

## **EXHIBIT B**

### **CAPITAL ANNEXATION NO.1 ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT ("Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 2014, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Weatherford Artificial Lift Systems, LLC ("Owner").

#### **I.** **INTRODUCTION**

Owner owns all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A (the "Property").

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. Owner will be required to expend substantial amounts of funds for the installation of infrastructure needed to service the Property and, therefore, desires to clarify Owner's obligations for installation of or payment for any off-site infrastructure or improvements and with regard to the City's agreements with respect to provision of services to the Property and cost recoveries available to Owner. Subject to the terms and conditions set forth in this Agreement, both the City and Owner wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the parties, the City and Owner agree as follows.

#### **II.** **ANNEXATION**

Owner has petitioned the City for annexation of the Property. The annexation will become effective upon the effective date of the ordinance documenting final approval by the City Council of the annexation (the "annexation ordinance") after satisfying all conditions precedent to annexation identified in this Agreement and the recording of (a) certified copies of the annexation ordinance and annexation plat in accordance with C.R.S. § 31-12-113, (b) a fully-executed copy of this Agreement, and (c) a fully-executed Capital Annexation No.1 Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal, and Use of Groundwater, substantially in the same form as the attached Exhibit B, with the El Paso County Clerk and Recorder.

All references to the Property or to Owner's Property are to the Property described in Exhibit A except as otherwise indicated.

#### **III.** **LAND USE**

The Capital Annexation No.1 Master Plan for the Property has been proposed and submitted to the City for approval. Owner will comply with the approved Master Plan or an amended Master Plan approved in accord with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or re-codified, ("City Code").

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### **IV.**

#### **ZONING**

A. Zoning. The Planning and Development Department of the City agrees to recommend that the initial zone for Owner's Property shall be zoned M-1/AO/HR (Light Manufacturing with Airport Overlay and High Rise Overlay) upon annexation. While zoned M-1/AO, a development plan and a final subdivision plat shall be required for any use requiring a building permit or an expansion into currently vacant portions of the property. Owner acknowledges and understands that the City Council determines what an appropriate zone is for the Property, and this recommendation does not bind the City Planning Commission or City Council to adopt the recommended zone for the Property.

B. Change of Zoning. A change of zone request shall conform to the Master Plan, as approved or as amended by the City in the future. Rezoning in accord with the Master Plan will occur prior to actual development of the site.

### **V.**

#### **PUBLIC FACILITIES**

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development, the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: 1.) Utility facilities and extensions for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (for water, wastewater, gas and electric utility service, refer to Chapter 12 of the City Code and Section VI. "Utilities Services" and Section VII. "Water Rights" of this Agreement); 2.) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; 3.) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; 4.) Arterial roadway bridges; 5.) Parks; 6.) Schools; and 7.) Other facilities and improvements warranted by a specific land development proposal.

It is understood that all public facilities and improvements shall be subject to the provisions of the City Code, unless otherwise specifically provided for under the terms and provisions of this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. The Property currently receives water and wastewater service from Cherokee Metropolitan District ("CMD"). Refer to Section VI, "Utilities Services", of this Agreement for specific provisions and requirements regarding water and wastewater service after the Property is annexed into the City.

C. Streets, Bridge and Traffic Control. Owner agrees to construct, at Owner's expense, those street, bridge and/or traffic improvements adjacent to or within the Property, as determined at the time of future development plan review and approval. These improvements may also include mutually acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. Owner shall not be entitled to the benefit of City Code §§ 7.7.706 (Reimbursements) and 7.7.1001-1006 (Arterial Roadway Bridges) for any improvements made pursuant to this section of the Agreement. City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

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### 1. On-Site or Adjacent Streets:

a. Capital Drive: Portions of existing Capital Drive are located both to the south and along the northwest boundary of the Property. These portions of the streets are located within El Paso County and are not included as part of the Property or this annexation. This Agreement does not require Capital Drive to be extended, upgraded or improved, as part of and at the time of this annexation. Future extensions, upgrades, and improvements shall be necessary at the time of future development plan and final subdivision plat review and approval. A logical extension of the Capital Drive right-of-way is located along the western boundary of the Property. Owner agrees to reserve a forty foot (40') potential right-of-way along the western boundary of the Property as a "future forty foot (40') public right-of-way tract" and to construct Capital Drive, to meet City Industrial Street standards, at the time of the first development plan and final subdivision plat of the Property, as shown on the approved master plan. Construction of this portion of Capital Drive will not be required in conjunction with the construction of the improvements contemplated by the approved County Approved Project (as defined below).

b. Un-named future northern street: A future public street will be necessary to connect Capital Drive east to the existing City area located within the Banning Lewis Ranch Master Plan area. The City and Owner agree that the most logical location for this street is adjacent to and within the Property's northern boundary of the Property. This Agreement does not require Owner to extend or construct a street to connect the Property to Marksheffel Road, as part of and at the time of this annexation. The future extension and construction of such a road may be necessary at the time of future development plan and final subdivision plat review and approval for the adjacent property to the east which is already located within the City. Owner agrees to reserve a forty foot (40') potential right-of-way along and within the northern boundary of the Property as a "future forty foot (40') public right-of-way tract" as shown on the approved master plan.

c. Cost Recovery: Owner shall be entitled to seek cost recovery for the costs incurred by Owner in the dedication of right-of-way for and construction of the roads provided for above if eligible under the existing City ordinances, or as amended, on cost recovery.

2. Off-Site Streets and Bridges: Pursuant to City Code, Owner may be subject to cost recovery requirements for off-site street and bridge improvements.

3. Traffic Control Devices. Owner shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly applied criteria set forth by the City. Traffic signals will be installed only after the intersection warrants signals, as outlined in the Manual on Uniform Traffic Control Devices in use at the time or another nationally accepted standard. Once the intersection meets the outlined criteria, the City will notify Owner in writing and Owner will install the traffic signal within one hundred eighty (180) days after receipt of that notice. Owner will be responsible for all components of the traffic signal, except the City will supply the controller equipment and cabinet and Owner will reimburse the City for its reasonable costs of the controller equipment and cabinet.

D. Drainage. In conjunction with the first required new development plan and final subdivision plat (but not as a requirement for construction of the County Approved Project), a Master Development Drainage Plan shall be prepared and submitted by Owner to the City and approved by the City Engineer. Final Drainage Reports and Plans shall be prepared and submitted by Owner to the City and approved by the City Engineer, prior to recording subdivision plats. Owner shall comply with all drainage criteria, standards, policies, and ordinances in effect at the time of development, including but not limited to the payment of any drainage, arterial bridge, and detention pond fees and the reimbursement for drainage facilities constructed. Owner shall provide water

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quality for all developed areas; and Owner agrees that all water quality improvements and facilities shall be owned and maintained by Owner. Ownership and the obligation to maintain such improvements and facilities shall be appurtenant to the Property and run with the land. Owner shall be responsible for conformance with the Sand Creek Drainage Basin Planning Study.

E. Parks Not Applicable.

F. Schools: Not Applicable.

G. Improvements Adjacent to Park and School Lands. Not Applicable.

### VI. UTILITY SERVICES

A. Colorado Springs Utilities' (CSU) Services: CSU's water, non-potable water, wastewater, electric, streetlight, and gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to CSU's facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and CSU determine that the applicant meets all applicable City ordinances and regulations, and applicable CSU tariff requirements and regulations for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication of public rights-of-way, private rights-of-way, or easements that CSU determines are required for the extension of any proposed Utility Service from CSU system facilities that currently exist or that may exist at the time of the proposed extension.

Owner shall ensure that the connection and/or extension of Utility Services to the Property is in accord with all codes and regulations in effect at the time of Utility Service connection and/or extension, including but not limited to CSU's tariffs, rules, and policies, City ordinances, resolutions, and policies, and Pikes Peak Regional Building Department codes. Further, as specified herein below, Owner acknowledges responsibility for the costs of any extensions or utility system improvements set forth in CSU's tariffs and/or by agreement that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by CSU.

CSU's connection requirements require Owner to execute and comply with a Revenue Guarantee Contract or other CSU-approved guarantee for the extension of Utility Service before CSU authorizes the extension of the Utility Services and/or other utility systems improvements, and/or any request for service connection to the Property by Owner. Owner acknowledges that such connection requirements shall include Owner's payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges, and other fees or charges applicable to the requested Utility Service, and any costs CSU incurs to acquire additional service territory for the Utility Service to be provided, including those costs specified in paragraph C below. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owner is responsible for contacting CSU's Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property.

Owner acknowledges that annexation of the Property does not imply a guarantee of water supply, wastewater treatment system capacity, or any other Utility Service supply or capacity, and CSU does not guarantee Utility Service to the Property until such time as permanent service is initiated. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owner upon annexation, and the City and CSU make no commitments as to the availability of any Utility Service at any time in the future.

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B. Dedications and Easements: Notwithstanding anything contained in Section XI of this Agreement to the contrary, Owner, at Owner's sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property (real and personal) and easements that CSU, in its sole discretion, determines are required for all utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system, including but not limited to, any access roads, gas regulation or electric substation sites, electric transmission and distribution facilities, water storage reservoir/facility sites, and wastewater or water pump station sites. CSU, in its sole discretion, shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owner shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU in its sole discretion. Owner shall pay all fees and costs applicable to and/or associated with the platting of the real property to be dedicated to the City, and all fees and costs associated with the conveyance of real property interests by plat or by separate instrument, including but not limited to, Phase 1 and Phase 2 environmental assessments, closing costs, any accrued and unpaid taxes or assessments, title policy fees, and recording fees for any deeds, permanent or temporary easement documents, or other required documents. Dedicated and/or deeded properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded or dedicated to the City free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, and any applicable CSU policies and procedures, and shall be subject to CSU's environmental review. Neither the City nor CSU has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using CSU's then-current Permanent Easement Agreement form without modification.

If Owner, with prior written approval by CSU, relocates, requires relocation, or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at Owner's sole cost and expense. If CSU, in its sole discretion, determines that Owner's relocation or alteration requires new or updated easements, Owner shall convey those easements prior to relocating or altering the existing utility facilities using CSU's then-current Permanent Easement Agreement form without modification. CSU will only relocate existing gas or electric facilities during time frames and in a manner that CSU determines will minimize outages and loss of service.

### C. Utility Facilities by CSU:

1. Natural Gas Facilities: CSU and Owner acknowledge that, at the time of annexation, the Property is located within CSU's gas service territory. In the event the Property requires gas service in addition to that received prior to annexation, Owner shall be solely responsible for all costs and expenses that CSU incurs due to any such additional service pursuant to its then-existing tariffs, rules, regulations, and policies.
2. Electric Facilities: Subject to the provisions of this Article, including sections A and B above, and all applicable CSU tariffs, rules, regulations, and policies, CSU will extend electric service to the Property. Owner shall cooperate with CSU to ensure that any extension of electric facilities to serve the Property will be in accord with CSU's Line Extension and Service Standards. Prior to execution of this Agreement, CSU and Owner entered into an "Electric Line Extension and Revenue Guarantee Contract", attached hereto and incorporated herein by reference as Exhibit C, for the extension of electric service and facilities. CSU and Owner recognize that prior to annexation, the Property is located outside of CSU's electric service territory, and that upon annexation the Property will be included in CSU's electric service territory. Upon

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annexation, Owner shall be solely responsible for all costs and fees that CSU incurs as a result of or associated with the acquisition of such electric service territory through annexation, including the just compensation set forth at C.R.S. § 40-9.5-204, as clarified by the General Release and Settlement Agreement entered into between CSU and Mountain View Electric Association on June 10, 1997. To the extent any such costs and fees are associated with C.R.S. §§ 40-9.5-204(1)(a) and 40-9.5-204(1)(b), Owner shall pay such costs and fees directly to the pre-annexation electric service provider. To the extent any such costs and fees are associated with C.R.S. §§ 40-9.5-204(1)(c) and 40-9.5-204(1)(d), Owner shall pay CSU for such costs and fees in accordance with the terms of a CSU invoice or bill.

Further, Owner acknowledges sole responsibility for the costs of conversion of any overhead electric lines to underground service and the removal of any existing electric distribution facilities (overhead or underground) that were previously installed by the then-current electric service provider. These costs shall be paid by Owner concurrent with the execution of a contract between Owner and the electric service provider that obligates Owner to reimburse the electric service provider for such conversion or removal of existing electrical facilities.

3. Water and Wastewater Facilities by CSU: Owner shall pay any advance recovery-agreement charges, recovery-agreement charges, or other fees or charges that are not currently approved by CSU for the Property, but which may become applicable as a result of any on-site or off-site water or wastewater system facilities that CSU or other developers may design and construct in order to ensure an integrated water or wastewater system supplying the Property. Additionally, Owner shall be subject to cost recovery for the engineering, materials and installation costs incurred by CSU in its design, construction, upgrade or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations or treatment facilities, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances that CSU, in its sole discretion, determines are necessary to serve the Property.

D. Water and Wastewater System Extensions by Owners: The Property currently receives water and wastewater service from Cherokee Metropolitan District ("CMD"). City Council authorization is required for Owner to receive CMD water and wastewater service on an interim basis after annexation of the Property and until Owner is required by CSU to disconnect from CMD and to extend and connect to CSU's water supply and wastewater treatment systems. Owner, CMD, and CSU have entered into that certain Interim Water and Wastewater Service Agreement dated September 25, 2014, which is attached hereto as Exhibit D ("Interim Agreement") and which identifies the terms by which CMD shall provide interim water and wastewater service to the Property after the annexation of the Property. City Council approval of the annexation resolution authorizing the provision of such interim water and wastewater service by CMD, as described in the Interim Agreement, is a condition precedent to annexation of the Property. The Interim Agreement sets forth various obligations and responsibilities of Owner regarding the plan for interim service and for ultimate conversion to water and wastewater service from CSU and the terms and conditions of such service.

In accord with the provisions of the Interim Agreement, Owner shall extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at Owners' sole cost and expense in accord with all applicable CSU tariffs, rules, regulations, including CSU's Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of such construction. Consistent with City Code § 7.7.1102 (B), Owners shall complete the design, installation and obtain preliminary acceptance of such utility facilities prior to CSU's approval of Owners' water and wastewater service requests.

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Owner shall be solely responsible for its share, in accordance with applicable tariffs, of all costs and fees associated with engineering, materials, and installation of all water system facilities and appurtenances, and all wastewater collection and treatment facilities and appurtenances, whether on-site or off-site, that are necessary to serve the Property or to ensure development of an integrated water or wastewater system serving the Property and areas outside the Property as determined by CSU. Further, Owner acknowledges that CSU may require that such water or wastewater system facilities be larger than necessary to serve the Property itself, and may require Owner to participate with other development projects, including, if applicable, any shared development and recovery agreement charges associated with the Property's location adjacent to the Banning Lewis Ranch property, on a pro rata basis in any necessary off-site system facilities improvements.

The plans, specifications and construction of the water facilities and appurtenances, and the wastewater facilities and appurtenances are each subject to CSU's inspection and written acceptance, and CSU shall make the final determination as to the size, location, point(s) of connection and the required appurtenances of the system facilities to be constructed. No work shall commence on any proposed water or wastewater extension facilities until CSU provides written approval of Owner's water or wastewater construction plans and copies of such approved plans are received by CSU. Owner may only connect newly-constructed facilities to CSU's existing water or wastewater system upon CSU's inspection and written acceptance of such facilities.

As part of any development plan submittal for the Property, Owners acknowledge that a Preliminary Utility Plan, Wastewater Master Facility Plan and Report, Hydraulic Grade Line Request Form, and Hydraulic Analysis Report (as determined by CSU) are required and must be completed and approved by CSU.

The water distribution system facilities must meet CSU's criteria for quality, reliability and pressure. The water distribution system shall ensure capacity, pressure and system reliability for both partially completed and fully completed conditions and the static pressure of the water distribution system shall be a minimum of 60 psi. Also, to ensure the protection of public health and to maintain compliance with state regulatory requirements, the detailed plans for all customer-owned, non-potable water distribution systems, including irrigation systems, must be approved by CSU.

Further, Owner recognizes that the extension of water system facilities may affect the quality of water in CSU's water system. Consequently, Owner acknowledges responsibility for any costs that CSU, in its sole discretion, determines necessary to incur in order to maintain water quality in its system as a result of Owner's water system extensions, including but not limited to, the cost of any lost water, materials and labor from pipeline-flushing maintenance activities, temporary pipeline loop extensions, or other appurtenances and measures that CSU determines are necessary to minimize pipeline flushing and to maintain water quality (Water-quality Maintenance Costs). Owner shall reimburse CSU for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and CSU in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or CSU to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of CSU. Subject to the provisions of the Article of this Agreement that is labeled "WATER RIGHTS", CSU's tariffs, policies, and/or contract agreements, as may be modified from time to time, shall govern the use of all Utility Services, including but not limited to, groundwater and non-potable water for irrigation use by Owner for Owner's exclusive use.



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F. Southeastern Colorado Water Conservancy District: Notice is hereby provided that upon annexation the Property is subject to subsequent inclusion into the boundaries of the Southeastern Colorado Water Conservancy District ("District") pursuant to C.R.S. § 37-45-136 (3.6) as may be amended, and the rules and procedures of the District and shall be subject thereafter to a property tax mill levy for the purposes of meeting the financial obligations of the District. Owner acknowledges that water service for the Property will not be made available by CSU until such time as the Property is formally included within the boundaries of the District. In order for the Property to be included into the District, Owner must obtain consent from the Bureau of Reclamation ("Reclamation"). Owner shall be responsible for taking all actions necessary for inclusion of the Property into the boundaries of the District, including but not limited to, any action required to obtain consent from Reclamation for inclusion into the District as expeditiously as possible.

### **VII.** **WATER RIGHTS**

As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement as Exhibit B and hereby incorporated by reference, Owner grants to the City, all right, title and interest held by Owner to any and all groundwater in the Arapahoe Aquifer underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property held by Owner (collectively referred to as the "Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by Owners concurrently with this Agreement and shall be made effective upon the date of the City Council's final approval of the annexation of the Property. The Deed shall be recorded concurrent with the recording of this Agreement at the El Paso County Clerk and Recorder's office.

Through its Ordinance No. 85-01, CMD obtained the implied consent to withdraw the groundwater in the Dawson, Denver, and Laramie-Fox Hills Aquifers underlying the Property. Since CMD obtained such implied consent, Owner does not have a property interest in the groundwater located in the Dawson, Denver, and Laramie-Fox Hills Aquifers underlying the Property. In addition, CMD adjudicated the groundwater in the Laramie-Fox Hills Aquifer underlying the Property in the Colorado District Court, Water Division 2, Case No. 2005CW45 and has a vested real property right in such groundwater. Therefore, subject to the approval of City Council, Owner shall not be required to convey to the City any groundwater located in the Dawson, Denver, and Laramie-Fox Hills Aquifers underlying the Property. Further, subject to the approval of City Council, Owner shall not be required to compensate the City for the value of any groundwater located in the Dawson, Denver, and Laramie-Fox Hills Aquifers underlying the Property. City Council approval of the annexation resolution consenting to the terms of this paragraph is a condition precedent to annexation of the Property.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, Owner, on behalf of Owner and all successors in title, irrevocably consents to the appropriation, withdrawal, and use by the City of all groundwater in the Arapahoe Aquifer underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water rights related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner.

Upon annexation of the Property, any wells or groundwater developed by Owner or Owner's predecessors-in-interest prior to annexation will become subject to CSU's applicable tariffs, rules and regulations, and rates as amended in the future. Owner's uses of groundwater shall be subject to approval by the City and CSU, and



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shall be consistent with CSU's standards, tariffs, policies, and the City's ordinances, resolutions and policies for the use of groundwater now in effect or as amended in the future. Notwithstanding the foregoing, subject to the approval of City Council, Owner shall be permitted, to continue using the existing well on the Property and withdrawing and using the groundwater for industrial uses consistent with the terms and conditions of the Colorado Division of Water Resources Well Permit No. 22434-F. City Council approval of the annexation ordinance consenting to the terms of this paragraph is a condition precedent to this annexation of the Property. No commingling of well and City potable water supply will be permitted.

### **VIII.** **FIRE PROTECTION**

A. Fire District: Owner acknowledges that the Property is located within the boundaries of the Falcon Fire Protection District (the "Fire District") and is subject to property taxes payable to the Fire District for its services. Owner further acknowledges that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the Fire District until such time as the Property is excluded from the boundaries of the Fire District. Upon annexation of the Property to the City, fire protection services will be provided by the City through its Fire Department and by the Fire District unless and until the Property is excluded from the Fire District. After annexation, the Property will be assessed property taxes payable to both the City and the Fire District until such time as the Property is excluded from the boundaries of the Fire District.

Owner understands and acknowledges that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the City's request agrees to apply to the Fire District for exclusion of the Property from the Fire District. Owner understands and acknowledges that Owner, its heirs, assigns and successors in title are responsible for seeking any exclusion from the Fire District and that the City has no obligation to seek exclusion of any portion of the Property from the Fire District.

B. Supplemental Fire Protection Provisions: Owner understands and acknowledges the following upon annexation:

1. All site perimeter gates securing access onto/into the site will be provided with applicable Knox equipment meeting Colorado Springs Fire Department specifications.
2. Approved fire lane markings will be provided site-wide per Colorado Springs Fire Department specifications.
3. The barriers at the southern end of the Property, placed across Capital Drive, will be removed and a gate installed in the fence, with approved Knox equipment meeting Colorado Springs Fire Department specifications, and other necessary modifications to allow secondary access onto/into the site from the south.
4. Within 30 days of annexation, Owner shall contact the Division of the Fire Marshal to schedule an inspection of all buildings and facilities on site to determine the status of any/all fire protection systems as well as to determine if any operational permits are required.
5. An initial and then bi-annual analysis of the available water supply and all site hydrants will be provided to the Division of the Fire Marshal for review. Should the available water supply be found inadequate or become inadequate in the future, Owner shall contact the CSFD Division of the Fire Marshal to discuss options for the inadequate water supply. The bi-annual analysis of the available water supply shall continue until deemed unnecessary by the Division of the Fire Marshal.

### **IX.** **FIRE PROTECTION FEE**

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Owner agrees to pay a fee of \$1,631.00 per gross acre of the entire annexed area as their share of the capital cost of a new fire station and the initial apparatus purchase required to service this annexation as well as adjacent areas of future annexation (the "Fire Protection Fee"). The City will not record the certified copies of the annexation map and the annexation ordinance and the annexation will not be effective unless and until the Fire Protection Fee has been remitted to the City. The City agrees as future annexations occur within the service area of the proposed fire station that the owners of future annexations will be required to pay a comparable per-acre fee to the City for the capital improvements to the fire station.

### **X.**

#### **POLICE SERVICE FEE**

Owner agrees to pay a fee of \$677.00 per gross acre of the entire annexed area as Owner's share of the capital cost of a new police station and the initial equipment purchase required to service this annexation as well as adjacent areas of future annexation ("Police Service Fee"). The City will not record the certified copies of the annexation map and annexation ordinance and the annexation will not be effective unless and until the Police Service Fee has been remitted to the City. The City agrees as future annexations occur within the service area of the proposed police station that the owners of future annexations will be required to pay a comparable per-acre fee to the City for the capital improvements to the police station.

### **XI.**

#### **PUBLIC LAND DEDICATION**

The City currently does not contemplate requiring from Owner or the Property any dedications of land in fee (as opposed to easements).

Notwithstanding the foregoing, Owner agrees that all land dedicated to the City for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid.

Owner agrees that any land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Owner. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by Owner prior to conveyance, unless otherwise waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

- A. All property deeded to the City shall be conveyed by General Warranty Deed, subject to easements, covenants and restrictions of record, and any such deed must approved by the City prior to the conveyance.
- B. Owner shall convey the property to the City within 30 days of the City's written request.
- C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.
- D. All property taxes levied against the property to be deeded shall be paid by Owner through the date of conveyance to the City.
- E. A phase I environmental assessment of the property to be deeded must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City.

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### **XII. SPECIAL PROVISIONS**

This section and the following special provisions apply to this annexation due its specific location and the special provisions are unique and applicable to this Owner, Property and/or project. To the extent of any inconsistencies between the foregoing provisions and the provisions of this Section XII, the provisions in this Section XII shall control.

A. County Approved Development Plan. The City recognizes and accepts the El Paso County ("County") approved "Weatherford Artificial Lift Systems Minor Site Development Plan for New Chrome Plant Facilities", approved September 5, 2013 by the County (the "County Approved Project"). In addition, the City recognizes and accepts related studies and reports approved by the County associated with this County Approved Project, including: the Stormwater Pollution Prevention Plan, the Erosion and Stormwater Quality Control Permit, the Final Drainage Report, and the Transportation Memorandum. Owner may proceed with the permitting, construction and operation of the pending new Chrome Plant Facilities and improvements authorized by the County Approved Project, which the County previously reviewed and approved and authorized the issuance of the necessary building permits for the project, without the need for any further approvals therefor from the City.

With the exception of the County Approved Project, Owner agrees that a new development plan and a final subdivision plat are required for any use requiring a building permit or an expansion into currently vacant portions of the Property. Any such development plan and subdivision plat must meet all City requirements and specifications, including but not limited to required additional or updated reports and studies; plan and plat content requirements; additional components including a grading plan, utility and public facility plan, and landscape plan; and specifically landscape setback, buffering and screening treatments.

B. Banning Lewis Ranch Annexation Agreement. This Property is adjacent to Banning Lewis Ranch property; as such, the City has certain obligations under the Banning Lewis Ranch Annexation Agreement ("BLR Agreement"), as recorded in Book 5557, beginning on Page 405, with respect to annexing the Property. Therefore Owner and City agree that, because the Property is adjacent to the Banning Lewis Ranch property, Owner will be subject to any fees the City is obligated to pass through to adjacent property owners under the BLR Agreement including the following:

1. Off-Site Construction of the Banning-Lewis Parkway Fee. Owner agrees to pay a \$95.55 per acre fee as an equitable contribution for Owner's fair share portion of the benefit Owner will receive from the Banning-Lewis Parkway ("Banning-Lewis Parkway Fee"). This per acre fee is based upon the traffic analysis which was prepared by a traffic professional using ITE Manual methods and identifies a direct traffic impact on the Banning-Lewis Parkway. The City will not record the certified copies of the annexation map and annexation ordinance and the annexation will not be effective unless and until the Banning-Lewis Parkway Fee has been remitted to the City.

2. Construction of the Banning Lewis Ranch Radio Repeater Station. Owner agrees to pay an \$11.69 per acre fee ("Banning Lewis Ranch Repeater Station Fee") as an equitable contribution for Owner's portion of the benefit Owner will receive from the radio repeater station. The Banning Lewis Ranch Radio Repeater Station fee will be due prior to recordation of the annexation plat and this Agreement. The City will not record the certified copies of the annexation map and annexation ordinance and the annexation will not be effective unless and until the Banning Lewis Repeater Station Fee has been remitted to the City.

### **XIII.**

## **EXHIBIT B**

### **ORDINANCE COMPLIANCE**

Owner will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions, and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

#### **XIV.**

### **ASSIGNS AND DEED OF TRUST HOLDERS**

Where used in this Agreement, the term "Owner" shall also mean any of the successors, heirs, executors, personal representatives, transferees, or assigns of Owner and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto.

Owner affirmatively states that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property).

#### **XV.**

### **RECORDING**

Upon final approval of the annexation ordinance by City Council and the satisfaction of all conditions precedent to annexation as provided for herein, the City shall record the annexation plat and annexation ordinance, in accordance with C.R.S. § 31-12-113, and this Agreement with the Clerk and Recorder of El Paso County, Colorado. Upon recording, this Agreement shall constitute a covenant running with the land. This Agreement shall be binding on future assigns of Owner and all other persons who may purchase land within the Property from Owner or any persons later acquiring an interest in the Property

#### **XVI.**

### **AMENDMENTS**

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, only with the written consent of the City, and may be amended without the consent of any other party or its successors, transferees, or assigns so long as the amendment applies only to the property owned by the amending party. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect as to property owned by any non-amending party.

Any amendment shall be recorded by the Clerk and Recorder in the records of El Paso County, Colorado, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment."

#### **XVII.**

### **HEADINGS**

The headings set forth in the Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of the Agreement.

## **EXHIBIT B**

### XVIII.

#### **DEFAULT AND REMEDIES**

If either Owner or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of the breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

### XIX.

#### **GENERAL**

Except as specifically provided in this Agreement, City agrees to treat Owner and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned, or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or the City Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Owner and City shall continue to be bound by all terms and provisions of this Agreement.

### XX.

#### **SEVERABILITY**

If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

**EXHIBIT B**

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

CITY OF COLORADO SPRINGS

BY: \_\_\_\_\_  
PRESIDENT OF THE CITY COUNCIL

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT B**

OWNER:

TMS Weatherford Artificial Lift Systems, LLC

*Jo Lynne Busic*  
Name: Jo-Lynne Busic  
Title: Director, Global Real Estate & Construction

ACKNOWLEDGMENT

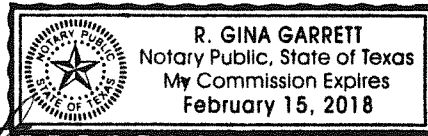
STATE OF TEXAS        )  
                                  ) ss.  
COUNTY OF HARRIS    )

The foregoing instrument was acknowledged before me this 29 day of SEPTEMBER, 2014, by Jo-Lynne Busic as Director of Global Real Estate for Weatherford Artificial Lift Systems, LLC

Witness my hand and official seal.

My Commission Expires: FEBRUARY 15, 2018

*R. Gina Garrett*  
Notary Public





**EXHIBIT B**

EXHIBIT A

LEGAL DESCRIPTION

## **EXHIBIT B**

### **EXHIBIT A**

#### **Capital Annexation No. 1 Legal Description**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 33 IN TOWNSHIP 13 SOUTH, RANGE WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SAID NORTHWEST QUARTER; THENCE SOUTHERLY ON THE EAST LINE OF SAID NORTHWEST QUARTER 2,200 FEET; THENCE WESTERLY, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, 1,200 FEET; THENCE NORTHERLY PARALLEL WITH THE EASTERLY LINE OF SAID NORTHWEST QUARTER, 2,200 FEET TO THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE EASTERLY ON SAID NORTH LINE 1,200 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR ROADWAY, WATER, SEWER AND UTILITY LINES AND MAINTENANCE ON, OVER AND UNDER THE WESTERLY 1,528 FEET OF THE NORTHERLY 40 FEET OF SECTION 33, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., ON, OVER AND UNDER WESTERLY 1,528 FEET OF THE SOUTHERLY 40 FEET OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., AND ON AND UNDER AN 80 FOOT STRIP, BEING 40 FEET ON EACH SIDE OF THE CENTER LINE WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE TRACT BEING CONVEYED HEREIN AND THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 33 TO THE WEST LINE OF SAID SECTION OF 33; AND ON, OVER AND UNDER THE EASTERLY 40 FEET OF THE SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., WHICH LIES SOUTH OF THE RIGHT-OF-WAY OF THE CHICAGO, ROCK ISLAND PACIFIC RAILROAD.

CONTAINING  $\pm 2,639,997$  SQ. FEET OR  $\pm 60.606$  ACRES, MORE OR LESS.

**EXHIBIT B**

EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Capital Annexation No.1 Annexation

Weatherford Artificial Lift Systems, LLC("Grantor"), whose address is 2000 ST. JAMES PLACE HOUSTON, TX 77056, in consideration of the benefits received pursuant to the Capital Annexation No.1 Annexation Agreement dated \_\_\_\_\_ ("Annexation Agreement"), which is executed by Grantor concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, sells and conveys to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all Grantor's right, title, and interest in any and all groundwater in the Arapahoe Aquifer underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property collectively referred to as the "Water Rights", together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor warrants title to the same against all claims arising by, through, or under said Grantor. The Water Rights include but are not limited to those described in Exhibit B.

Furthermore, pursuant to C.R.S. § 37-90-137(4) as now exists or may later be amended, Grantor, on behalf of Grantor and any and all successors in title, hereby irrevocably consents in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater in the Arapahoe Aquifer underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon the date of the City of Colorado Springs-City Council's final approval of the Annexation Agreement.

Executed this 29 day of SEPTEMBER, 2014

GRANTOR(s):

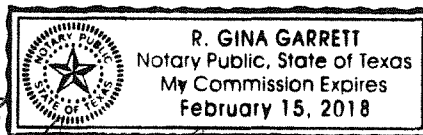
TMS Weatherford Artificial Lift Systems, LLC;  
By: [Signature]  
Printed Name: Jo-Lynne Busic  
Title: Director, Global Real Estate

STATE OF )  
                  ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 29 day of SEPTEMBER, 2014 by JO-LYNNE BUSIC, Grantor.  
DIRECTOR, GLOBAL REAL ESTATE

Witness my hand and official seal.

My Commission Expires: FEBRUARY 15, 2018



[Signature]

(SEAL) Notary Public

**EXHIBIT B**

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Capital Annexation No.1 Annexation

Accepted by the City of Colorado Springs

By: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20##  
Real Estate Services Manager

By: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20##

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office

**EXHIBIT B**

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Capital Annexation No.1 Annexation

Exhibit A

LEGAL DESCRIPTION

To the  
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater  
executed by WEATHERFORD, Grantor(s) on \_\_\_\_\_.  
ARTIFICIAL LIFT SYSTEMS, LLC

*(provide legal description signed and stamped by Professional Licensed Surveyor)*

# EXHIBIT B

## EXHIBIT A

### Capital Annexation No. 1 Legal Description

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 33 IN TOWNSHIP 13 SOUTH, RANGE WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SAID NORTHWEST QUARTER; THENCE SOUTHERLY ON THE EAST LINE OF SAID NORTHWEST QUARTER 2,200 FEET; THENCE WESTERLY, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, 1,200 FEET; THENCE NORTHERLY PARALLEL WITH THE EASTERLY LINE OF SAID NORTHWEST QUARTER, 2,200 FEET TO THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE EASTERLY ON SAID NORTH LINE 1,200 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR ROADWAY, WATER, SEWER AND UTILITY LINES AND MAINTENANCE ON, OVER AND UNDER THE WESTERLY 1,528 FEET OF THE NORTHERLY 40 FEET OF SECTION 33, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., ON, OVER AND UNDER WESTERLY 1,528 FEET OF THE SOUTHERLY 40 FEET OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., AND ON AND UNDER AN 80 FOOT STRIP, BEING 40 FEET ON EACH SIDE OF THE CENTER LINE WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE TRACT BEING CONVEYED HEREIN AND THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 33 TO THE WEST LINE OF SAID SECTION OF 33; AND ON, OVER AND UNDER THE EASTERLY 40 FEET OF THE SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., WHICH LIES SOUTH OF THE RIGHT-OF-WAY OF THE CHICAGO, ROCK ISLAND PACIFIC RAILROAD.

CONTAINING  $\pm 2,639,997$  SQ. FEET OR  $\pm 60.606$  ACRES, MORE OR LESS.

**EXHIBIT B**

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
Capital Annexation No.1 Annexation

Exhibit B

To the  
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater  
executed by WEATHERFORD, Grantor(s) on \_\_\_\_\_  
ARTIFICIAL LIFT SYSTEMS, LLC

Decreed Groundwater Rights

Case No.  
Court:  
Source:  
Amount:  
Date of Decree:  
Name of Owner:

Permitted Groundwater

Permit No. 22424-F  
Date of Permit: May 23, 1977  
Source: Arapahoe Aquifer  
Amount: 25 acre feet of withdrawals annually  
Name of Owner:  
Legal Description of Well or other structure:

Surface Water Rights

Name of Water Right:  
Case No.  
Court:  
Source:  
Amount:  
Date of Decree:  
Name of Owner:



**EXHIBIT B**

ELECTRIC LINE EXTENSION AND REVENUE GUARANTEE CONTRACT  
Capital Annexation No.1 Annexation

Exhibit C

## **EXHIBIT B**

### **COLORADO SPRINGS UTILITIES ELECTRIC EXTENSION AND REVENUE GUARANTEE AGREEMENT WEATHERFORD ARTIFICIAL LIFT SYSTEMS, LLC**

This Electric Extension and Revenue Guarantee Agreement ("Agreement") is hereby made and entered into this 21<sup>st</sup> day of ~~August~~ August, 2014 ("Effective Date"), by and between WEATHERFORD, ARTIFICIAL LIFT SYSTEMS, LLC, a Delaware Limited Liability Company ("Owner"), and COLORADO SPRINGS UTILITIES, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation ("Utilities") (individually, referred to herein as "Party" or collectively referred to as "Parties").

#### **RECITALS**

**WHEREAS**, Owner has requested that Utilities extend its electric distribution system to serve Owner's property located at 3285 Capital Drive, Colorado Springs, Colorado 80922 ("Property", as detailed in Exhibit A attached hereto and incorporated herein by reference); and

**WHEREAS**, Owner submitted a petition for annexation into the City of Colorado Springs ("City") in accordance with § 31-12-101 *et seq.*, C.R.S. on January 15, 2014, and, pursuant to the City Clerk's communication that the petition is in substantial compliance with § 31-12-107(1), C.R.S., the City Council of the City of Colorado Springs ("City Council") referred the petition to the City Administration for review and recommendation on February 11, 2014; and

**WHEREAS**, if the annexation into the City is approved by City Council, the Property will be located within Utilities' electric service territory; and

**WHEREAS**, if the annexation into Colorado Springs is approved by City Council, Owner desires electric service to the Property promptly after the date of annexation; and

**WHEREAS**, Owner is willing to provide contractual assurances to permit Utilities to commence construction of the line extension required to serve the Property (the "Project") as detailed in Exhibit B attached hereto and incorporated herein by reference) irrespective of the timing and outcome of the annexation petition at no risk to Utilities or Utilities' existing rate payers; and

**WHEREAS**, upon annexation, Utilities has determined that the provision of electric service to the Property is in the best interest of Utilities' rate payers; and

**WHEREAS**, the "Service Availability Date" is that date on which Utilities provides notice to Owner that electrical service is available to the Property at Utilities' side of the switches that are located on top of Utilities' vaults to be installed within the Property; and

**WHEREAS**, Owner acknowledges that Utilities cannot provide electrical service until Owner has satisfied all requirements for the commencement of such service under both Utilities'

## **EXHIBIT B**

Rules and Regulations tariffs and Utilities' Electric Line Extension & Service Standards, as well as obtained all necessary approvals from the Pikes Peak Regional Building Department; and

**WHEREAS**, the date of annexation is the effective date of annexation as set forth in the Municipal Annexation Act of 1965, § 31-12-101 *et seq.*

**WHEREAS**, the "Service Start Date" is the date Utilities assumes service responsibility for electrical service to Owner at the Property, which date is the latest of the Service Availability Date, the date on which Owner has satisfied the requirements for the commencement of service set forth in the preceding recital, or the date of annexation; and

**WHEREAS**, so long as the annexation into the City is approved by City Council, Utilities has elected to require a satisfactory annual revenue guarantee for each year of the five (5) year period commencing on the Service Start Date equal to thirty percent (30%) of the total actual cost of such extension in accordance with Utilities' Electric Rules and Regulations; and

**WHEREAS**, Owner desires to provide a minimum annual revenue guarantee as detailed in Section 1.C., below; and

**WHEREAS**, Utilities estimates that the cost of the Project will be \$864,902.99; and

**WHEREAS**, Utilities will determine the actual Project cost within 60 days of the Service Start Date.

**NOW, THEREFORE**, in consideration of the mutual covenants of the Parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby enter into this Agreement under the following terms and conditions:

### **Section 1. Owner's Responsibilities.**

A. On or before to the Service Start Date, Owner shall satisfy all conditions set forth in both Utilities' Rules and Regulations tariffs and Utilities' Electric Line Extension & Service Standards, as well as obtain all necessary approvals from the Pikes Peak Regional Building Department.

B. Owner shall use or ensure use of the electrical service provided by the Project continuously or seasonally, for a minimum period of five (5) years beginning on the Service Start Date.

C. Owner shall further guarantee that the annual minimum revenue for electric service provided to the Property for each year of the five (5) year period beginning on the Service Start Date shall be not less than thirty percent (30%) of the actual cost of the Project ("Guaranteed Minimum"). If any revenue shortfall exists, Owner agrees and covenants to pay, within thirty (30) days of the invoice date, sixty-three percent (63%) of the difference between the actual annual revenue for electric service to the Property and the Guaranteed Minimum.

## **EXHIBIT B**

D. Owner shall notify Utilities in writing within ten (10) days of a change of billing address.

E. If the annexation into the City is not approved by City Council, the Property will not be within Utilities' electric service territory and Utilities shall not provide electric service to Owner pursuant to this Agreement. Upon a final determination that the annexation into the City is not approved by City Council, the termination provisions of Section 3.G. shall control.

### **Section 2. Utilities' Responsibilities.**

A. Upon execution of this Agreement, Utilities shall:

1. Perform, at its own expense and with reasonable promptness, the construction of the Project.

2. Inform Owner of the Service Availability Date.

3. Provide Owner with electric utility service on the Service Start Date.

4. Bill Owner or any assignee for electric utility service under the effective tariffs and rate schedules, as such tariffs and schedules may be revised or amended by the City, subject, however, to the Guaranteed Minimum provided for herein.

5. Establish the total actual cost of the Project within sixty (60) days of the completion of the Project and notify Owner of the actual Project cost and the amount of the Guaranteed Minimum.

6. Reset, if required, the Guaranteed Minimum in accordance with Utilities' Rules and Regulations, as such tariffs and schedules may be revised or amended by the City of Colorado Springs, in the event that electric utility service is provided to additional customer(s) from the facilities that comprise the Project.

7. Determine, within sixty (60) days following the end of each of the five (5) one-year periods described in Section 1, the amount of revenue received by Utilities for electric utility service provided to the Property and further determine whether such revenues are less than, equal to, or exceed the Guaranteed Minimum.

8. If the amount of revenue received by Utilities for electric utility service provided to the Property is determined pursuant to Section 2.A.7 to be less than the Guaranteed Minimum, Utilities shall invoice Owner sixty-three percent (63%) of the difference between the actual annual revenue for electric utility service to the Property and the Guaranteed Minimum.

### **Section 3. General Provisions.**

A. Incorporation of Recitals. The recitals set forth above are incorporated herein by reference and made part of this Agreement.

## EXHIBIT B

B. Indemnification. Owner agrees to indemnify and hold harmless the City of Colorado Springs, Utilities, City Council, the Utilities Board of Directors, and the officers, directors, employees and agents of each (collectively "Utilities Indemnitees"), from and against any and all liability for any damages, injuries to the person or property, costs (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court and other dispute resolution costs), causes of action, demands or actions of whatsoever kind or nature, arising out of, or caused by, the negligent acts or omissions, or intentional misconduct of Owner under this Agreement, unless and to the extent any such damages are proximately caused by the negligent acts, omissions, or intentional misconduct of any Utilities Indemnitee. Owner shall give Utilities timely and reasonable notice of any such claims or actions.

C. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado, except for its conflict of law provisions and the City of Colorado Springs Charter and City Code, as well as Utilities' applicable rules, regulations, tariffs and policies, as now in effect or hereafter amended.

D. Jurisdiction and Venue. The place of performance and transaction of business will be deemed to be in the County of El Paso, State of Colorado, and in the event of litigation, the exclusive venue and place of jurisdiction will be in the district court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

E. Governmental Immunity. Utilities expressly reserves any and all of the protections, defenses, and limitations that it may be afforded under the Colorado Governmental Immunity Act with respect to the enforcement of its obligations hereunder and any damages related thereto.

F. Limitation of Liability. Owner understands and agrees that the City, Utilities, City Council, the Utilities Board of Directors, and the officers, directors, employees and agents of each shall not be liable, except where expressly provided by applicable laws, for incidental or consequential damages of any kind, including, without limitation, loss of use, lost profits, or increased costs of purchased or replacement materials and equipment caused by Utilities and concerning the Project.

G. Default and Termination.

1. In the event a Party fails to comply with any material term or condition of this Agreement, such failure shall constitute an event of default. Upon learning of any such default, the non-defaulting party shall notify the defaulting party in writing, after which time, the defaulting party shall have a period of thirty (30) days to cure the default. If the default is not cured within such period, the non-defaulting party shall have the right to terminate the contract immediately.

2. In the event of a final determination that the annexation into the City is not approved by City Council, Utilities shall be entitled to immediately terminate the contract and to the recovery of all costs as set forth in paragraph G.4.

## EXHIBIT B

3. Either Party may terminate this Agreement for convenience, upon provision of written notice thirty (30) days in advance.

4. In the event of termination by Utilities pursuant to paragraph G.1, termination by Utilities pursuant to paragraph G.2 or termination by Owner pursuant to paragraph G.3., one hundred percent (100%) of the costs reasonably expended on the Project by Utilities will be the responsibility of Owner. In such case, if the Project is not yet completed, the Owner will also be responsible for all costs to reasonably terminate and demobilize the Project. Utilities will invoice Owner for such costs.

H. Assignment/Third Party Beneficiary. There shall be no assignment of the rights or obligations contained in this Agreement by any Party without the prior written consent of the other Party, or such assignment shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to Owner, Utilities may assign this Agreement without consent to the City. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Utilities and Owner. Notice of this Agreement may be recorded by Utilities.

I. Runs with the Land. This Agreement shall run with the land and each of the benefits and burdens of this Agreement shall inure to and be binding upon the respective heirs, executors, personal representatives, administrators, transferees, successors, and assigns of the Parties.

J. Binding Upon Heirs and Assigns. Owner hereby binds itself, its owners, partners, successors, assigns, and legal representatives to Utilities, its partners, successors, assigns and legal representatives with respect to all covenants, agreements and obligations contained in this Agreement.

K. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Utilities, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

L. Notice. All notices necessary or required under this Agreement shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid and return receipt requested, as follows:

If to Utilities:

COLORADO SPRINGS UTILITIES  
Customer Contract Administration  
2880 International Circle  
P.O. Box 1103, Mail Code 1376  
Colorado Springs, CO 80947-1015  
Phone: (719) 668-8111  
Fax: (719) 668-8130

## EXHIBIT B

If to Owner:  
Weatherford Artificial Lift Systems, LLC  
Attn: Jo-Lynne Busic  
2000 St. James Place  
Houston, TX 77056  
Phone: (713) 836-4000  
Fax: (713) 836-5019

With a copy thereof to:

Weatherford Artificial Lift Systems, LLC  
Attn: Tyler Scott  
410 17<sup>th</sup> Street, Suite 400  
Denver, Colorado 80202  
Phone: (303) 825-6558  
Fax: (303) 825-2927

Notice given by personal delivery, overnight delivery, or mail shall be effective upon actual receipt. The Parties may change any address to which notice is to be given by giving notice as provided above of such change of address.

M. Force Majeure. Neither Party shall be liable for delays in performing its obligations, other than obligations for payment, under this Agreement to the extent the delay is caused by an unforeseeable condition beyond its reasonable control and without fault or negligence of the Party affected, including, but not limited to, acts of God, fire, flood or other catastrophes; adverse weather conditions; the imposition of any state or federal governmental codes, ordinances, laws, rules, regulations or restrictions; national emergencies, insurrections, riots, or wars.

N. [Intentionally Omitted]

O. Nonwaiver. A failure to enforce any provision of this Agreement by either Party shall not constitute a waiver of that provision by such Party, nor shall it affect the enforceability of that provision or the remainder of this Agreement.

P. Appropriation of Funds. In accordance with the City of Colorado Springs Charter, performance of Utilities' obligations under this Agreement is expressly subject to the appropriation of funds by City Council for Utilities. The funds for the current year's activities related to this Agreement have been fully appropriated. In the event funds are not appropriated in whole or in part sufficient for performance of Utilities' obligations under this Agreement, or appropriated funds may not be expended due to City of Colorado Springs Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and Utilities will thereafter have no liability for compensation or damages to Owner in excess of Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Utilities will notify Owner as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

Electric Extension and Revenue Guarantee Agreement – Weatherford



## **EXHIBIT B**

Q. Headings. The titles, headings, or captions of the provisions of this Agreement are merely for convenience of reference, and are not representations of matters included or excluded from such provisions.

R. Entire Agreement. This Agreement with attachments contains the entire understanding between the Parties; no modification, amendment, notation, or other alteration to this Agreement shall be valid or of any force or effect unless mutually agreed to by the Parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement that are not specifically set forth herein. All electronic communications, including email and voice, from Utilities in connection with this Agreement are for informational purposes only. No such communication is intended by Utilities to constitute any agreement by Utilities to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

S. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Facsimile copies of signatures shall be permitted for purposes of the binding nature of this Agreement

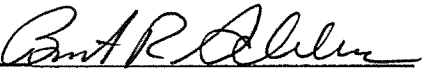
T. Authority. Each Party warrants that it has the authority to enter into this Agreement. Utilities has taken all appropriate action to enter into this Agreement, and the undersigned, on behalf of Utilities has the authority to sign and bind Utilities. Owner has taken all appropriate action to enter into this Agreement and the undersigned, on behalf of Owner, has the authority to sign and bind Owner.

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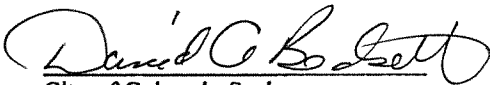
**EXHIBIT B**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

**COLORADO SPRINGS UTILITIES**

By:   
Name: BRENT R. SCHUBLOOM  
Title: SYSTEM EXTENSIONS MGR  
Date: 8/25/14

Approved as to form:

  
City of Colorado Springs  
City Attorney's Office

**EXHIBIT B**

OWNER:

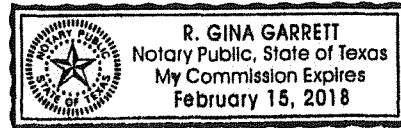
Weatherford Artificial Lift Systems, LLC

TMS By: [Signature]  
Name: Jo-Lynne Busic  
Title: Director, Global Real Estate & Construction

STATE OF TEXAS )  
 ) SS  
COUNTY OF HARRIS )

The foregoing instrument was acknowledged before me this 21 day of AUGUST,  
2014, by JO-LYNNE BUSIC as DIRECTOR of  
GLOBAL REAL ESTATE & CONSTRUCTION FOR WEATHERFORD  
ARTIFICIAL LIFT SYSTEMS, LLC  
Witness my hand and official seal.

My Commission Expires: FEBRUARY 15, 2018  
[Signature]  
Notary Public



# **EXHIBIT B**

## **Exhibit A**

**WEATHERFORD ARTIFICIAL LIFT SYSTEMS, LLC**

**CAPITAL ANNEXATION No.1**

### **LEGAL DESCRIPTION**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 33 IN TOWNSHIP 13 SOUTH, RANGE WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SAID NORTHWEST QUARTER; THENCE SOUTHERLY ON THE EAST LINE OF SAID NORTHWEST QUARTER 2,200 FEET; THENCE WESTERLY, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, 1,200 FEET; THENCE NORTHERLY PARALLEL WITH THE EASTERLY LINE OF SAID NORTHWEST QUARTER, 2,200 FEET TO THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE EASTERLY ON SAID NORTH LINE 1,200 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR ROADWAY, WATER, SEWER AND UTILITY LINES AND MAINTENANCE ON, OVER AND UNDER THE WESTERLY 1,528 FEET OF THE NORTHERLY 40 FEET OF SECTION 33, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., ON, OVER AND UNDER WESTERLY 1,528 FEET OF THE SOUTHERLY 40 FEET OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., AND ON AND UNDER AN 80 FOOT STRIP, BEING 40 FEET ON EACH SIDE OF THE CENTER LINE WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE TRACT BEING CONVEYED HEREIN AND THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 33 TO THE WEST LINE OF SAID SECTION OF 33; AND ON, OVER AND UNDER THE EASTERLY 40 FEET OF THE SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  OF SECTION 28, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., WHICH LIES SOUTH OF THE RIGHT-OF-WAY OF THE CHICAGO, ROCK ISLAND PACIFIC RAILROAD.

CONTAINING  $\pm 2,639,997$  SQ. FEET OR  $\pm 60.606$  ACRES, MORE OR LESS.

# EXHIBIT B

Exhibit B

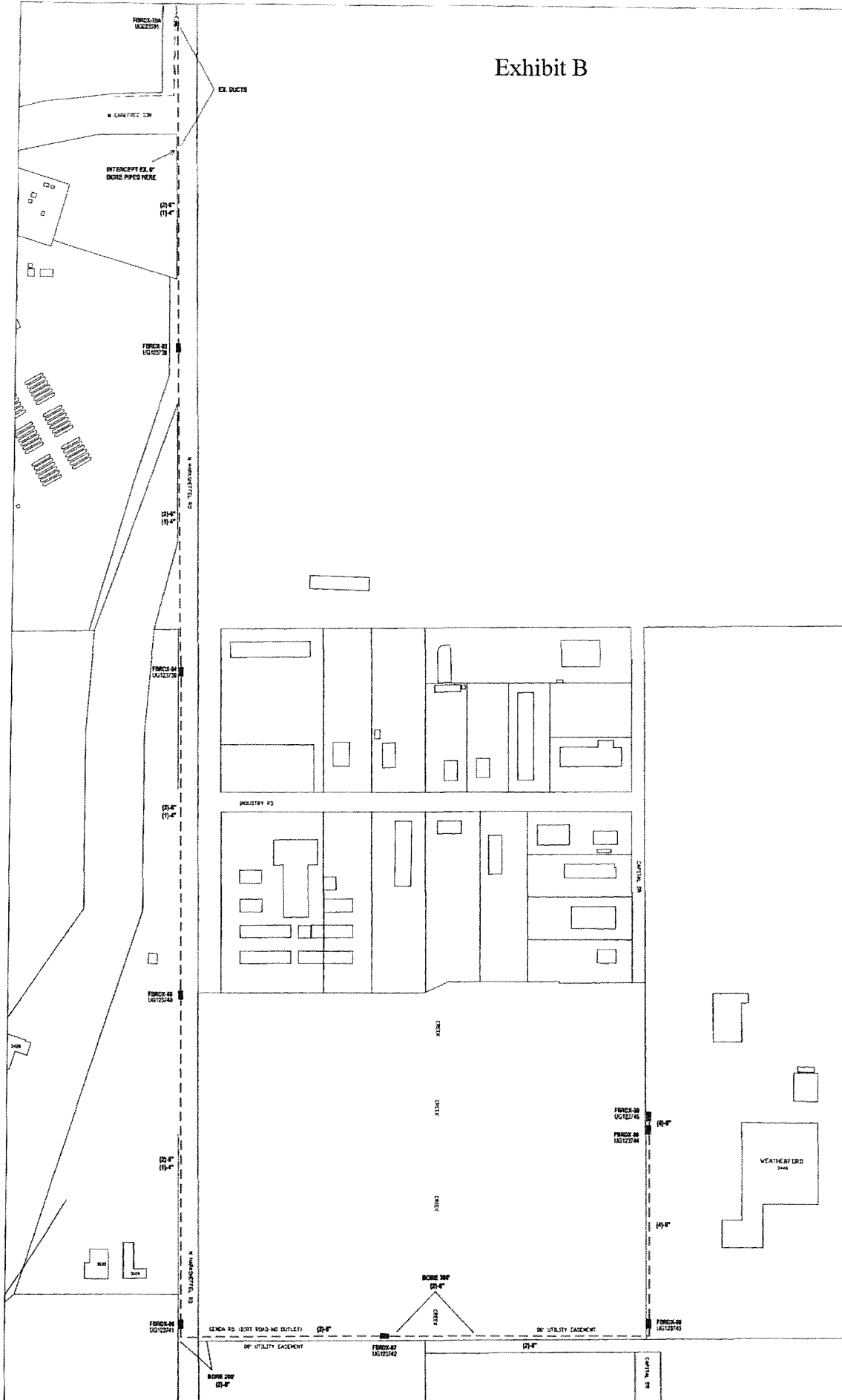
## SPECIFICATIONS

**Order**  
**FBRDX-70A:** (1)EIS-EXVLT-15KV-(4)600A, (3)E.T-OP-15KV-3PH-1000  
**FBRDX-83:** (1)E.SP.LICE3PH15KV-1000AL, (1)E.VLT6X12-W2RING&COVER  
**FBRDX-84:** (1)E.SP.LICE3PH15KV-1000AL, (1)E.VLT6X12-W2RING&COVER  
**FBRDX-85:** (1)E.SP.LICE3PH15KV-1000AL, (1)E.VLT6X12-W2RING&COVER  
**FBRDX-86:** (1)E.SP.LICE3PH15KV-1000AL, (1)E.VLT6X12-W2RING&COVER  
**FBRDX-87:** (1)E.SP.LICE3PH15KV-1000AL, (1)E.VLT6X12-W2RING&COVER  
**FBRDX-88:** (1)E.SP.LICE3PH15KV-1000AL, (1)E.VLT6X12-W2RING&COVER  
**FBRDX-89:** (1)EIS-VLT-15KV-(4)600A2, (2)E.T-OP-15KV-3PH-1000  
**FBRDX-90:** (1)EIS-VLT-15KV-(4)600A2, (2)E.T-OP-15KV-3PH-1000  
**CONDUIT:** (1000)E.CONDUIT-4"PE  
**DUCT BANK:** (4728)E.DUCT-BANK-(2)-6"PVC-ENC, (675)E.DUCT-BANK-(4)-4"PVC-ENC  
**WIRE:** (5200)E.TRACER-WIRE, (6700)E.UG-3PH-1000AL-15KV  
**Remove:**

1. THIS JOB TO INSTALL 600A MAINLINE FEED FROM FBRDX-70 TO FBRDX-89 & -90 AT WEATHERFORD FACILITY.
2. CREW TO INSTALL (1)-231 & (2)-222 SW'S AT FBRDX-70A & FBRDX-89/90 & (8) 6X12 VLT'S.
3. INSTALL (2)-6" & (1)-4" DB FROM CAREFREE TO FBRDX-86, (2)-6" DB FROM FBRDX-86 TO FBRDX-88 & (4)-6" DB FROM FBRDX-88 TO FBRDX-89 & -90.
4. BORE (2)-6" POLY ACROSS MARKSHEFFEL AT GENOA RD. AND UNDER CREEK AT MID PT. ON GENOA RD.
5. TRENCH WEST SIDE OF MARKSHEFFEL BEHIND CURB OR UNDER DETACHED SIDEWALK DEPENDING ON TELCOMM LOCATES.
6. CONTACT JEFF JONES (CSU SURVEY) TO STAKE 80' EASEMENT ALONG GENOA RD. 651-1029

WEATHERFORD CONTACT: DALE (313) 655-8554

**BORE REQUIRED**



NO.	TYPE	DESCRIPTION	REVISIONS	DATE
1	I	SCOPE OF WORK CHANGED FROM PRIMARY		8/6/2014
2		METERING TO JOB & COMMERCIAL INSTALL		
3				

CRGHT # 1257-23
MAP GRID # R-29
PRIMARY VOLTAGE 12.5



W.O.#: 2681463-01	PARENT W.O.# 2681463	SHEET NO. 1 OF 2
JOB SITE: MARKSHEFFEL RD N, 3445		
DESCRIPTION OF WORK: INSTALL MAINLINE TO FEED WEATHERFORD CHROMING FACILITY		
FIELD ENGINEER: ISHTERFIELD		

**EXHIBIT B**

INTERIM WATER AND WASTEWATER SERVICE AGREEMENT  
Capital Annexation No.1 Annexation

Exhibit D

## **EXHIBIT B**

### **INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

This Interim Water and Wastewater Service Agreement ("Agreement") is entered into this 25<sup>th</sup> day of September, 2014 ("Effective Date"), by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation ("Utilities"), whose address is P.O. Box 1103, Colorado Springs, Colorado 80903; Weatherford Artificial Lift Systems, LLC, a Delaware Limited Liability Company (the "Owner"), whose address is 410 17th Street, Suite 400, Denver, Colorado 80202; and Cherokee Metropolitan District, a metropolitan district organized under title 32 of the Colorado Revised Statutes ("CMD"), whose address is 6250 Palmer Park Boulevard, Colorado Springs, CO 80915. Utilities, CMD, and Owner are hereinafter individually referred to as "Party," and collectively referred to as the "Parties."

#### **RECITALS:**

**WHEREAS**, Owner owns the real property described in Exhibit A, attached hereto and incorporated herein by reference ("Property"), for which Owner is pursuing annexation into the City of Colorado Springs ("City"); and

**WHEREAS**, currently, the Property is located outside of the limits of the City and within CMD's service territory boundary; and

**WHEREAS**, Owner has petitioned for annexation into the City of Colorado Springs in accordance with C.R.S. § 31-12-101 *et seq.* and such petition was accepted by the City Council of the City of Colorado Springs on February 11, 2014; and

**WHEREAS**, the date of annexation is the effective date of annexation as set forth in the Municipal Annexation Act of 1965, § 31-12-101 *et seq.*; and

**WHEREAS**, at the time of execution of this Agreement, Owner's Property receives wastewater service from CMD and receives water for industrial purposes from an existing groundwater well, and is in the process of extending and connecting to CMD's water system to receive water for domestic purposes; and

**WHEREAS**, after annexation of the Property into the City, Owner desires to continue to receive water and wastewater service on an interim basis ("Interim Service") from CMD as provided for herein; and

**WHEREAS**, in consideration for CMD losing the Property as a long-term water and wastewater customer and CMD providing service on an interim basis, Owner has agreed to financial obligations tied to a minimum service period with CMD of ten years starting at the date of annexation into the City; and

**WHEREAS**, in the event CMD, Utilities and Owner effect the disconnection of the Property from CMD's water and wastewater systems and effect the connection of the Property to Utilities' water and wastewater systems prior to the expiration of ten years from the date of annexation, Owner will pay the total average annual invoice for any years less than 10 years of service as contemplated here above; and



## **EXHIBIT B**

### **INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

**WHEREAS**, Utilities desires to allow CMD to provide Interim Service to the Property after annexation of the Property until one year after Utilities provides notice as set forth herein; and

**WHEREAS**, CMD desires to provide Interim Service to the Property after annexation of the Property into the City as provided for herein; and

**WHEREAS**, Utilities is willing to defer Owner's obligation to extend and connect to Utilities water and wastewater facilities, which obligation arises upon annexation of the Property into the City; and

**WHEREAS**, the Parties are entering into this Agreement to set forth the terms and conditions for the provision of Interim Service to the Property by CMD, for the disconnection from CMD's water and wastewater systems after an interim period, and for the conversion from Interim Service to Utilities' permanent water and wastewater service.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **Section 1. Incorporation by Reference.**

The above-stated recitals are hereby incorporated by reference into this Agreement to the same extent as if fully restated herein.

#### **Section 2. Definitions.**

The following terms shall have the following meanings for purposes of this Agreement, unless the context clearly requires otherwise:

**"Determine(s)(d)" or "Determination"** means a decision or approval made by Utilities in its sole discretion.

**"Install"** means, without limitation, the planning, design, permitting, construction, and installation of Utilities' facilities in accordance with Utilities Rules and Regulations and standard practices and procedures, as such practices and procedures may be amended from time to time, and subject to Utilities' approval.

**"Utilities Rules and Regulations"** means the rules and regulations governing Utilities established by the Colorado Springs City Council, as may be amended from time to time.

#### **Section 3. Term.**

This Agreement shall be in full force and effect and shall be binding upon the Parties hereto beginning on the Effective Date and extending until such time as the Property is connected to Utilities' water and wastewater systems and obligations to CMD have been satisfied. This Agreement shall be null and void if the Colorado Springs City Council does not approve the annexation of the Property into the City.

## **EXHIBIT B**

### **INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

#### **Section 4. Interim Water and Wastewater Service.**

A. Except as specifically provided for herein, and in accordance with the Colorado Springs City Code, Utilities shall be the exclusive provider of water and wastewater utility service to the Property following its annexation.

B. After annexation of the Property into the City, Utilities hereby authorizes CMD, and CMD hereby commits, to provide Interim Service to the Property until such time as Owner is required to disconnect from CMD's water and wastewater systems and connect to Utilities' water and wastewater systems as further provided for in Section 5 of this Agreement.

C. While receiving Interim Service, Owner shall be a customer of CMD, Owner shall be directly billed by CMD, and Owner shall be solely responsible for payment of CMD's water and wastewater rates, charges, fees, and penalties, as may be adjusted by CMD's Board of Directors.

D. While receiving Interim Wastewater Service from CMD, Owner shall comply with all District Ordinances relative to wastewater, maintain industrial discharge pre-treatment program permits, records and the required sampling and reporting as required under the permit. The Owner shall observe and comply with all local limits as set forth and adopted by CMD.

E. For the sole purpose of establishing financial obligations, the minimum period for receiving Interim Service from CMD shall be ten years. Owner is responsible for payment to CMD for every year of Interim Service, to be paid on a monthly basis following invoicing; and in the event CMD, Utilities and Owner effect the disconnection of the Property from CMD's water and wastewater systems and effect the connection of the Property to Utilities' water and wastewater systems prior to the expiration of ten years from the date of annexation into the City, Owner shall pay CMD a one-time disconnect fee based on the total average annual costs of the Interim Service totaled on a pro-rated basis for the remainder of the 10 year period.

#### **Section 5. Connection to Colorado Springs Utilities.**

A. At such time as it determines in its sole discretion, Utilities shall provide notice to Owner and CMD that Owner shall disconnect from CMD's water and wastewater systems and shall extend and connect to Utilities' water supply and wastewater treatment systems one (1) year from the date of the notice.

B. Within ninety (90) calendar days of the Owner's receipt of Utilities' written notice described in paragraph 5.A., above, Owner shall commence the design and permitting required to Install the permanent utility extensions necessary to receive water and wastewater utility service from Utilities. Utilities consents to the Owner's continued use of the existing well on the Property for industrial use pursuant to the terms and conditions of the Colorado Division of Water Resources Well Permit No. 22434-F both during and after the Interim Service period.

## **EXHIBIT B**

### **INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

C. Owner, at its sole cost and expense, shall Install the permanent utility extensions required to connect to Utilities' water and wastewater systems in accordance with Utilities' Water and Wastewater Line Extension and Service Standards.

D. On the date that occurs one (1) year after the notice provided in paragraph 5.A., above, CMD, Utilities and Owner shall effect the disconnection of the Property from CMD's water and wastewater systems and shall effect the connection of the Property to Utilities' water and wastewater systems in a manner that minimizes the impact to Owner's business processes.

E. Provision of water and wastewater service to Owner by Utilities shall be in accordance with the Colorado Springs City Code, Utilities' tariffs, Utilities Rules and Regulations, Utilities' Line Extension and Service Standards, and any other applicable Utilities' policies. In addition, Owner acknowledges that water service for the Property from Utilities will not be available until such time as the Property is formally included within the boundaries of the Southeastern Colorado Water Conservancy District. Owner shall become a water and wastewater customer of Utilities upon commencement of such services and shall take service under the applicable rates, fees, terms and conditions of Utilities' water and wastewater service.

F. Owner shall secure on behalf of Utilities, all easements required for Utilities' water and wastewater extensions, if any, in the form of Utilities' then-current standard, permanent easement agreement.

#### **Section 6. Miscellaneous.**

A. Assignment. Except as otherwise explicitly provided, neither this Agreement nor any right or duty hereunder shall be assigned by any Party; provided, however, that Utilities may assign this Agreement and its rights and duties hereunder to the City or any department or enterprise thereof without such consent.

B. Notice. Any notice required or provided pursuant to this Agreement shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid and return receipt requested to a Party's address as shown below. Such notice shall be effective upon the date sent. A Party may change its address to which any notice is to be delivered under this Agreement by giving notice as provided herein.

**Colorado Springs Utilities:**

Utilities Development Services  
P.O. Box 1103, Mail Code 1015  
Colorado Springs, CO 80947-1015

**Cherokee Metropolitan District:**

Cherokee Metropolitan District  
Attn: General Manager  
6250 Palmer Park Boulevard  
Colorado Springs, CO 80915

## **EXHIBIT B**

### **INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

**Weatherford Artificial  
Lift Systems, LLC:**

Tyler M. Scott  
410 17th Street, Suite 400  
Denver, Colorado 80202

C. Indemnification. Owner hereby releases Utilities and shall fully protect, defend, indemnify and hold harmless Utilities, the City, their officers, City Council, Utilities' Board of Directors, employees, agents, and representatives from and against any and all losses, claims, causes of action, or liability of any nature due to, arising from, or associated with this Agreement. Owner further releases CMD and shall fully protect, defend, indemnify and hold harmless CMD, its officers, employees, agents, and representatives from and against any and all losses, claims, causes of action, or liability of any nature due to, arising from, or associated with this Agreement.

D. Governmental Immunity. Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to Utilities or the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

E. Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the illegal or unenforceable term or provision shall be deemed stricken for as long as it remains illegal or unenforceable.

F. Governing Law; Jurisdiction and Venue. This Agreement shall be performed and all terms of this Agreement construed in accordance with the laws of the State of Colorado (without reference to conflicts of laws), the Colorado Springs City Charter and Code, and City and Utilities rules, regulations, policies, practices, and procedures. In the event of litigation, this Agreement shall be enforceable by or against the City on behalf of Utilities as provided in Colorado Springs City Code s. 12.1.108. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

G. Runs with the Land. This Agreement shall run with the land and each of the benefits and burdens of this Agreement shall inure to and be binding upon the respective heirs, executors, personal representatives, administrators, transferees, successors, and assigns of the Parties.

H. Binding upon Heirs and Assigns. The Owner's heirs, executors, personal representatives, administrators, transferees, or assigns shall have the right to enforce this Agreement and shall have the Agreement enforceable against them as if they were the original parties hereto.

I. Liens and Encumbrances. Owner affirmatively states that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property.

## **EXHIBIT B**

### **INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

J. No Third-Party Beneficiary. This Agreement is intended to be solely for the benefit of the Parties and their respective successors and assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

K. Nonwaiver. The failure of a Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants or agreements herein contained, or the failure of a Party in any one or more instances to exercise any option, privilege or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants or agreements, and no forbearance by the Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

L. Headings. The headings used to designate the various sections of this Agreement are solely for the convenience of reference and shall not be construed to define or limit any of the terms or provisions hereof.

M. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument. This Agreement may be executed and delivered by facsimile transmission with an original to follow.

N. Force Majeure. No Party shall be liable to any other Party for any failure of performance under this Agreement due to causes beyond its control and without the fault or negligence of the Party affected including, but not limited to, acts of God, fire, flood or other catastrophes; adverse weather conditions; the imposition of any government codes, ordinances, laws, rules, regulations, or restrictions; national emergencies, insurrections, riots, or wars. Financial inability to perform is excluded from the scope of this paragraph of the Agreement.

O. Recording of Agreement. Within five (5) business days of the date of annexation and within five (5) business days of Owner's receipt of any amendments to the Agreement, Owner, at its sole expense, shall record this Agreement and any amendments to it, including all attachments, in the El Paso County real property records.

P. Default; Cure of Default. If Owner fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) calendar days following receipt of notice from the non-defaulting Party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting Party will be entitled, at its election, to either cure the default and recover the cost thereof from Owner, or pursue and obtain against Owner an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting Party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

## **EXHIBIT B**

### **INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

Q. Entire Agreement. This Agreement supersedes all previous written or oral communications, understandings, and agreements between the Parties. This Agreement may only be amended by written agreement signed by both Parties. E-mail and all electronic, voice, or other communications from Utilities in connection with this Agreement are for informational purposes only.

R. Authority. Each of the Parties warrants that it has the authority to enter into this Agreement. Utilities has taken all appropriate action necessary to enter into this Agreement and the undersigned, on behalf of Utilities, has the authority to sign and to bind Utilities. Owner has taken all appropriate action necessary to enter into this Agreement and the undersigned, on behalf of Owner, has the authority to sign and to bind Owner. CMD has taken all appropriate action necessary to enter into this Agreement and the undersigned, on behalf of CMD, has the authority to sign and to bind CMD.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement effective as of the day and year first above written.

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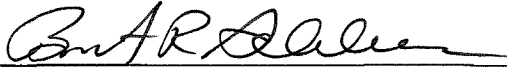




**EXHIBIT B**

**INTERIM WATER AND WASTEWATER SERVICE AGREEMENT**

Colorado Springs Utilities

By:   
Name: BRENT R. SCHUBLOOM  
Title: SYSTEM EXTENSIONS MANAGER

Date: SEPTEMBER 30, 2014

Approved as to form:

By:  Date: 09-30-14  
City Attorney's Office - Utilities Division