## TOWN OF CASTLE ROCK/DENVER BOTANIC GARDENS AT CHATFIELD SPOT WATER LEASE AGREEMENT

THIS SPOT WATER LEASE AGREEMENT ("Agreement") is entered into \_\_\_\_\_\_\_, 2020, 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 Denver Botanic Gardens at Chatfield ("Botanic Gardens"), as Lessee, whose address is: 8500 West Deer Creek Canyon Road, Littleton, CO 80128, 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 2020; and

**WHEREAS**, the Botanic Gardens desire 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 "Green Irrigation Well" (SEO Well ID 0809483), located in the SE1/4 of the NE1/4 of Section 10, Township 6 South, Range 69 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 Botanic Gardens agree as follows:

- 1. <u>Water Rights Lease</u>. The Town hereby leases to the Botanic Gardens a total of 4 acre-feet (AF) of the Surplus Water ("Leased Spot Water"), which will be made available as follows:
  - A. On October 7, 2020 with a slug release prior to November 1, 2020;
- 2. Deliveries.
- A. <u>Amount</u>. The Town has approximately 200 AF of water within its Chatfield Storage Account. Four (4) AF of this water will be withdrawn from the Town's storage account upon coordination with the Colorado Department of Natural Resources Division of Water Resources, who will make the requested release from Chatfield.
- B. <u>Location</u>. Release from Chatfield Reservoir into the main stem of the South Platte River.
- C. <u>Accounting</u>. The Botanic Gardens must provide the Town with a copy of the water accounting showing the date and quantity of the release. This information will also be used to confirm and update the Town's Chatfield accounting forms.

## 3. Fees and Costs.

- A. <u>Lease Rate</u>. The Botanic Gardens shall pay to the Town **\$1,200.00** for the lease of the four (4) acre-feet of water. Payment to be remitted to Castle Rock Water; 175 Kellogg Court; Castle Rock, CO 80129; ATTN: Matt Benak, Water Resources Manager.
- 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 Botanic Gardens 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. <u>Lease Term.</u> The term of this Agreement shall commence upon its execution and expire December 31, 2020. By mutual written agreement of the Parties, this Lease Agreement may be renewed on the same or on different terms.
- 6. <u>Lessee's Obligations</u>. The Botanic Gardens obligations under this Agreement are limited to making the payments as described in paragraph 3 above.
- 7. <u>Notice</u>. 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 Botanic Gardens: Denver Botanic Gardens at Chatfield

Attn: Larry Vickerman

8500 West Deer Creek Canyon Road

Littleton, Colorado 80128

8. <u>Assignment</u>. 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.

- 9. <u>Entire Agreement</u>. 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. <u>Binding Effect</u>. The execution of the Agreement by the Town as lessor and the Botanic Gardens 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.
- 11. <u>Controlling Law</u>. 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 Lisa Anderson as Town Clerk and Jason Gray as N	d before me this day of, 2020 by Mayor of the Town of Castle Rock, Colorado.
Witness my official hand and seal. My commission expires:	
	Notary Public
LESSEE:	
Denver Botanic Gardens at Chatfield	
By: John Calderhead, Chief Financial Officer	
STATE OF COLORADO ) ) ss. COUNTY OF JEFFERSON )	
The foregoing instrument as acknowledged	d before me this day of, 2020 by
Witness my official hand and seal. My commission expires:	
	Notary Public