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December 19, 2024

Via E-Mail (benglish@csu.org)

Bryan T. English, PMP
Development Projects Manager
Colorado Springs Utilities
2880 International Circle, Suite 210
Colorado Springs, CO 80910

Re: Southern Colorado Rail Park ("SCRP") - Annexation Request

Dear Bryan:

Gary Barber provided information regarding the wells and water rights that pertain to the Southern Colorado Rail Park property. This letter provides information regarding other utilities.

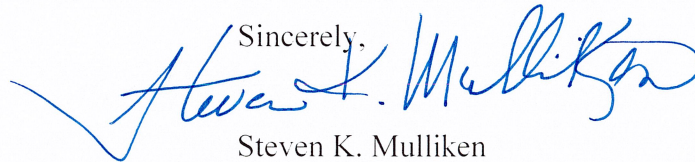
SCRP is currently within the City of Fountain electric service territory and receives electricity for its aggregate operations from the City of Fountain. SCRP is also receiving water needed in support of the aggregate operations from wells owned by Colorado Springs Utilities ("Utilities"). That water is being provided pursuant to a Surplus Water Lease Agreement with Utilities (the "Water Lease") which has been renewed twice and will expire on August 31, 2025 unless Utilities agrees to renew the Water Lease. We would request that the Water Lease again be renewed prior to its currently scheduled expiration, understanding that the rates may change.

We would also request that both the electric service from the City of Fountain and the water service pursuant to the Water Lease be allowed to remain in place following annexation and pending the development of SCRP so the aggregate operations would not be interrupted. We would anticipate that it will take some time following the annexation of the property for utility connections to be extended to the property, and we would like to be able to continue the aggregate operations with its current utility set up until those utility connections are made as development of the rail park occurs. If you agree, this will need to be addressed in the Annexation Agreement. For your convenience, a copy of the Water Lease and its amendments are attached.

Mulliken Weiner Berg & Jolivet P.C.

Bryan T. English, PMP
Development Projects Manager
December 19, 2024
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Thank you for your assistance. Please let me know if you have any questions or need any additional information regarding current utility services at SCRP.

Sincerely,

Steven K. Mulliken

SKM:sg
Enclosures
File No.: 81567.058
Cc: L. Steven Weiner
Gary Barber
City Attorney

RENEWAL ADDENDUM TO SURPLUS WATER LEASE AGREEMENT

THIS RENEWAL ADDENDUM TO SURPLUS WATER LEASE AGREEMENT, herein after called the "Addendum," is made and entered into on the dates set forth below, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called "UTILITIES," and Schmidt Construction, 2635 Delta Drive, Colorado Springs, CO 80910, hereinafter called "SCHMIDT."

RECITALS

- A. UTILITIES and SCHMIDT entered into a Surplus Water Lease Agreement on August 16, 2022, hereinafter called the "Agreement," under which UTILITIES leases up to 250 acre-feet per year of untreated surplus groundwater ("Surplus Water") for use in Schmidt's gravel mining operation if and when such supply is available.
- B. The term of the Agreement expires on August 31, 2023.
- C. Paragraph 1 of the Agreement provides that it "can be renewed on an annual basis after expiration of the Original Term for up to 4 additional one year periods at UTILITIES' sole discretion based on its determination that Surplus Water is available for lease each year. In no case can the term of this Agreement be extended beyond August 31, 2025."
- D. Based on current conditions and operating system constraints, UTILITIES has determined that a limited amount of Surplus Water is available for non-potable use by SCHMIDT at its gravel mining operation for the period of September 1, 2023 through August 31, 2024.
- E. UTILITIES desires to renew the term of the Agreement in order to continue leasing Surplus Water to SCHMIDT for use in its' gravel mining operation.
- F. SCHMIDT desires to renew the term of the Agreement in order to continue leasing Surplus Water from UTILITIES for use in its' gravel mining operation.

G. UTILITIES and SCHMIDT have determined that renewal of the term of the Agreement for a period of one year that begins on September 1, 2023 and expires on August 31, 2024 through this Addendum is in their respective best interests.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE FOREGOING REPRESENTATIONS, THE RECEIPT AND BENEFIT OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

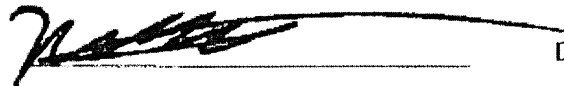
1. The term of the Agreement is extended for the one-year period of September 1, 2023 through August 31, 2024.
2. Except to the same extent as amended hereby, all other terms of the Agreement shall remain the same and are hereby ratified and affirmed by the parties.
3. In the event of a conflict between the Agreement and this Addendum, the terms and conditions of this Addendum shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the dates set forth below.

FOR COLORADO SPRINGS UTILITIES

By:  Date: 8/28/2023
Kim Gortz
Manager, Water Resources

Approved as to Form City of Colorado Springs City Attorney's Office:

By:  Date: 8-23-23

FOR SCHMIDT

By:  Date: 8-29-2023
Scott Davis
President

SURPLUS WATER LEASE AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered on the dates set forth below by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called “UTILITIES,” and Schmidt Construction, 2635 Delta Drive, Colorado Springs, CO 80910, hereinafter called “SCHMIDT.”

RECITALS

- A. UTILITIES is the owner and operator of Clear Spring Ranch;
- B. UTILITIES owns certain water wells located on Clear Spring Ranch (Hanna Wells) that are decreed for industrial use whose pumping is augmented by reusable sewer return flows released from the Las Vegas Water Reclamation Facility and/or nonsewered return flows as permitted in Division 2, Water Court, Case Nos. W-4376 and 1989CW36. These augmentation releases are made in sufficient quantity to ensure that any water pumped from the Hanna Wells can be fully consumed;
- C. UTILITIES, through the operation of the Hanna Wells, and based on current conditions and operation system constraints, has determined that a limited amount of surplus untreated groundwater (“Surplus Water”) is normally available for nonpotable use at a gravel mine operated by SCHMIDT, located adjacent to UTILITIES’ Clear Springs Ranch property as depicted on Exhibit A;
- D. SCHMIDT has the desire to lease up to 250 acre-feet per year of Surplus Water from UTILITIES each year to be used for various nonpotable uses such as dust suppression, washing of gravel, and other nonpotable uses associated with gravel mining (SCHMIDT Uses); and
- E. The water rights for the Hanna Wells are currently decreed for municipal, industrial and domestic purposes in conjunction with the operation of UTILITIES R.D. Nixon Power Generating Plant located on Clear Spring Ranch.
- F. In order for SCHMIDT to use the Surplus Water as described herein, it must request and obtain approval of a substitute water supply plan (SWSP) from the Colorado State Engineer’s Office pursuant to C.R.S 37-92-308(5) or C.R.S. 37-90-137(11) that allows the Surplus Water to be used for SCHMIDT’s Uses; and
- G. UTILITIES desires to lease Surplus Water to SCHMIDT for use in its gravel mining operation on an annual basis if and when such a supply is available, according to the guidelines set forth in the UTILITIES’ Water Management Plan.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE FOREGOING REPRESENTATIONS, IT IS AGREED AS FOLLOWS:

1. **Term:** This Agreement shall become effective upon execution by both parties and shall remain in effect until June 30, 2021 (“Original Term”). The Agreement can be renewed on an annual basis after expiration of the Original Term for up to 4 additional one year periods at UTILITIES’ sole discretion based on its determination that Surplus Water is available for lease each year. In no case can the term of this Agreement be extended beyond June 30, 2025. UTILITIES reserves the right not to lease Surplus Water to SCHMIDT under this Agreement if in its sole judgment such water is required to supply the needs of UTILITIES’ customers or that Surplus Water is not available. UTILITIES is not obligated to extend or renew the term of this Agreement or deliver Surplus Water to SCHMIDT after the expiration of the Original Term or any subsequent one year renewal of the term.
2. **Substitute Water Supply Plan:** SCHMIDT shall be solely responsible for filing a SWSP with the Colorado State Engineer’s Office pursuant to C.R.S. 37-92-308(5) or C.R.S. 37-90-137(11) requesting approval of a change of the water rights for the Hanna Wells that would allow the Surplus Water to be legally used for SCHMIDT’s Uses. SCHMIDT shall provide UTILITIES with the reasonable opportunity to review and provide input on the SWSP request before it is filed with the State Engineer’s Office, to review and provide input on any responses to questions or comments from the State Engineer’s Office related to the SWSP request or approval, and to review and provide input on any terms and conditions proposed by the State Engineer’s Office. SCHMIDT shall not submit the SWSP request or responses to the State Engineer’s Office, or accept the terms and conditions of the SWSP without receiving UTILITIES’ approval of same. The submission of documents or other information related to the review and approval set forth in this paragraph shall be provided to UTILITIES as follows: Kalsoum Abbasi, Planning Supervisor, kabbasi@csu.org.
3. **Surplus Water Deliveries:** Upon approval of the SWSP described in paragraph 2, UTILITIES agrees to lease up to 250 acre feet of Surplus Water to SCHMIDT solely for uses associated with its gravel mining operations each year this Agreement is in effect. UTILITIES agrees to supply Surplus Water at a maximum sustained delivery rate of **200 gallons per minute** from the Hanna Wells to SCHMIDT’s gravel mining operation. The maximum annual delivery of Surplus Water to SCHMIDT shall not exceed 250 acre-feet in any calendar year. Deliveries of Surplus Water will be made at the meter on the existing pipeline that runs from the Zero Discharge softening plant to the gravel pit property (“Meter Point”).

4. **Operation and Maintenance Costs:** UTILITIES will be responsible for the cost of pumping the Hanna Wells and any other power costs associated with this Agreement, including well-field pumping, as part of the Ray Nixon Power Plant's overall station use. UTILITIES and SCHMIDT agree to split equally any and all maintenance costs of the pipeline, pump, motor, and any other appurtenances associated with the pipeline/pump station necessary for Surplus Water deliveries from the Hanna Wells. UTILITIES will maintain and provide Surplus Water through the existing infrastructure; any modifications or additional infrastructure that the parties deem necessary for Surplus Water delivery to SCHMIDT'S gravel mining operation will be the sole responsibility of SCHMIDT.
5. **Use of Water:** Surplus Water delivered hereunder will only be used to supply SCHMIDT with nonpotable water for its gravel mining operation, including dust control and construction activities on or in the vicinity of the quarry and no other purpose in accordance with the terms and conditions of the SWSP approved by the State Engineer's Office. SCHMIDT agrees and understands that the Surplus Water it is leasing hereunder is nonpotable and must not be used for human consumption or sanitary purposes. SCHMIDT further agrees that it will be solely responsible to comply with all applicable regulatory requirements associated with storing and using nonpotable Surplus Water in its operations. In no event shall Surplus Water be used to support development or any other potable use.
6. **Requests for and Delivery of Surplus Water:** SCHMIDT shall be responsible to request and arrange for the delivery of the Surplus Water, including pumping schedules and initial flow rates for delivery of Surplus Water with UTILITIES' Zero Discharge Plant control room personnel. UTILITIES agrees to use its best efforts to perform on the request provided, however, UTILITIES shall not be liable for non-performance for any reason. Once deliveries of Surplus Water have commenced, UTILITIES agrees to make flow rate adjustments once per day during normal operating hours. Normal operating hours are Monday through Friday from 6:00 am until 2:30 pm. SCHMIDT will be responsible for notifying UTILITIES' Zero Discharge Plant control room personnel at least one hour before any such flow adjustment is required. The contact information for the control room is as follows: **(719) 668-8990**.
7. **Water Rights Unaffected:** No water rights are being transferred to or from UTILITIES or SCHMIDT under this Agreement. UTILITIES retains dominion and control and all rights to return flows generated from Leased Water delivered to SCHMIDT.
8. **Service Rate, Billing, and Payment:** SCHMIDT agrees to pay UTILITIES for nonpotable water provided pursuant to this Agreement at a rate of 1.5 times the augmentation rate as defined in UTILITIES' tariffs in place at the time of Surplus Water deliveries. UTILITIES will read the

water meter on a monthly basis to determine the amount of water provided during the previous month and invoice SCHMIDT monthly in arrears with payment due within thirty (30) days of the date of billing. Invoices shall be sent by first class mail to SCHMIDT at the following address:

Scott Davis, President, Schmidt Construction

2635 Delta Drive

Colorado Springs, CO 80910

9. **Metering:** All Surplus Water delivered under this Agreement shall be measured at the meter point. If at any time, either UTILITIES or SCHMIDT questions the accuracy of the meter, either party may cause such meter to be tested for accuracy and recalibrated if necessary, at such party's expense. In the event a meter shall be tested, the party testing the meter shall provide the other party with three (3) days' notice of such testing. If the parties cannot agree that the meter is measuring accurately, they shall choose an independent third party qualified to test the accuracy of such meters, whose decision regarding accuracy shall be binding on both parties. The expenses associated with use of the third party tester shall be split evenly between both parties. In the event that the meter is found to be in error, no adjustments will be made to previous bills issued by UTILITIES.
10. **Water Quality:** Surplus Water from the Hanna Wells is currently of the quality that is acceptable for use in SCHMIDT's operations. In the future, if SCHMIDT demonstrates that the water supplied under this Agreement has declined in quality to the point that it can no longer be used by SCHMIDT in its gravel production operations, then SCHMIDT has the right to terminate this Agreement upon thirty (30) days' notice to UTILITIES.
11. **No Assignment Without Consent; No Third-Party Beneficiary:** There shall be no assignment of the rights or obligations contained in this Agreement by either party without the prior written consent by the other party, and any such assignment shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to SCHMIDT, UTILITIES may assign this Agreement without consent to the City of Colorado Springs, Colorado. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and SCHMIDT.
12. **Legal Notice:** Notices under this Agreement, other than SCHMIDT's requests for water and UTILITIES' responses to such requests, shall be given in writing, signed by an authorized representative of the party giving notice. Telephonic or email notice is not acceptable. Notices

shall be delivered by facsimile, by courier service delivery (such as Federal Express), or by first-class mail to the people specified below at the following addresses and telephone numbers:

a. For UTILITIES:

i. Chief Water Services Officer: Earl Wilkinson

Courier Service Address:

Colorado Springs Utilities
ATTN: Chief Water Services Officer
121 S. Tejon St., 5th Floor, Mail Code 950
Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities
ATTN: Chief Water Services Officer
P.O. Box 1103, Mail Code 950
Colorado Springs, CO 80947-0950

ii. City Attorney's Office – Utilities Division

City Attorney's Office
ATTN: City Attorney's Office – Utilities Division
30 South Nevada Ave., Suite 501
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

b. For SCHMIDT

i. Scott Davis, President, Schmidt Construction

2635 Delta Drive
Colorado Springs, CO 80910

13. Approvals. SCHMIDT is responsible for obtaining all approvals of the State Engineer or Division 2 Engineer, as well as all other approvals required for the delivery and use of Surplus Water.

14. Termination. SCHMIDT acknowledges and consents to UTILITIES' right to terminate deliveries of Surplus Water under this Agreement due to a significant interruption of water supplies, a substantial disruption (including, but not limited to, legal challenges impacting UTILITIES' water system, and maintenance and repair to the infrastructure) to UTILITIES' water system, SCHMIDT's breach of a material term or conditions of this Agreement, at UTILITIES' convenience, upon thirty (30) days written notice, upon UTILITIES' determination, in its sole discretion, that the water provided by the Hanna Wells is no longer surplus water, or as otherwise

authorized by the City Code of Colorado Springs. UTILITIES will make reasonable efforts to notify SCHMIDT of circumstances that could result in such termination. SCHMIDT further acknowledges and consents to UTILITIES' right to terminate deliveries of Surplus Water under this Agreement if SCHMIDT violates the terms and conditions of the approved SWSP or the SWSP is revoked by the State Engineer's Office for any reason. This agreement shall also automatically terminate if SCHMIDT does not obtain approval of the SWSP from the State Engineer's Office.

15. **Governing Law, Jurisdictional and Venue:** This Agreement shall be construed in accordance with the laws of the State of Colorado (except for its conflict of law provisions), as well as the Colorado Springs City Charter and the 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 and, more specifically, El Paso County, Colorado and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.
16. **Force Majeure:** Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by unforeseeable conditions beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbance.
17. **Appropriation of Funds:** 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 the 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 SCHMIDT in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify SCHMIDT as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.
18. **Entire Agreement; Modifications to be in Writing:** This Agreement, including any and all appendices and exhibits attached hereto, contains the entire understanding between the parties. No modification, amendment, notation, or other alteration to this Agreement shall be valid or of any force in 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 which are not specifically set forth therein. Email and all other electronic (including voice) communications from UTILITIES, except as

otherwise specifically provided herein, in connection with this Agreement, are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic record or an electronic signature or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.


19. **No Precedent; Severability:** The parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future agreement between the parties, 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 and at the time of UTILITIES' annual determination that the Agreement can continue after expiration of the current term. 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 reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

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

COLORADO SPRINGS UTILITIES


SCHMIDT

By:



Earl Wilkinson, III
Chief Water Services Officer

By:



Scott Davis
President

APPROVED AS TO FORM:



Michael V. Gustafson
City Attorney's Office - Utilities Division

Schmidt Construction
2535 Delta Drive
Colorado Springs, CO 80910

August 5, 2024

Via Electronic Mail to Justin Zeisler (jzeisler@csu.org)

Colorado Springs Utilities
Attn: Justin Zeisler, Planning Supervisor
121 S. Tejon, 5th Floor, Mail Code 950
Colorado Springs, CO 80901-1575

Re: Renewal of that certain Surplus Water Lease Agreement executed August 16, 2022 by and between the City of Colorado Springs and Schmidt Construction.

Mr. Zeisler:

Please consider this letter a formal request to renew the term of the Surplus Water Lease Agreement executed between The City of Colorado Springs and Schmidt Construction for the period between September 1, 2024 and August 31, 2025. Thank you for your consideration.

Sincerely,

Mr. Austin Maher
General Manager

CC: Ms. Kim Gortz, PE
Colorado Springs Utilities | Manager Water Resources
1521 S. Hancock Expressway | MC 1825 | Colorado Springs, CO 80903