

TOWN OF CASTLE ROCK/NELSON FAMILY SPOT WATER LEASE AGREEMENT

THIS SPOT WATER LEASE AGREEMENT (“Agreement”) is entered into June 4, 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 Henri Ann Nelson (“Nelson Family”), as Lessee, whose address is: 2500 E. Bellevue Ave., Greenwood Village, Colorado 80121, 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 2019; and

WHEREAS, the Nelson Family 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 as a substitute or replacement supply to offset out-of-priority depletions from pumping the Nelson Well, Permit No. 41172-F, located in the NW¹/₄NW¹/₄ Section 13, Township 5 South, Range 68 West of the 6th P.M.

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 Nelson Family agree as follows:

1. The Town hereby leases to the Nelson Family a total of 17.24 acre-feet (AF) annually of the Surplus Water (“Leased Spot Water”), which will be made available through December 31, 2019, with deliveries not to exceed 0.07 AF per day.

2. Deliveries.

A. Amount. The Town shall provide the Nelson Family 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. Actual day-to-day deliveries of Leased Spot Water to the Nelson Family 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 unless the Water Commissioner declares that Plum Creek is not a live stream at the Titan Gage. The Nelson Family 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 the Plum Creek Water Reclamation Authority ("PCWRA") outfall to East Plum Creek. The Nelson Family shall bear any transit losses the Water Commissioner imposes between the PCWRA outfall and the Nelson Family's point of use.

C. Acceptance of Deliveries. Subject to the non-refundable payment obligation below, the Nelson Family may either accept or decline delivery of any portion of the Leased Spot Water the Town delivers to Plum Creek 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 Nelson Family must provide Town with a weekly accounting of the water and on the 1st of each month it uses as a substitute or replacement supply in any approved substitute water supply plan or augmentation plan. The Nelson Family must supply the Town its substitute water supply plan or augmentation plan 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 in the approved substitute water supply plan or augmentation plan.

3. Fees and Costs.

A. Lease Rate. The Nelson Family shall pay to the Town \$350.00 per acre foot for each acre-foot of Leased Spot Water measured at the point the Leased Spot Water is discharged from the PCWRA into East Plum Creek, and used for augmentation by the Nelson Family.

B. Minimum Annual Delivery. Regardless of the amount of water the Nelson Family uses as a substitute or replacement supply, it must pay for at least 5 acre-feet annually ("Minimum Annual Delivery").

The nonrefundable payment for the Minimum Annual Delivery (\$1,750) is due to the Town at the time of execution of this Agreement, which is not effective until such payment is made. The Town will reconcile the accounting for deliveries made through December 31 each year and send an invoice to the Nelson Family for the balance due 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 PCWRA 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 Nelson Family acknowledges that water meeting the requirements of this paragraph is suitable for augmentation 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, 2019. By mutual written agreement of the Parties, this Lease Agreement may be renewed on the same or on different terms.

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

7. 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: Director of Castle Rock Water
100 N. Wilcox Street
Castle Rock, CO 80104

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

If to the Nelson Family: H.A. Nelson
2500 E. Belleview Avenue
Greenwood Village, Colorado 80121

9. 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.

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

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

[illegible]

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

LESSEE:

The Nelson Family

By: _____
Henri Ann Nelson

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument as acknowledged before me this ____ day of _____,
2019 by Henri Ann Nelson.

Witness my official hand and seal.

My commission expires:

Notary Public