

## **TOWN OF CASTLE ROCK/ROXBOROUGH WATER AND SANITATION DISTRICT WATER LEASE AGREEMENT**

THIS WATER LEASE AGREEMENT (“Agreement”) is entered into April 16, 2019 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 Roxborough Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado (“Roxborough”), as Lessee, whose address is: 6222 North Roxborough Park Road; Littleton, Colorado 80125, 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 2019; and

**WHEREAS**, Roxborough desires to lease a certain portion of the Surplus Water from the Town in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, Roxborough owns certain Denver Basin non-tributary groundwater rights in the Dawson, Denver and Arapahoe Aquifers (“Bell Mountain Ground Water”) accessible by the Bell Mountain Wells (Well Permit Nos. 57960-F, 57961-F, and 57962-F) and delivered to East Plum Creek via existing pipeline infrastructure. The decreed quantity of the Bell Mountain Ground Water is as follows:

Dawson Aquifer	136.5 acre-feet/year
Denver Aquifer	129.8 acre-feet/year
Arapahoe Aquifer	157.7 acre-feet/year

**WHEREAS**, in exchange for Roxborough’s lease of the Surplus Water, the Town may, from time to time, desire to use and successively reuse to extinction, the Bell Mountain Ground Water for the Town’s municipal use; and

**WHEREAS**, before Roxborough began providing water service to the property within the boundaries of the Ravenna Metropolitan District, the Town previously leased the Surplus Water to Ravenna Metropolitan District at the rate of \$300 per acre-foot; and

**WHEREAS**, pursuant to the Castle Rock Water / Ravenna Metropolitan District Water Service Agreement dated November 17, 2017,<sup>1</sup> which was assigned to Roxborough (the “Water

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<sup>1</sup> Ravenna Metropolitan District assigned the Water Service Agreement to Roxborough pursuant to the Assignment and Assumption of Water Service Agreement dated February 21, 2018. Roxborough acquired the “Ravenna Water Facilities,” as defined in the Water Service Agreement, pursuant to those certain Bills of Sale recorded in the Office of the Douglas County Clerk and Recorder on February 7, 2018 at Reception Number 2018007809 and Reception Number 2018007807.

Service Agreement”), the Town provides carriage of the Bell Mountain Ground Water to the Point of Connection (as defined in the Water Service Agreement) for use by Roxborough, and Roxborough pays the Town service charges in exchange therefor; and

**WHEREAS**, if the Town does not use the Bell Mountain Ground Water pursuant to this Agreement, the Water Service Agreement will apply for delivery of the Bell Mountain Ground Water to Roxborough, but Roxborough shall still be permitted to lease a portion of the Surplus Water as described herein.

## **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 Roxborough agree as follows:

1. If the Town elects to withdraw the Bell Mountain Ground Water, it will provide a minimum of 48 hours’ notice to Roxborough and indicate which Bell Mountain Well(s) will be utilized and the pumping of the Bell Mountain Ground Water shall be in compliance with the applicable decrees and well permits. This Agreement does not obligate the Town to withdraw any specific quantity of the Bell Mountain Ground Water.

2. The Town intends to divert the Bell Mountain Ground Water from East Plum Creek at its CR-1 Diversion located near the Plum Creek Water Purification Facility for treatment and delivery into its municipal distribution system.

3. The Town shall record pumping rates of the Bell Mountain Ground Water on a daily basis for water accounting purposes and shall provide a weekly report to Roxborough on the previous week pumped quantities. If the Town is the only user of the Bell Mountain Wells during this period, the Town shall pay the electrical costs associated with pumping. If other parties request the wells be pumped during this period (Roxborough or Lochbuie), the electrical costs shall be split on a pro-rata basis relative to the quantities of water pumped for each party.

4. In exchange for the Bell Mountain Ground Water the Town withdraws, the Town shall make available to Roxborough an equivalent amount of Surplus Water constituting fully reusable effluent to Roxborough at the following prices:

- a. \$37.50 per acre-foot for the same quantity of the Bell Mountain Ground Water that was pumped from the Dawson Aquifer;
- b. \$85 per acre-foot for the same quantity of the Bell Mountain Ground Water that was pumped from the Dawson Aquifer;
- c. \$157 per acre-foot for the same quantity of the Bell Mountain Ground Water that was pumped from the Arapahoe Aquifer.

5. Roxborough intends to pick up the Surplus Water at the Town’s Plum Creek Diversion near Sedalia. All costs of diversion, transmission and utilization of the surplus water shall be borne by Roxborough. The rate of delivery of Surplus Water shall be mutually agreed upon by the Parties.

6. The Town shall invoice to Roxborough on a quarterly basis for Surplus Water taken by Roxborough and Roxborough shall make payment within 30 days of receipt.

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

8. Surplus 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 lease and taking delivery of the Surplus Water, Roxborough acknowledges that the Surplus Water is suitable for all purposes that Roxborough shall make of the water, if the Surplus Water meets the requirements of this paragraph. Roxborough and any entity providing water to Roxborough shall be precluded from arguing or otherwise asserting that effluent discharged from the Plum Creek Water Reclamation Authority and carried in East Plum Creek and Plum Creek to the Plum Creek Diversion is not of suitable quality to meet the requirement of use to which water delivered to Roxborough has normally been put. Roxborough shall have no obligation to take delivery of or pay for any of the Surplus Water that does not satisfy the requirements of this Section.

9. If the Town determines not to withdraw the Bell Mountain Ground Water, the terms and conditions of the Water Service Agreement shall control, and the Town shall deliver the Bell Mountain Ground Water to Roxborough pursuant to the terms of the Water Service Agreement. Roxborough shall be permitted to lease the Surplus Water, if and when the Surplus Water is available in Town's sole discretion, in an amount of up to 424 acre-feet per year, at the rate of \$300.00 per acre-foot delivered in accordance with Section 5, above, and accepted for delivery by Roxborough. The Town shall invoice Roxborough in accordance with Section 6, above.

10. Within 45 days of the close of the calendar year during any year this Agreement is in effect, the Parties shall submit corrected costs from the prior year to recover the actual costs of the Surplus Water, based on the quantity of Bell Mountain Ground Water used by the Town, it being the intention to adjust costs in accordance with Sections 4 and 9 hereof. Each party, as applicable, shall pay additional charges or reimburse excess payments. The obligations of this Section shall survive termination or expiration of this Agreement.

11. The term of this Agreement shall commence on its execution and expire December 31, 2019. Provided however, by mutual written agreement of the Parties, this Lease Agreement may be renewed on the same or on different terms.

12. Roxborough's financial obligations under this Agreement are limited to making the payments as described in Section 3, above for the Surplus Water it elects to take. Roxborough's sole source of compensation for the Bell Mountain Ground Water withdrawn by the Town is the right to utilize Surplus Water pursuant to this Agreement.

13. 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  
Attn: Town Attorney  
100 N. Wilcox Street  
Castle Rock, CO 80104

with copy to: Town of Castle Rock  
Attn: Director of Castle Rock Water  
100 N. Wilcox Street  
Castle Rock, CO 80104

If to Roxborough: General Manager  
6222 North Roxborough Park Road  
Littleton, CO 80125

with copy to: Icenogle Seaver Pogue, P.C.  
Attn: Alan D. Pogue  
4725 S. Monaco St., Ste 360  
Denver, CO 80237

14. This Agreement and the Water Service Agreement set forth the entire understanding of the Parties on the matters addressed herein. This Agreement supplements, but does not amend or modify, the Water Service Agreement, and the Water Service Agreement supplements, but does not amend or modify this Agreement. This Agreement and the Water Service Agreement shall be read together to give full effect to each agreement.

15. The execution of the Agreement by the Town as lessor and Roxborough as lessee constitutes the execution of a binding lease agreement by those Parties on the terms and conditions contained herein.

(Signatures appear on following page.)

**LESSOR:**

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Robert J. Slentz, 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 \_\_\_\_\_,  
2019 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

**ATTEST:**

Kenneth W. Maas, President

Notary Public