

RESOLUTION NO. 27-17

A RESOLUTION DIRECTING THE CHIEF EXECUTIVE
OFFICER OF COLORADO SPRINGS UTILITIES TO
EXECUTE AN AGREEMENT FOR AUGMENTATION
SERVICE

WHEREAS, the City Code § 12.4.401 generally provides that customers with properties located within the City are required to connect their properties to the Colorado Springs Utilities' water supply system; and

WHEREAS, City Code § 12.4.403 generally provides that it is unlawful for any person who owns any house or other building occupied for business or residential purposes situated within the City to fail to connect the house or building to the Colorado Springs Utilities' water supply system in accord with the requirements of the City Code; and

WHEREAS, City Code § 12.4.402 provides that Colorado Springs Utilities may negotiate agreements that provide for the development of groundwater resources within the City to be supplied to users for purposes specified in the agreements upon approval by the Executive Director, Utilities Board or City Council as appropriate; and

WHEREAS, City Resolution No. 233-86 sets forth the City's groundwater development policy and provides that unless otherwise determined by City Council, groundwater located within the City may only be utilized for supplemental water supply for emergency and limited irrigation purposes; and

WHEREAS, Utilities Board Executive Limitation 10 provides that groundwater located within the City may only be utilized for supplemental supply for emergency, limited irrigation, aquifer storage and recovery, or periodic operation and maintenance of groundwater infrastructure; and

WHEREAS, 260EB – 2, LLC ("Customer") is the owner of a 35-acre portion of a 392-acre parcel of vacant land located southeast of the intersection of Shoup Road and State Highway 83 ("Property"); and

WHEREAS, Customer is planning on constructing a primary residence and several guest residences on the Property in the near future; and

WHEREAS, City Code § 12.4.401 generally provides that Customer is responsible for the cost of all water main extensions necessary for Colorado Springs Utilities to serve the Property; and

WHEREAS, Colorado Springs Utilities currently does not have water distribution mains in the vicinity of the Property and Customer would have to pay for extensive and costly offsite water main extensions in order to connect the Property to the Colorado Springs Utilities' water supply system; and

WHEREAS, extending distribution mains to the Property at this time would introduce water quality and safety concerns due to water age and underutilized pipes, and would not facilitate the orderly development of Colorado Springs Utilities' water supply system; and

WHEREAS, Customer is interested in drilling a new groundwater well on the Property to provide interim water service to the Property ("New Well") until such time as a water distribution main is installed near the Property; and

WHEREAS, Customer is the owner of the existing exempt groundwater well located upon the 392-acre parcel that withdraws water from the Dawson Aquifer pursuant to State of Colorado Well Permit No. 23874-A for livestock use ("Existing Well") and desires to continue using the Existing Well for its livestock use; and

WHEREAS, Colorado Springs Utilities is willing to allow Customer to utilize the New Well for domestic uses on the Property, pursuant to Colorado Springs Utilities' Augmentation Service Tariff, until such time as a water distribution main is located near the Property; and

WHEREAS, Colorado Springs Utilities is willing to allow Customer to utilize the Existing Well for livestock use on the 392 acre parcel; and

WHEREAS, Customer has agreed to fund its share of the costs associated with the extension of the water main(s) necessary to serve the Property in the future and connect the Property to the main(s) when requested to do so by Colorado Springs Utilities; and

WHEREAS, Colorado Springs Utilities requests that City Council authorize and direct the Chief Executive Officer for Colorado Springs Utilities to execute an agreement for augmentation service with Customer that provides for the use of the New Well and the Existing Well as set forth above.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

SECTION 1. The City Council finds and determines that an augmentation service agreement between Colorado Springs Utilities and Customer is in the best interest of the City of Colorado Springs.

SECTION 2. The Chief Executive Officer for Colorado Springs Utilities is authorized and directed to enter into an augmentation services agreement with the Customer in a form substantially similar to that attached hereto.

SECTION 3. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado, this 28th day of February, 2017.

ATTEST:



Sarah B. Johnson, City Clerk





Council President

AUGMENTATION SERVICE AGREEMENT

This Augmentation Service Agreement ("Agreement") is made and entered into by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903 ("UTILITIES"), and 260EB - 2, LLC, with its principal place of business at 2 North Cascade Avenue, Suite 1490, Colorado Springs, Colorado 80903, ("CUSTOMER") (collectively "the Parties").

RECITALS

- A. CUSTOMER is the owner of a 35-acre parcel ("Property") as shown on attached Exhibit A, within UTILITIES' water service area. The Property constitutes a portion of the larger 392-acre parcel ("Larger Parcel") which was annexed to the City of Colorado Springs on December 24, 1986. See attached Exhibit A-1 for the legal description of the Larger Parcel.
- B. CUSTOMER is the owner of the existing exempt groundwater well located upon the Larger Parcel, not within the 35 acres of the Property, that withdraws water from the Dawson Aquifer under the Larger Parcel pursuant to State of Colorado Well Permit No. 23874-A for livestock use ("Existing Well").
- C. CUSTOMER is interested in drilling a new groundwater well to provide interim water service to the Property ("New Well") consistent with the terms of this Agreement until such time as a public water distribution main is installed near the Property. The water from the New Well is anticipated to be withdrawn from the Denver Aquifer beneath the Property.
- D. UTILITIES, by City of Colorado Springs' Ordinance No. 85-187 and by the decree entered in Case No. 90CW39, Division 2 Water Court, has obtained the exclusive right to withdraw all groundwater from the Dawson, Denver, Arapahoe, Laramie-Fox-Hills, and/or Dakota Aquifers underlying the annexed Larger Parcel.
- E. UTILITIES, by City of Colorado Springs' Resolution No. 233-86, is prohibited from developing or allowing development of City owned or City controlled groundwater from the Dawson Aquifer within its Water Service Area.
- F. UTILITIES, by the decree entered in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(A), and 89CW36, Division 2, Water Court, has the right to provide necessary augmentation or replacement water in order to use groundwater within the UTILITIES' water service area.
- G. It is the general policy of UTILITIES not to allow groundwater use for domestic development, but to require connection to UTILITIES' potable water distribution system, as stated in City of Colorado Springs' Resolution No. 233-86 and City Code § 12-4-401. However, at this point in time, due to, without limitation, the distance of UTILITIES' existing water utility lines from the Property, adherence to this general policy would not

contribute to the orderly development of UTILITIES' potable water distribution system. Therefore, UTILITIES is willing to allow the CUSTOMER's interim use of groundwater withdrawn from the New Well to be drilled on the Property pursuant to the terms and conditions set forth in this Agreement until such time as UTILITIES, pursuant to the City Code and UTILITIES' policies and tariffs, now in effect or hereafter amended, provides prior notice that the CUSTOMER, as provided in Section 1.11, must participate in a public water distribution main extension project that will serve the Property and connect the Property to UTILITIES' potable water distribution system.

AGREEMENT

NOW, THEREFORE, in consideration of the premises recited above and the mutual benefits received by each Party from the performance of this Agreement, the sufficiency of which is acknowledged, **IT IS AGREED**:

1. Customer is hereby authorized to construct and use the New Well on the Property and continue to use the Existing Well in accordance with the terms and conditions of this Agreement. CUSTOMER covenants and agrees that CUSTOMER shall be responsible for the following items:
 - 1.1 CUSTOMER may construct the New Well on the Property for the purposes described herein. CUSTOMER will pay all costs associated with permitting, engineering, construction, development, production, operations, maintenance, abandonment, and repair of the Existing Well and a New Well to be constructed for CUSTOMER's use under this Agreement. CUSTOMER is also responsible for all costs associated with any filtering or treatment necessary to make the water withdrawn from the New Well or Existing Well useable and to comply with any applicable existing or future water quality regulations. So long as this Agreement is in effect, CUSTOMER shall retain all rights of ownership of the pumps, appurtenances, and associated surface facilities of the New Well and the Existing Well.
 - 1.2 The New Well may only be constructed in the Denver, Arapahoe, or Laramie-Fox-Hills aquifers. The New Well may not be constructed in the Dawson aquifer. CUSTOMER shall use the groundwater produced from the New Well only within the Property, and within an additional up to 3.5 acres of land adjacent to the Property as may be added to the Property from the Larger Parcel by CUSTOMER, for the uses described in Exhibit B hereto, which uses are expressly approved by UTILITIES. CUSTOMER shall provide UTILITIES with notice of when that acreage is added to the Property and shall provide UTILITIES with a revised map of the Property with the notice. Provided, however, the establishment and watering of perimeter trees as allowed in Exhibit B may occur along the boundaries of the Larger Parcel, as well as along the boundaries of the Property so long as the Larger Parcel remains in the possession of the CUSTOMER. The annual amount of water withdrawn from the New Well shall not exceed 55 acre feet. CUSTOMER

shall also be allowed continued use of Dawson Aquifer groundwater withdrawn from the Existing Well only for the permitted livestock use on the Property and the Larger Parcel under Permit No. 23874-A and pursuant to the terms, conditions, and limitations set forth in the well permit and this Agreement. No other uses of groundwater withdrawn from either well shall be allowed.

- 1.3 CUSTOMER shall not allow any cross-connections of the New Well or the Existing Well with existing or future potable municipal water supplies within the Property or the Larger Parcel.
- 1.4 CUSTOMER shall not sell or provide groundwater produced under this Agreement to another party within or outside the Property or the Larger Parcel, or use the groundwater for any purpose other than those uses expressly allowed under the terms of this Agreement.
- 1.5 CUSTOMER shall indemnify and hold UTILITIES harmless from all claims, demands, and liabilities of any kind, including attorneys' fees and costs of defense, arising from or associated with the permitting, engineering, location, design, construction, maintenance and operation of either the New Well or Existing Well and associated facilities, and from any claims, demands, and liabilities of any kind arising from or associated with the existence or nonexistence of said groundwater, the use of said groundwater, any offensive characteristics or contamination of said groundwater, and any nuisances or contamination caused by its use. Furthermore, in the event any such claim arises, CUSTOMER shall take immediate action to abate any nuisance or contamination caused by the groundwater or its use and to remedy any dangerous condition of either well and associated facilities.
- 1.6 CUSTOMER's use of the groundwater withdrawn from the New Well shall comply with all requirements set forth in the City Code as now in effect or hereafter amended, all UTILITIES' policies and tariffs affecting the use of groundwater as now or hereafter adopted, and all other applicable federal, state, and local laws, ordinances, and regulations affecting the use of groundwater or the operation, maintenance, repair or replacement of said wells.
- 1.7 CUSTOMER shall pay UTILITIES, according to standard and customary billing procedures of UTILITIES, the amounts computed and billed to CUSTOMER under subparagraphs 2.2 and 2.6 as a condition to the use of the groundwater withdrawn from the New Well under this Agreement. It is understood that the Existing Well for its permitted livestock use is grandfathered and therefore provisions for billing described under this Agreement do not apply to the Existing Well. Notwithstanding the forgoing, the Existing Well may only be used for its permitted livestock use.

- 1.8 CUSTOMER acknowledges and agrees that its failure to pay charges as required by subparagraphs 1.7 , 2.6 and 2.7, or to indemnify UTILITIES or to abate any nuisances or to remove any dangerous conditions, pursuant to paragraph 1.5 above, shall entitle UTILITIES to terminate CUSTOMER's rights to withdraw any groundwater under this Agreement upon ten (10) days notice in writing as provided herein.
- 1.9 CUSTOMER shall be responsible to prepare the New Well's head discharge pipeline for meter installation in accordance with UTILITIES' Line Extension and Service Standards. No water shall be used from the New Well until such time as UTILITIES' meter is installed and functioning.
- 1.10 CUSTOMER shall provide to UTILITIES and record perpetual rights-of-way or easements for the use of UTILITIES that will be sufficient for the construction, operation, maintenance, repair, and replacement of a possible future potable water distribution line, including ingress and egress as necessary to the lands as described in both Exhibit A and Exhibit A-1.
- 1.11 At some date in the future, due to development occurring within close proximity to the Property, a public water distribution main will need to be installed to serve the Property. Pursuant to City Code and UTILITIES' policies and tariffs, now in effect or hereinafter amended, CUSTOMER will be required to fund all or a portion of the costs associated with the installation of the public water distribution main upon UTILITIES' request. UTILITIES will provide CUSTOMER with not less than 90 days prior notice of the date when CUSTOMER must provide funding for such public water distribution main installation. UTILITIES shall determine the date when funding must be provided based on Colorado Springs municipal development occurring, and UTILITIES water distribution infrastructure existing, within reasonable proximity of the Property. As determined appropriate by UTILITIES according to the City Code as now in effect or hereafter amended and all UTILITIES' policies and tariffs, UTILITIES will make available to CUSTOMER a Recovery Agreement, to assist in the collection of a *pro rata* share of the eligible cost of such facilities and interest from the owner(s) of unserved or undeveloped lands that will be served by the public water distribution main in the future. Upon completion of the public water distribution main, CUSTOMER shall be required to connect the Property to such public water distribution main upon UTILITIES' request. UTILITIES will provide CUSTOMER with not less than 90 days prior notice of the date when CUSTOMER must connect to such public water distribution main. Upon connection of CUSTOMER's water service line to such public water distribution main, CUSTOMER shall be required to discontinue domestic use of the New Well and groundwater withdrawn therefrom, to include physically disconnecting the New Well from the dwelling, and shall be required to connect to UTILITIES' public water distribution main and to pay all associated development charges, tap fees, and recovery charges. After

CUSTOMER connects to UTILITIES' system, CUSTOMER may continue the use of the New Well and groundwater withdrawn therefrom exclusively for irrigation and other nonpotable uses under the terms of this Agreement, providing that there is no cross-connection with UTILITIES' potable water distribution system.

2. UTILITIES shall be responsible for the following items:

2.1 UTILITIES shall install and maintain a meter as necessary and shall be responsible for readings, calibration, and billing for groundwater production from the New Well. UTILITIES' Advanced Meter Infrastructure ("AMI") system may or may not be available to read the meter at the point in time the meter is installed on the New Well. If the meter cannot be read by the AMI system at the time it is installed, then CUSTOMER shall be automatically included in UTILITIES' Automated-Meter Opt-Out Program as described in section 2.F of UTILITIES' Rules and Regulations and shall be subject to all terms and conditions set forth therein. The CUSTOMER shall be part of the Automated-Meter Opt-Out Program until the AMI system infrastructure is available to automatically read the New Meter, at which time the CUSTOMER will be removed from the Automated-Meter Opt-Out Program.

2.2 UTILITIES shall be responsible for and shall control all necessary water rights matters, including all necessary administrative or judicial approvals including, without limitation, obtaining the well permit for the New Well, approval of substitute supply plans for the New Well, and the Division Engineer's approval of the operation of the New Well under UTILITIES' augmentation plan decreed in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(A), and 89CW36, Water Division No. 2. If required for CUSTOMER's intended use of the groundwater withdrawn from the New Well, UTILITIES will make application for a well permit and approval of the operation of the New Well under UTILITIES' augmentation plan promptly upon execution of this Agreement. Failure of UTILITIES to obtain a satisfactory well permit from the State Engineer or satisfactory approvals to provide augmentation water under the terms and conditions of UTILITIES' decrees in Consolidated Case Nos. 84CW202, 84CW203, 86CW118(A), and 89CW36, Water Division No. 2, for the New Well, shall allow UTILITIES, at its option, to terminate this Agreement without further compensation or liability to CUSTOMER upon notice to CUSTOMER. CUSTOMER shall reimburse UTILITIES for all fees and costs associated with obtaining the approvals that are the subject of this subparagraph within 30 days of CUSTOMER's receipt of UTILITIES' invoice for such fees and costs.

2.3 UTILITIES shall replace depletions due to groundwater production from the New Well in accordance with requirements of the Division 2 Engineer's administration.

- 2.4 UTILITIES shall permit CUSTOMER to locate, relocate, design, develop, construct, operate and maintain the New Well and associated facilities in accordance with applicable State permits. However, UTILITIES shall retain ownership of all groundwater water rights associated with the New Well.
 - 2.5 UTILITIES makes no representations and does not guarantee that the quantity or quality of the groundwater to be withdrawn from either the Existing Well or the New Well will be adequate for CUSTOMER's intended uses or that the groundwater withdrawn from the wells will be free of any physical characteristics making it undesirable for CUSTOMER's intended use.
 - 2.6 UTILITIES shall charge CUSTOMER for use of the groundwater withdrawn from the New Well, according to the metered groundwater production at each well head, at a rate equivalent to UTILITIES' then current Augmentation Tariff rate (as of the date of this Agreement \$0.0072/cf). UTILITIES shall not charge CUSTOMER for water withdrawn from the Existing Well as long as such water is used for the purposes set forth in State of Colorado Well Permit No. 23874-A.
 - 2.7 UTILITIES shall have the right to change the rate in subparagraph 2.6 based on changes to UTILITES' Augmentation Tariff rate provided that the changes are approved by City Council.
3. All withdrawals of groundwater by CUSTOMER from the New Well pursuant to the terms of the Agreement shall be metered. In the event either Party disputes the accuracy of the measurement of withdrawals of groundwater, that Party, upon written notice to the other Party, may request that the meter be tested by a mutually agreed upon third party agency. If the third party agency determines that a meter measuring well withdrawals has registered the amounts withdrawn within two percent (2%), plus or minus, of the actual amount withdrawn during the test, the Party requesting the test shall bear all costs thereof, and no billing shall be adjusted. If the third party testing agency determines that the meter has failed to confirm that the amounts withdrawn during the test are within the required accuracy, the cost of the testing shall be borne equally by CUSTOMER and UTILITIES, and the billings to CUSTOMER based upon the information obtained from such meter shall be adjusted based upon a reasonable estimate of the amount withdrawn or delivered considering all relevant factors and rebilled or credited to CUSTOMER. If the error was to result in CUSTOMER being underbilled for the water used, CUSTOMER will be billed for the adjusted usage for the last 12 months only. If the error was to result in CUSTOMER being overbilled for the water used, UTILITIES will refund CUSTOMER based on the adjusted usage for UTILITIES' period of record. Any amounts due from either Party resulting from such adjusted billing shall be due within thirty (30) days of the adjustment.
4. CUSTOMER's rights to use groundwater from the New Well or Existing Well under this Agreement are contract rights only and shall not be construed in any manner to

grant CUSTOMER any right, title, or interest in any groundwater, groundwater rights, water rights, or any appurtenances thereto belonging to the City of Colorado Springs and, without limitation of the foregoing provision, UTILITIES specifically reserves all rights of reuse and successive use of return flows from CUSTOMER's groundwater use.

5. The term of this Agreement shall be for twenty-five (25) years. This Agreement may be renewed for an additional term of twenty-five (25) years at the sole discretion of UTILITIES.
6. CUSTOMER acknowledges and consents to UTILITIES' right to terminate this Agreement: (1) due to CUSTOMER's breach of a material term or condition of this Agreement, if CUSTOMER has not taken substantial steps to cure the breach within thirty (30) days of receiving written notice of such breach from UTILITIES; or (2) as otherwise authorized by the City Code of Colorado Springs or the Colorado Springs City Council. UTILITIES will make reasonable efforts to notify CUSTOMER of circumstances that could result in such termination. CUSTOMER may terminate this Agreement and its obligations hereunder by giving UTILITIES written notice of its intent to terminate thirty (30) days prior to termination. In the event of termination, CUSTOMER shall remain responsible to pay all charges due under subparagraphs 2.2 and 2.6 above up to the date of termination. Upon notice of termination of this Agreement by either Party as provided above, CUSTOMER may remove the pumps, appurtenances, and associated surface facilities of the New Well, provided that the well bore hole and well casing shall be left intact and title thereto shall be deemed transferred to UTILITIES for its use as of the date of termination. If CUSTOMER fails to remove the pumps and associated surface facilities of the New Well before the effective date of termination, ownership thereof shall revert to UTILITIES as of the effective date of termination. No groundwater thereafter shall be produced for CUSTOMER's use from wells constructed pursuant to this Agreement. UTILITIES, however, may utilize such wells thereafter for its own use or for other lawful purposes, provided it obtains necessary easements from CUSTOMER over the Property, which easements will not be unreasonably withheld by CUSTOMER.
7. This Agreement is specifically conditioned upon UTILITIES obtaining satisfactory approvals and permits from the State Engineer to allow the construction and augmentation of the New Well as provided herein. If such approvals and permits are not obtained, this Agreement, at UTILITIES' option, shall become null and void.
8. Any notice required or permitted under this Agreement shall be considered given if the same is sent via first class mail to the following:
 - 8.1 If to CUSTOMER:
260EB – 2, LLC
Attn: Randy and Linda Samelson
2 North Cascade Avenue, Suite 1490
Colorado Springs, CO 80903

8.2 If to UTILITIES:

i. Chief Water Services Officer

Courier Service Address:

Colorado Springs Utilities
ATTN: Chief Water Services Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities
ATTN: Chief Water Services Officer
P.O. Box 1103
Colorado Springs, CO 80947-0950
Fax: (719) 668-8020

ii. City Attorney's Office - Utilities Division

Courier Service Address:

City Attorney's Office – Utilities Division
30 S. Nevada Ave, Suite 501
Colorado Springs, CO 80903

United States Postal Service Address:

City Attorney's Office – Utilities Division
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575
Fax: (719) 385-5535

9. This Agreement is assignable by CUSTOMER to another owner of the Property only for uses allowed hereunder. This Agreement shall benefit and bind alike the parties hereto, their successors or assigns.
10. There shall be no assignment or delegation of the rights or obligations contained in this Agreement by either Party without the prior written consent of the other Party, and any such assignment or delegation shall be null and void. UTILITIES' consent to CUSTOMER's assignment or delegation of the rights or obligations contained in this Agreement to a subsequent owner of the Property shall not be unreasonably withheld. Notwithstanding anything herein to the contrary, upon written notice to CUSTOMER, UTILITIES may assign or delegate its rights and obligations under this Agreement, without consent from CUSTOMER, to the City of Colorado Springs, Colorado. Any such assignee of CUSTOMER or UTILITIES shall agree to assume and perform this

Agreement. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and CUSTOMER.

11. The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be binding upon the Parties who agree that this Agreement shall be re-formed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.
12. Neither Party shall be liable for delays in performing its obligations under this Agreement to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including, but not limited to, strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.
13. In accord with the Colorado Springs City Charter, performance of UTILITIES' obligations under this Agreement is expressly subject to appropriation of funds by the City Council. 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 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 CUSTOMER in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify CUSTOMER as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.
14. CUSTOMER hereby agrees to release, discharge, indemnify and hold harmless the City of Colorado Springs, UTILITIES, the Colorado Springs City Council, the Utilities Board, and the officers, directors, employees and agents of each from and against any and all liability for any damages, injuries to the person or property, costs (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or 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 CUSTOMER under this Agreement. CUSTOMER shall give UTILITIES timely and reasonable notice of any such claims or actions. Notwithstanding the foregoing, UTILITIES expressly reserves any and all of the protections, defenses, and limitations that it may be afforded under the Colorado Governmental Immunity Act. Additionally, the Parties understand and agree that the City of Colorado Springs, UTILITIES, CUSTOMER, the Colorado Springs City Council, the Utilities Board and the officers, directors,

employees and agents of each shall not be liable, except where expressly provided by applicable laws, for incidental, special, or consequential damages of any kind.

15. This Agreement 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 and CUSTOMER in connection with this Agreement, are for informational purposes only. No such communication is intended by UTILITIES or CUSTOMER to constitute any agreement by UTILITIES or CUSTOMER to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.
16. This Agreement shall be construed in accordance with the laws of the State of Colorado, except for its conflict of law provisions, and the Colorado Springs City Charter and City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado, specifically in the District Court for El Paso County, Colorado, and if necessary for exclusive federal questions, the United States District Court for the District of Colorado, and for water matters as defined by Colo. Rev. Stat. § 37-92-201, *et seq.*, the District Court for Water Division 2.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates following their signatures below.

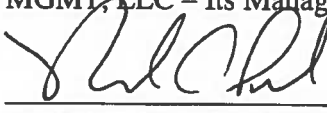
COLORADO SPRINGS UTILITIES

CUSTOMER

260EB - 2, LLC

By: MGMT, LLC - Its Manager

By: 
Jerry A. Forte, Chief Executive Officer

By: 
Randon A. Samelson, Manager

Date: 3/27/17, 2017

Date: 4/10, 2017

APPROVED AS TO FORM



City Attorney's Office - Utilities Division

City of Colorado Springs



619 N. Cascade Avenue, Suite 200 (719)785-0790
Colorado Springs, Colorado 80903 (719) 785-0799(Fax)

EXHIBIT A
to the Augmentation Service Agreement
between 260EB-2, LLC and Colorado Springs Utilities
page 2 of 2

JOB NO. 2217.31-01
NOVEMBER 1, 2016
PAGE 1 OF 1

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN NORTHEAST QUARTER OF SECTION 15 , TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: A PORTION OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING MONUMENTED AT THE WEST END AT THE CENTER QUARTER CORNER OF SAID SECTION 15 BY A 3-1/4" ALUMINUM CAP STAMPED "JR ENG, LS 10377" AND AT THE EAST END BY A 1/2 INCH IRON PIPE ON THE WESTERLY RIGHT OF WAY LINE OF HOWELL ROAD, SAID POINT BEING 30 WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, ALL AS SHOWN ON AN ALTA/ACSM LAND TITLE SURVEY PREPARED BY LAW & MARIOTTI CONSULTANTS, INC., JOB NO. 04-008, DATED FEBRUARY 24, 2004, IS ASSUMED TO BEAR S89°43'25"E A DISTANCE OF 2598.95 FEET.

COMMENCING AT 1/2 INCH IRON PIPE ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF HOWELLS ROAD SAID POINT BEING 30 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, ALL AS SHOWN ON AN ALTA/ACSM LAND TITLE SURVEY PREPARED BY LAW & MARIOTTI CONSULTANTS, INC., JOB NO. 04-008, DATED FEBRUARY 24, 2004, SAID POINT BEING THE POINT OF BEGINNING.

THENCE N89°43'25"W, ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 1471.62 FEET;

THENCE N00°07'51"W, PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 1036.20 FEET;

THENCE S89°43'25"E, PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 1471.62 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SAID HOWELLS ROAD, SAID POINT BEING 30 WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15;

THENCE S00°07'51"E, ON THE WESTERLY RIGHT OF WAY LINE OF SAID HOWELLS ROAD AND THE LINE 30 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 1036.20 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 35.006 ACRES

NO FIELD WORK WAS PERFORMED BY CLASSIC CONSULTING ENGINEERS & SURVEYORS TO PREPARE THIS DESCRIPTION. ALL MONUMENTATION AND BOUNDARY INFORMATION WAS TAKEN FROM AN ALTA/ACSM LAND TITLE SURVEY PREPARED BY LAW & MARIOTTI CONSULTANTS, INC., JOB NO. 04-008, DATED FEBRUARY 24, 2004

LEGAL DESCRIPTION STATEMENT:

I, DOUGLAS P. REINELT, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.



DOUGLAS P. REINELT, PROFESSIONAL LAND SURVEYOR
COLORADO P.L.S. NO. 30118
FOR AND ON BEHALF OF CLASSIC CONSULTING,
ENGINEERS AND SURVEYORS, LLC.

Nov 01, 2016
DATE

EXHIBIT A
to the Augmentation Service Agreement
between 260EB-2, LLC and Colorado Springs Utilities
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392-ac Property Boundary (approximate)

35-ac Parcel Boundary (approximate)

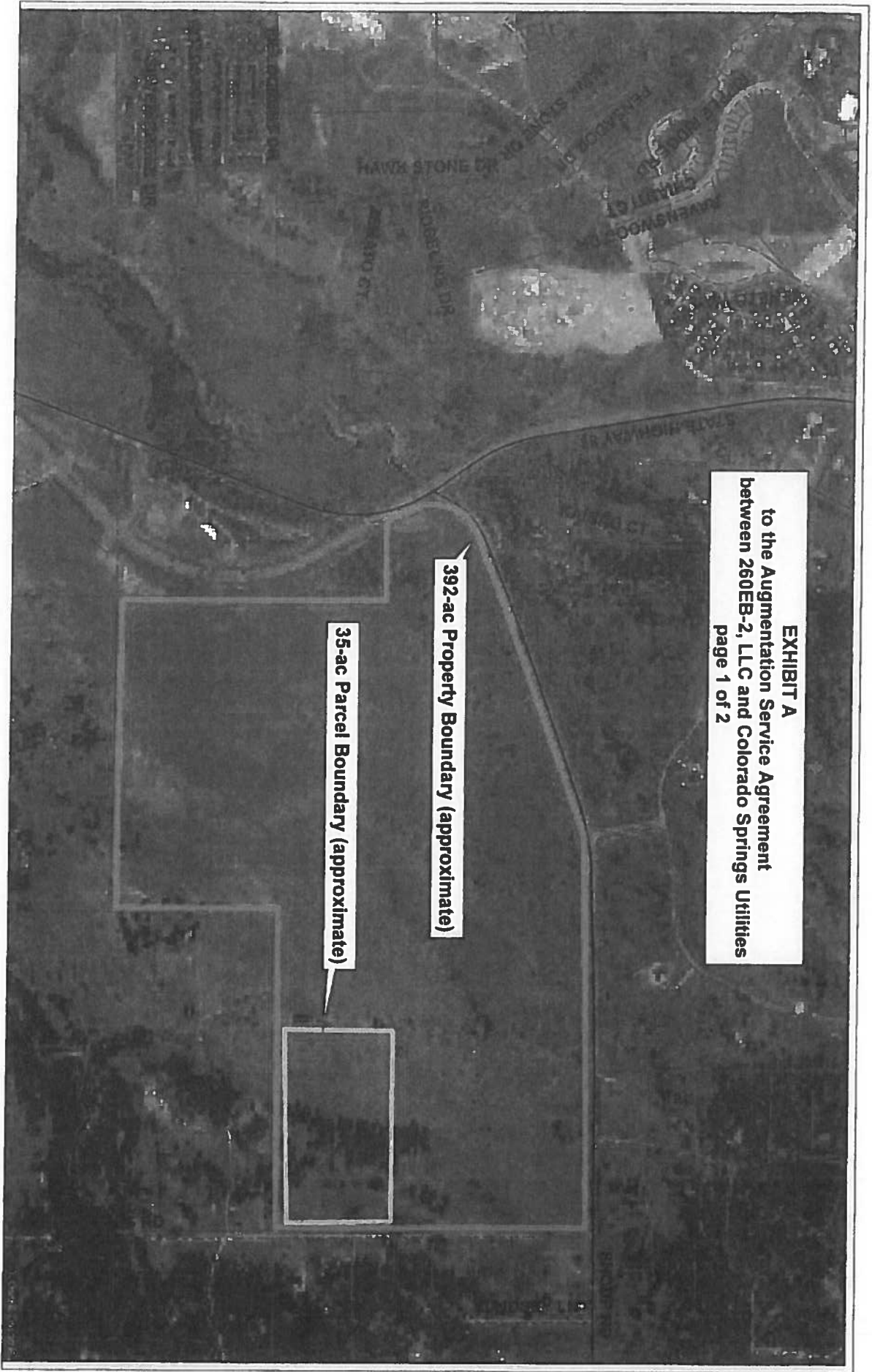


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A TRACT OF LAND LOCATED IN A PORTION OF SECTION 15 AND 16, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

1. BEGINNING AT THE WEST 1/4 CORNER OF SAID SECTION 15 (A FOUND ORIGINAL STONE IN THE FENCE LINE), THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 15 BEARS N 00°08'57"W AND ALL BEARINGS IN THIS DESCRIPTION ARE RELATIVE THERETO; THENCE N 00°08'57"W ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 15, A DISTANCE OF 894.97 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
 2. THENCE S 89°51'03"W, A DISTANCE OF 626.96 FEET TO A C.D.O.H. ROW MARKER, SAID MARKER BEING ON THE EASTERLY RIGHT OF WAY OF STATE HIGHWAY NO. 83;
 3. THENCE NORTHERLY ALONG THE ARC OF A CURVE WHOSE RADIUS BEARS S 78°22'14"W A DISTANCE OF 1,206.00 FEET, THROUGH A CENTRAL ANGLE OF 15°43'50", A DISTANCE OF 331.11 FEET TO A FOUND "X" CHISLED IN CONCRETE;
 4. THENCE N 03°11'33"W, A DISTANCE OF 188.27 FEET TO A FOUND "X" CHISLED IN CONCRETE, SAID POINT FURTHERMORE BEING ON THE SOUTHERLY RIGHT OF WAY OF SHOUP ROAD;
 5. THENCE CONTINUE ALONG THE SAID SOUTHERLY RIGHT OF WAY OF SHOUP ROAD FOR THE NEXT 9 COURSES, N 33°39'37"E, A DISTANCE OF 133.83 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
 6. THENCE N 44°10'17"E, A DISTANCE OF 99.58 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
 7. THENCE N 55°56'38"E, A DISTANCE OF 98.48 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
 8. THENCE N 59°56'58"E, A DISTANCE OF 233.28 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
 9. THENCE N 69°47'23"E, A DISTANCE OF 338.99 FEET TO A SET REBAR AND CAP MARKED "L.S. #13225", SAID POINT FURTHERMORE BEING ON THE WEST LINE OF SAID SECTION 15;
 10. THENCE CONTINUE N 69°47'23"E, A DISTANCE OF 207.76 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
 11. THENCE N 70°53'32"E, A DISTANCE OF 1,640.91 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
 12. THENCE N 80°17'29"E, A DISTANCE OF 566.39 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
- *****CONTINUED*****

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13. THENCE N 89°43'15"E, A DISTANCE OF 2,886.03 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
14. THENCE S 00°09'54"E (SAID BEARING BEING 90 FEET WESTERLY AND PARALLEL TO THE EAST LINE OF SAID SECTION 15), A DISTANCE OF 2,615.71 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710", SAID POINT FURTHERMORE BEING A POINT ON THE SOUTH LINE OF THE NE 1/4 OF SAID SECTION 15;
15. THENCE N 89°50'35"W ALONG THE SOUTH LINE OF SAID NE 1/4, A DISTANCE OF 2,583.58 FEET TO A FOUND 1 1/2" DIA. PIPE;
16. THENCE S 00°35'28"W, A DISTANCE OF 1,331.95 FEET TO A FOUND REBAR AND CAP MARKED "L.S. #11710";
17. THENCE N 89°11'18"W, A DISTANCE OF 2,597.74 FEET TO A FOUND 1/2" DIA. REBAR;
18. THENCE N 00°05'50"E, A DISTANCE OF 1,320.25 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION HEREOF NOT LYING WITHIN THE BOUNDARIES OF THAT TRACT OF LAND DESCRIBED IN WARRANTY DEED FROM THE BUTLER REVOCABLE TRUST AND THE E. SUZANNE INKLEY TRUST TO O.S. PROPERTIES, INC., RECORDED OCTOBER 5, 1984 IN BOOK 3925 AT PAGE 1226.

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Permitted Uses of the New Well:

1. Domestic uses associated with the following structures currently or to be located on the Property in the future:
 - a. Primary residence;
 - b. Home office building located adjacent to primary residence;
 - c. Guest home;
 - d. Four small cabins;
 - e. Pavilion with kitchenette, restroom and guest suite;
 - f. Livestock barn;
 - g. Beekeeping facility; and
 - h. Chicken coop.

2. Irrigation associated with the following:
 - a. Up to four acres of orchards;
 - b. Up to one acre of garden/greenhouse/small aquaponics facility;
 - c. Up to one acre of vineyards; and
 - d. Establishment of perimeter trees to enhance the border between grazing area and the neighboring properties.

3. Miscellaneous uses:
 - a. Development of small pond for watering sheep and ducks near Howells Road.