it has all of the necessary infrastructure in place to do so.
- 4.4. If the Foundation exercises its option to receive potable water, the connection point shall be along the Eastern Regional Pipeline Project at or near the point labeled Potential Interconnect Location on the map attached hereto as **Exhibit E**. The final connection location shall be mutually agreed upon with Dominion, the retail provider and the Foundation.
5. **Default and Remedies.** In the event of default hereunder by any Party, the remedies set forth below and the provisions of Section 5 shall survive the termination of this Agreement.
- 5.1. A default shall be deemed to have occurred if any Party breaches its obligations hereunder and fails to cure such breach within 20 days of receipt of written notice from a non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default shall not be construed as condoning or acquiescing to any continuing or subsequent default. The Parties acknowledge that due to the uniqueness of the subject matter of this Agreement, legal remedies may be inadequate. Accordingly, the non-breaching Party shall have the right to pursue any legal or equitable remedies which it may have, including specific performance, in accordance with the provisions of this Section 5.
- 5.2. If Dominion, the Town or the Foundation employ an attorney to enforce its rights pursuant to this Agreement because of the default of another Party, the parties agree that

each will be responsible for their own attorney's fees and costs associated with any such legal action.

6. **Miscellaneous Provisions.**

6.1. **Amendment.** Except as otherwise provided herein, this Agreement may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by the Parties.

6.2. **Notice.** For purposes of notice pursuant to this Agreement, the Parties' representatives shall be:

For the Town: Castle Rock Water
Attn: Director of Castle Rock Water
175 Kellogg Court
Castle Rock, CO 80109

With a copy to: Town Attorney
Town of Castle Rock
100 Wilcox Street
Castle Rock, CO 80104

For Dominion: Dominion Water & Sanitation Dist.
Clifton Larson Allen, LLP
8390 E. Crescent Parkway, Suite 500
Greenwood Village, CO 80111

With a copy to: Dominion Water & Sanitation District
Attn: General Manager
9250 E. Costilla Ave. Suite 210
Greenwood Village, CO 80016

With a copy to: Welborn Sullivan Meck & Tooley, P.C.
1125 17th Street, Suite 2200
Denver, CO 80220

With a copy to: MaryAnn M. McGeady
McGeady Becher P.C.
450 East 17th Ave Suite 400
Denver, CO 80203

For the Foundation: Cherokee Ranch & Castle Foundation
Attn: Executive Director

With a copy to: James J. Petrock

Petrock, Fendel, Poznanovic, P.C.
700 17th Street, Suite 1800
Denver, CO 80202

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed given when given personally or sent by certified or registered mail, return receipt requested, postage prepaid. Any Party hereto may designate a new address by giving written notice thereof to the other parties as provided herein. Notice shall be effective upon receipt.

6.3. Assignment. This Agreement may not be assigned by any Party to another party unless such assignment is approved in writing by Dominion, the Town and the Foundation.

6.4. Governing Law. The terms, conditions, and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

6.5. Defense Against Third Parties. In the event of litigation by any third party concerning this Agreement, and to the extent permitted by law, the Parties agree to jointly defend any such third party action.

6.6. No Third Party Beneficiaries. Except as otherwise explicitly provided for herein, there are no third party beneficiaries of this Agreement. No third party has any right to enforce this Agreement.

6.7. Sole Obligation of Water Activity Enterprise.

6.7.1. This Agreement shall never constitute a general obligation or other indebtedness of the Town or Dominion, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or Dominion within the meaning of the Constitution and laws of the State of Colorado or of the service plan, rules or regulations of the Town or Dominion.

6.7.2. The Town represents that this Agreement has been duly authorized, executed and delivered by the Town and constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

6.7.3. Dominion represents that this Agreement has been duly authorized, executed and delivered by Dominion and constitutes a valid and legally binding obligation of Dominion, enforceable against Dominion in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and

similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

6.7.4. The Foundation represents that this Agreement has been duly authorized, executed and delivered by the Foundation and constitutes a valid and legally binding obligation of the Foundation, enforceable against the Foundation in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

6.8. Entire Agreement. This Agreement represents the entire agreement of the parties and none of the parties has relied upon any fact or representation not expressly set forth herein.

6.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed original, but all of which constitute one and the same agreement.

6.10. Non-severability and Effect of Invalidity. Each provision of this Agreement is integral to the others and is not severable from the others. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties will immediately attempt to negotiate either valid alternative portions that as near as possible give effect to any stricken portions or a valid replacement agreement.

6.11. Joint Draft. The parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this Agreement shall not be construed for or against a party on the basis of authorship.

6.12. Intent of Agreement. This Agreement is intended to describe the rights and responsibilities of and between the parties and is not intended to and shall not be deemed to confer rights upon any persons or entities not signatories hereto nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either party or any other governmental entity not a party hereto.

6.13. Non-Business Days. If any date for any action under this Agreement falls on a Saturday, Sunday or Holiday, as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

IN WITNESS WHEREOF, the parties hereby executed this Agreement on the date first written above.

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TOWN OF CASTLE ROCK

Jason Gray, Mayor

ATTEST:

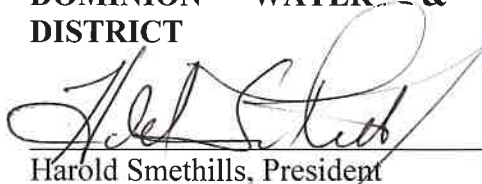
Lisa Anderson, Town Clerk

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water
**DOMINION WATER & SANITATION
DISTRICT**



Harold Smethills, President

ATTEST:



Tiffany Ramaekers, Secretary

ATTEST:

Jason Gray, Mayor

Lisa Anderson, Town Clerk

Approved as to form:

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Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water
**DOMINION WATER & SANITATION
DISTRICT**

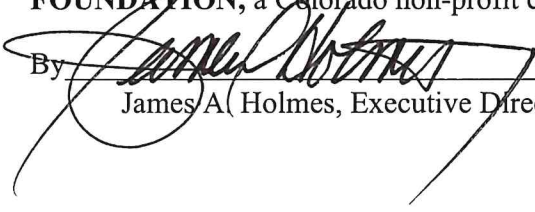
ATTEST:

Harold Smethills, President

Denise Denslow, Secretary

**CHEROKEE RANCH & CASTLE
FOUNDATION**, a Colorado non-profit corporation

By _____


James A. Holmes, Executive Director