

**LEASE BETWEEN
CITY OF COLORADO SPRINGS, ON BEHALF OF ITS ENTERPRISE,
COLORADO SPRINGS UTILITIES
AND
TRIVIEW METROPOLITAN DISTRICT**

Portion of: TSN 620300002

LEASE

THIS LEASE ("Lease") shall be effective as of the date of the last signature hereto ("Effective Date") and is by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, ("City") on behalf of its enterprise Colorado Springs Utilities ("Utilities") and Triview Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("Lessee"). Utilities and Lessee may be referred to herein collectively as the "Parties" and each individually as a "Party".

Recitals

WHEREAS, the City, on behalf of Utilities, owns the property commonly known as the Highway 83 Tank Site located along Highway 83, Colorado Springs, CO, 80921, and also identified as El Paso County Tax Schedule Number 62030-00-002 ("Property"); and

WHEREAS, Lessee desires to lease from Utilities, and Utilities desires to lease to Lessee, a portion of the Property, depicted as the "NDS Booster Pump Station Lease Area" on **Exhibit A**, attached hereto (herein after "Lease Area") and by this reference incorporated herein ("Lease Area" or "Premises"), for the purposes of constructing, operating and maintaining a municipal water booster pump station and associated infrastructure; Lessee's use of the Lease Area for the term of this Lease shall be exclusive, subject to any contrary terms and conditions herein; and

WHEREAS, Lessee further desires to lease from Utilities, and Utilities desires to lease to Lessee, a non-exclusive right to use portions of the Property, which are depicted as "Non-Exclusive Area 1" and "Non-Exclusive Area 2", on **Exhibit A** (collectively the "Non-Exclusive Area") for the purposes of constructing, installing and maintaining underground waterlines, and for ingress, egress and access to the Lease Area; and

WHEREAS, Lessee desires to lease the Lease Area and use the Non-Exclusive Area for the purposes noted above subject to the terms and conditions of this Lease.

Terms and Conditions

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, the Parties agree as follows:

1. Lease Area. In consideration of the payment of the rent hereinafter provided for and the keeping and performance of the covenants and agreements of the Lessee hereinafter set forth, Utilities agrees to lease unto the Lessee the Lease Area for the Lessee's exclusive possession thereof, specifically for the construction, installation, operation and maintenance of a booster pump station and associated infrastructure necessary for provision of municipal water service to Lessee's municipal residential, commercial and industrial customers. Utilities further

agrees to lease unto the Lessee the Non-Exclusive Area, and the non-exclusive right to use of the same for the construction, installation, operation and maintenance of underground waterlines necessary for conveyance of water to Lessee, and distribution of such potable water resources through Lessee's infrastructure, including on the Lease Area, to its municipal residential, commercial and industrial customers, subject to the terms and conditions herein.

2. Term. The term of this Lease shall commence on the Effective Date of this Lease and continue for a term of twenty-five (25) years, unless earlier terminated in accordance with the terms of this Lease ("Term").

2.1. No later than eighteen (18) months prior to the expiration of the Term, the Parties shall begin good faith negotiations on a new lease agreement, with the expectation that such new lease agreement ("New Lease") shall be substantially similar to this Lease. The Parties acknowledge that the intent of this Lease is for the Parties to enter into such successive New Lease agreements so as to continue the provision of service as contemplated herein, subject to approval by the Colorado Springs City Council.

2.2. If the Parties are unable to execute a New Lease by the date that is six (6) months prior to the end of the Term of this Lease:

- i. Utilities may notify Lessee in writing that Lessee's Lease shall terminate as of the expiration of the Term; or
- ii. If the Parties mutually agree to continue good faith negotiations for a New Lease beyond the Term, the Term may be extended for an additional one (1) year term at Utilities' sole discretion.

3. Rent. Lessee shall pay to Utilities for each twelve-month period of the Term hereunder commencing on the Effective Date, as rent for the Lease Area, the sum of \$1,200.00 per year ("Rent"), which shall be due on the 1st day of each year during the Term of this Lease at the address provided for Utilities in Section 25 of this Lease without notice or right to deduction or off set. For 2023, Lessee shall pay the full year's rent upon mutual execution of this Lease. The Rent shall escalate at the rate of three percent (3%) for each twelve-month period commencing on the first anniversary of the Effective Date of the Lease. In the event Lessee fails to timely pay any installment of Rent as required under this Lease, then and in such event Utilities shall be entitled to collect a late fee of five percent (5%) of any such installment not paid within five (5) business days of the due date. Additionally, if the Lessee continues to fail to timely pay any installment of Rent for a period of ninety (90) days from the date upon which such rent is due, Utilities may initiate processes to terminate this Lease, consistent with the terms and conditions herein.

4. Improvements/Coordination of Work. Lessee will construct, maintain and operate the private water lines and the booster pump station, and associated infrastructure and fixtures ("Improvements") within the Lease Area and Non-Exclusive Area. Lessee must, at its own cost, locate, construct, operate, and maintain the Improvements in such a manner and of such material that the Improvements will conform with all applicable laws, regulations, and permits, and will not at any time be a nuisance, or source of danger to or interference with any of Utilities' structures, facilities, or operations. Lessee must keep the Improvements and every part thereof, including any surrounding property, in good condition and appearance. The Improvements must be maintained so that they continue to properly serve the purposes for which they are originally constructed. If Utilities' structures, facilities, or operations are damaged by Lessee or Lessee's

contractors during the construction, operation, or maintenance of the Improvements, Lessee shall – without regard to the amount or severity of the damage – report such damage to Utilities. Utilities will then perform, or cause to be performed, the necessary repairs, and Lessee shall reimburse Utilities for all of Utilities' actual repair costs.

Lessee agrees to provide Utilities written notice at least 48 hours prior to any construction activities upon, over or under any Utilities structures, facilities, or improvements so that Utilities may have a representative present during such construction activities, except in the event of an emergency where the safety of people, assets or property are potentially at risk at the address provided in paragraph 27.

5. Safety and Security. Lessee must conduct its operations in a safe and prudent manner and in compliance with all applicable federal, state and municipal laws and regulations.

6. Injury or Damage. Utilities shall not be responsible to the Lessee for loss of property in or from the Lease Area or Non-Exclusive Area, or for any damage done to the Improvements, however occurring, nor shall Utilities be liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, or accident occurring in or to the Lease Area or adjacent premises, or other parts of the Lease Area, or by reason of the negligence or default of the owners or occupants thereof, or any other person.

7. Inspection. Utilities or its agents shall have the right at any reasonable time to enter the Lease Area, including the Non-Exclusive Area, to inspect the same. Should Utilities observe conditions within the Leased Area and/or Non-Exclusive Area violative of the terms and conditions of this Lease, that do not pose a risk to the health, safety, or welfare of Utilities' infrastructure or the public, Utilities shall provide Lessee with written notice of the same, and Lessee shall have thirty (30) days to correct any such deficiency as necessary and proper for the safety, improvement, and preservation thereof. Should Utilities observe or identify conditions within the Lease Area and/or Non-Exclusive Area requiring emergency repair or repair necessary to protect the health, safety, or welfare of Utilities' infrastructure or the public, Utilities may undertake such repairs and Triview shall be responsible for reimbursement of Utilities for all reasonably incurred costs and expenses in such regard. Utilities shall at all times have the right, at its election, to make such alterations of, changes in, or additions to any adjoining units or buildings on the Property, if any, not within the Lease Area and leased to Lessee, as may be desirable to the Utilities, and to demolish and/or dispose of any such adjoining units or buildings outside of the Lease Area as it shall elect, at Utilities' sole expense. Utilities shall at all times have the right, at its election, to make such alterations of, changes in, or additions to any infrastructure, on the Property, if any, as may be desirable to the Utilities, and to demolish and/or dispose of any such infrastructure as it shall elect, at Utilities' sole expense.

8. Use. It is understood and agreed that the only business and activities to be conducted by Lessee within the Lease Area and Non-Exclusive Area shall be construction, installation, operation and maintenance of the Improvements, as a component of Lessee's municipal water system. Lessee shall not use the Lease Area or Non-Exclusive Area for any other purposes without the prior written consent of Utilities, which consent may be withheld at the discretion of Utilities. Lessee agrees not to conduct or to permit to be conducted upon the Lease Area or Non-Exclusive Area any business or any act which is contrary to or in violation of the laws of the United States of America or of the State of Colorado or of any ordinances, regulations, or orders of any municipality or other public authority having jurisdiction over the Lease Area.

9. Noninterference with Operation. Lessee, by accepting this Lease, expressly agrees that it will not interfere in any way with Utilities' primary purpose and use of the Property. Lessee acknowledges that Utilities may develop and construct additional utility facilities on the Property, outside the Lease Area and within the Non-Exclusive Area in the future. Should Utilities require some portion of the Lease Area for its own infrastructure, Utilities and Triview shall cooperate in good faith to amend this Lease to allow the construction of the same, to the extent such infrastructure will not interfere with the Triview's Improvements and use of the Lease Area, as described herein. Lessee acknowledges that Utilities has electric, water, and stormwater infrastructure in the Lease Area and Non-Exclusive Area. Lessee shall not engage in, authorize, permit, or allow by omission any activity on the Lease Area, Non-Exclusive Area or other portions of Utilities' Property that will interfere with the safety, protection and operation of Utilities' utility operations or other municipal operations. Similarly, Utilities, in granting this lease, expressly agrees it will not interfere in any way with Lessee's primary purposes in the use of the Lease Area, and will not engage in, authorize, permit, or allow by omission any activity on the Property that would interfere with the safety, protection and operations of Lessee's public utility or other municipal operations.

10. Noise, Odor, Vibrations, and Annoyances. Lessee must conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste on the Lease Area. Lessee must take all reasonable measures, using the latest known and most practical devices and means, to reduce to the maximum extent reasonably possible any unusual, nauseous or objectionable smoke, gases, vapors, odors, or any vibrations tending to damage the Lease Area or Non-Exclusive Area and to maintain a low sound level in its operations.

11. Utilities' Rights to Use of Non-Exclusive Area. Utilities retains the right to make all uses of the Non-Exclusive Area, including but not limited to use of Non-Exclusive Area for any utility lines, drainage, or otherwise, except for such uses as might materially and adversely affect the rights of Lessee in its construction, operation or maintenance of the Improvements. Utilities will notify Lessee if it has determined in its discretion that it needs to exercise the rights associated with the Non-Exclusive Area. Utilities agrees to consider the ability to use its adjacent property when making such determination.

12. Condition of Premises. Lessee accepts the Lease Area and Non-Exclusive Area AS IS, WHERE IS, with all faults. Lessee has had the opportunity to inspect the Premises, accepts the Premises in its current condition, and waives any claims it may have against Utilities related to the condition of the Premises as it exists as of the date of this Lease.

13. Maintenance, Repair, and/or Restoration to Land/Other Damage. Lessee shall not willfully or negligently cause any damage to the Lease Area or the Non-Exclusive Area. Lessee shall promptly repair any such damage, or reimburse Utilities for the reasonable cost of repair for any physical damage done by or resulting from actions, omissions or operations of Lessee, its employees, contractors, or representatives, to the extent that Utilities, undertakes to remedy such damage. Lessee must replace any damaged property or reimburse Utilities for the reasonable cost of repair or replacement of such property including, but not limited to, physical damage to any land, articles, landscaping, storage tanks, utility lines (water, wastewater, gas, electric, telephone, cable, or other) and any appurtenances, whether within or without the Lease Area or Non-Exclusive Area, caused by laying, repairing, replacing, operating, maintaining or removing of the Improvements. Lessee will be responsible for any repair and maintenance which is required for the Improvements, including any repair or maintenance that is lawfully requested by any governing authority having jurisdiction thereof. All maintenance and repairs by Lessee must be performed promptly, in a good and workmanlike fashion, in conformance with all applicable laws,

regulations, and permits, and without diminishing the original quality of the Lease Area.

Additionally, Lessee shall not under any circumstances alter the present grade or ground level of the Lease Area or the Non-Exclusive Area by more than one foot (1') without Utilities' prior written consent. In no event may Lessee, whether by act or omission, allow the impoundment of any water or other substance on the Lease Area or Non-Exclusive Area.

14. Subjacent and Lateral Support. The activities of Lessee, its employees, contractors and representatives relating to the Lease Area and Non-Exclusive Area, shall not impair the lateral or subjacent support of any facilities, improvements or property of Utilities. To the extent any of the Improvements, now or in the future, impair the lateral or subjacent support of any such facilities or improvements of Utilities, or otherwise compromise the integrity of such facilities or improvements, in Utilities' reasonable judgment, Lessee shall immediately correct the situation to Utilities' satisfaction and, as provided for in Paragraph 16, below, indemnify and hold harmless the Indemnitees for any injury or damage resulting therefrom. Utilities will not construct new facilities or improvements adjacent to the Lease Area and Non-Exclusive Area which would create such subjacent or lateral support issues in relation to Lessee's then-existing infrastructure or Lessee's reasonably anticipated Improvements under the terms of this Agreement.

15. Utilities. For utilities associated with the Lease Area and Non-Exclusive Area, Lessee agrees to pay for all utilities used by Lessee, including, but not limited to, deposits, installation costs, meter deposits, connection and/or tap fees, and all service charges. No such payment will be considered a payment of rent entitling Lessee to a credit under any provision of this Lease. Lessee expressly agrees to comply with all applicable rules, regulations, and standards with respect thereto existing at the commencement of this Lease or thereafter adopted during the Term thereof.

16. Release/Indemnification. Lessee, its respective employees, contractors and representatives, hereby agree to release, discharge, indemnify and hold harmless the City of Colorado Springs, Colorado Springs Utilities, the Colorado Springs City Council, the Utilities Board, and the officers, directors, employees and agents of each ("Indemnitees"), from and against any and all liability for any damages, injuries to the person or property of Utilities or Lessee (including but not limited to the Improvements), or any third party, causes of action, demands, or actions of whatsoever kind or nature arising out of or related in any way to this Lease or the construction, operation, maintenance or existence of the Improvements, unless and to the extent any such damages are proximately caused by Utilities' negligent acts or omissions, or intentional misconduct. Lessee must 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 may be afforded under the Colorado Governmental Immunity Act. Additionally, Lessee understands and agrees that the City of Colorado Springs, Colorado Springs Utilities, the Colorado Springs City Council, the Utilities Board and the officers, directors, employees and agents of each must not be liable 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 either party and concerning any of the properties involved or the Improvements.

Nothing in this Lease will be interpreted to limit or prevent the protections afforded to each of the Parties under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

17. Public Insurance

- a) Lessee Minimum Insurance Requirements - Nothing in this Contract shall limit Utilities' access to the minimum required types and limits of Insurance in this Section.
- b) Lessee shall maintain insurance coverage for financial protection from and against claims arising out of Lessee's activities at or related to use of Lease Area. Such insurance will be through policies placed with commercial insurance companies approved or authorized to conduct insurance business in the state of Colorado and having a minimum A.M. Best rating of "A- / VII" or equivalent from alternate rating agencies which may be acceptable to Utilities' Risk Management Department.
- c) Insurance shall be of the required types and minimum limits as follows:

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| <p>Workers' Compensation Workers' Compensation coverage shall include a waiver of subrogation in favor of Utilities, endorsement required.</p> | <p>Statutory limits for where work is performed and/or where benefits can be claimed.</p> |
| <p>Employers Liability Bodily Injury by Accident – Each Accident Bodily Injury by Disease – Each Employee Bodily Injury by Disease – Policy Limit</p> | <p>\$1,000,000 \$1,000,000 \$1,000,000</p> |
| <p>Commercial General Liability Each Occurrence Policy Aggregate Including but not limited to coverage for: i. Products and Completed Operations ii. Contractual Liability iii. Independent Contractors</p> | <p>\$1,000,000 Per Occurrence \$2,000,000 Aggregate</p> |
| <p>Automobile Liability All owned, hired and non-owned vehicles</p> | <p>\$1,000,000 Combined Single Limit</p> |
| <p>Umbrella/Excess Liability Excess Liability coverage above the Following Policies: i. Commercial General Liability ii. Automobile Liability iii. Employers Liability</p> | <p>\$5,000,000 per Occurrence</p> |

- d) Except for Lessee policies of Workers' Compensation and Employers Liability, Utilities, the City of Colorado Springs, their officers, and including its directors, City Council, Utilities Board, employees, successors and assigns, shall be included as Additional Insureds on all other policies required herein by specific policy

endorsements. Commercial General Liability policies and Umbrella / Excess Liability policies as applicable, shall specifically include Utilities as an Additional Insured for products and completed operations liability coverages, which coverages and Additional Insured status shall be continued for a period not less than two (2) years after final completion.

- e) In any policy where Utilities is an Additional Insured, Lessee policies of insurance required herein shall state that such policies are specifically primary and shall not require contribution from any other insurance maintained by Utilities. Any insurance maintained by Utilities shall apply excess of any Lessee insurance required herein and shall be for the sole protection of Utilities only.
- f) All Lessee policies of insurance required herein shall waive rights of subrogation against Utilities, including its directors, officers, employees, successors and assigns.
- g) Liability insurance policies providing coverage as required in this Section shall be written on an "occurrence form" basis. For policies traditionally written on a "claims-made form" which may be required in this Section, Lessee shall provide an extended reporting or "tail" provision for each policy, allowing potential claims to be discovered and reported for a period of not less than two (2) years after final completion of this Contract.
- h) Upon commencement of this Lease and prior to entering the Lease Area, Lessee, shall provide Utilities with current Certificate(s) of Insurance evidencing continuous compliance with all insurance policy terms and limits as required in Sections above. To the extent commercially and reasonably available, such evidence of insurance shall include a provision that policies will not be materially changed or cancelled except after 30 days written notice to Utilities', or their designee. Where such provision is not commercially or reasonably available, Contractor shall be obligated to provide at least 30 days written notice of cancellation or material change. Replacement certificates shall be provided to Utilities at least 14 days prior to renewal of any insurance policies evidenced thereon. If requested by Utilities, specific endorsements confirming compliance with specifically required terms shall be included with the Certificate(s) of Insurance. In the event of any claim or potential claim against Utilities whereby Utilities may potentially be protected as an Additional Insured under any of the insurance policies required herein, Lessee agrees to provide a full and complete copy of any such policy if so requested by Utilities.
- i) Lessee shall require each of its subcontractors to furnish evidence that the subcontractor has General Liability Insurance, Workers' Compensation, Employer's Liability, and Automobile Liability Insurance with the limits of liability appropriate to the risk of its scope of work, including appropriate endorsements, and in no event less than \$1,000,000 per occurrence.
- j) Insurance requirements herein are only the minimum types and amounts required for compliance with this Contract, and shall not be construed as the full amount and types of insurance which may be necessary to adequately protect the Lessee for its full and complete obligations to Utilities and others as provided for in this Contract, or otherwise to any other party. Lessee shall be solely responsible for any deficiencies thereof. It is Lessee's sole obligation to determine and implement any other types or amounts of insurance necessary and sufficient to protect Lessee's obligations and interests. The types and amounts of insurance required herein shall not serve to in any way limit the liability of the Lessee, including under any warranty or indemnity provision of this Contract, or any other obligation whatsoever Lessee may have to Utilities or others.
- k) Lessee shall maintain All Risk Property Insurance to cover all personal property including Lessee's improvements and betterments, Business Interruption and Loss of

Use. Such insurance shall be full replacement cost coverage. Lessee waives and will require insurer to waive the right of subrogation for any damaged or destroyed property.

18. Liens. In no event will Lessee allow any liens to attach against the Property, including but not limited to the Lease Area, or any portion thereof, for materials supplied or work performed at the request of, or for the benefit of Lessee, and Lessee must indemnify and hold Utilities harmless from any cost or expense incurred by Utilities to release any such liens against the Property.

19. Termination/Expiration/Dispute Resolution. Utilities agrees and acknowledges that the Improvements to be constructed, operated and maintained within the Lease Area and the Non-Exclusive Area pursuant to this Lease are municipal water utilities, integral to Lessee's provision of municipal water service to its residential, commercial and industrial customers, and that as such interruption of such services through termination of this Lease should be a remedy of last resort. Either Party may terminate this Lease, provided breach of the terms of this Lease by the other Party has been alleged, demonstrated and resolved consistent with the dispute resolution terms and conditions of this Paragraph 19, and Paragraph 20, below. Upon termination or expiration of the Lease, Lessee shall remove any Improvements and restore, replace, or repair the Property, including, but not limited to, the Lease Area, to a condition reasonably acceptable to Utilities or reimburse Utilities for the cost of doing the same. Notwithstanding the foregoing, Lessee, its employees, contractors and representatives, shall not cause damage to or compromise the integrity of Utilities' property, real or personal, when removing any Improvements or restoring, replacing, or repairing such property. If the Improvements are not promptly removed, such Improvements may be deemed abandoned and become the sole property of Utilities at its option. Upon termination or expiration of this Lease, Utilities reserves the right to require Lessee to remove any Improvements on the Lease Area and the Non-Exclusive Area. Except for those situations caused by Utilities' negligent acts, omissions, or intentional misconduct, Utilities is under no obligation to reimburse Lessee for any sums of money expended for any Improvements or in making any improvements or repairs on the Lease Area.

19.1 Remedies and Resolution Methods. Each Party shall have all remedies available at law and in equity, including but not limited to actions for damages and injunctive relief as concerns any violation by the other Party. In the event a Party believes the other Party to be in violation of this Lease, the non-violating Party must provide written notice, in accordance with Paragraph 27, of the alleged violation to the violating Party within ten (10) days of the Party having notice of the event causing the violation. The Parties agree to resolve alleged violations as follows:

19.1.1 Non-Dispute. If a Party, alleged to be in violation of this Lease, agrees with or does not dispute such allegation, said violating Party shall, at its sole cost and expense, promptly remedy said violation(s), and otherwise take such other action as may be reasonable or necessary to eliminate the violation(s) and prevent their further occurrence. Said violating Party shall provide the other Party with details of its remedial plan, together with a reasonably prompt time for completion thereof. The non-violating Party may enforce such remedial plan via proceedings at law or in equity if the violating Party fails to perform it in accordance with its terms.

19.1.2 Dispute Meeting. If the Party alleged to be in violation disagrees with and disputes the allegation in whole or part, said Party shall provide other

Party with a written explanation within fourteen (14) days of receiving notice stating the reasons why said allegations are erroneous or stating why the use or activity should be permitted. Thereafter, representatives of the Parties with settlement authority shall meet as soon as possible, but not later than thirty (30) days after receipt of said response, to attempt to negotiate and resolve all issues surrounding the alleged violation(s) ("Dispute Meeting"). If the Parties reach agreement, they shall create a remedial plan together with a reasonably prompt time for completion thereof. Any Party may enforce such remedial plan via proceedings at law or in equity if the other Party fails to perform it in accordance with its terms.

19.1.3 Mediation. If no agreement is reached by Parties to the Dispute Meeting described above, then any and all claims, controversies, breaches or disputes arising from or related to the alleged violation(s), shall be subject to a requirement to mediate prior to the filing any legal action. Such mediation shall take place utilizing a mediator upon whom the Parties may agree. The mediation proceedings will be conducted under the Mediation Procedural Rules of Colorado Mediators & Arbitrators in effect at the time a demand for mediation is made. The Parties to such a dispute cannot be compelled to actually reach a settlement/agreement through mediation, but must use good faith efforts to achieve a mediated settlement, and if a settlement is reached during mediation it shall be reduced to writing and shall be binding upon the Parties, their heirs, executors, administrators, successors and assigns.

19.1.4 Legal Proceedings. Should negotiation, Dispute Meeting, and Mediation, all as described above, fail, the Parties may exercise any or all remedies available at law or in equity, including those available at common law, to enforce their respective rights under this Agreement, including enforcing any remedial plans created under Paragraphs 19.1.1, 19.1.2 and 19.1.3, above. Courts are specifically authorized to issue both mandatory and negative injunctions.

19.1.5 Irreparable Harm. If in any Party's opinion, an ongoing or imminent violation could irreparably diminish or impair the rights, entitlements and obligations described in this Lease, such Party may take appropriate legal action without resorting first to a dispute meeting or mediation, as described in this Paragraph 19.1.

20. Abandon/Vacate. If the Lessee shall abandon or vacate the Lease Area and Non-Exclusive Area before the end of the term of this Lease for a period of greater than 90 days, or shall suffer the rent to be in arrears, or if Lessee is otherwise in default under this Lease, beyond any applicable notice and cure periods under this Lease and subject to the terms and conditions of Section 19, above, Utilities may, at its option, enter the Lease Area and Non-Exclusive Area, take possession of the Improvements and terminate this Lease. In such instance, Utilities is authorized to make any repairs, changes, alterations, or additions in or to the Improvements or the Lease Area and Non-Exclusive Area as may be necessary or desirable, in the opinion of Utilities. Utilities shall not be required to re-let the subject Lease Area and Non-Exclusive Area in order for Lessee to be liable for continuing obligations under this Lease, in the event that Lessee violates any of the terms and conditions hereof and the termination procedures described in Section 19 have been complied with.

If, Utilities opts to take immediate possession of the Lease Area and Non-Exclusive Area and Improvements pursuant to a termination of this Lease, Utilities will place Lessee's property into storage at a site of Utilities' choosing at Lessee's expense. Property left unclaimed more than fifteen (15) days shall be presumed to have been abandoned.

20.3 Lien. Utilities shall have at all times a valid lien for all rentals due hereunder from the Lessee upon all of the personal property of Lessee situate in the Lease Area and Non-Exclusive Area and said property shall not be removed therefrom without the consent of Utilities until all arrearages in rent shall have first been paid and discharged.

20.4 Remedies Cumulative. Subject to the terms and conditions of Section 19, above, no reference to nor exercise of any specific right or remedy by Utilities shall prejudice or preclude Utilities from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but Utilities may from time to time exercise any one or more of such remedies independently or in combination.

21. No Sale, Assignment, or Subleasing of Lease or Property: Lessee is prohibited from the sale, assignment, partial assignment, collateralization, encumbrance, sublease, or any other use agreement of the Property, (collectively called a "Transfer") to any person or entity unless approved in advance in writing by Utilities. This condition expressly prohibits any granting of permission by the Lessee for access on, over or through the Utilities' Property for any agricultural or non-agricultural-related uses or purposes. Approval of a Transfer will not release Lessee from Lessee's liabilities or obligations under this Lease. Upon approval of a Transfer, Utilities may change or impose new rental amounts, terms, conditions, and payments. Any transfer or change in the control or ownership of the Lease necessitated by bankruptcy, death, divorce, merger, sale of private property or otherwise will be a Transfer requiring Utilities notification and approval. Any attempted Transfer by Lessee without prior written Utilities approval is invalid, will be grounds for immediate termination of this Lease by Utilities at Utilities option.

22. Disclaimers.

22.1. Title. Utilities hereby expressly disclaims any warranty of title with respect to the Lease Area. Lessee is relying on its own investigations as to the adequacy of title to the Lease Area or Non-Exclusive Area for its use under this Agreement. Without limiting the foregoing, the grant of rights set forth herein is subject to all easements, restrictions, reservations, and rights of way of record.

22.2. Physical Condition. Utilities disclaims any warranty with respect to the physical condition of the Lease Area, including, without limitations, the fitness of such property for any particular purpose and/or the condition of the soils contained therein. Lessee acknowledges that it is accepting its right to use the Lease Area and Non-Exclusive Area on an AS-IS, WHERE-IS, and with all faults basis. Lessee specifically acknowledges that Utilities may have utility infrastructure within the Property

23. Environmental.

23.1 Definitions. For purpose of this Section, the following words and phrases have the following meanings:

"Environmental Requirements" means any applicable environmental local, state and federal statutes, laws, rules and regulations, and all directives, orders, permits, licenses issued by, and environmental plans approved by, local, state and federal agencies, or by municipal, state, and federal courts that are now in effect or are hereinafter enacted, promulgated, issued, or approved.

"Hazardous Environmental Condition" means the presence on the property described in Paragraph 1 of asbestos, polychlorinated biphenyls, petroleum, hazardous waste (as defined by the Solid Waste Disposal Act as amended from time to time), or any hazardous substance or material including, but not limited to, petroleum and petroleum products, radioactive materials (as defined by the Atomic Energy Act of 1954 as amended from time to time), and all substances which are listed under 40 CFR 261, 40 CFR 302 and 40 CFR 355, 49 CFR 172, 29 CFR 1910.120, and 29 CFR 1910.1000.

"Environmental Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment of a Hazardous Substance or Hazardous Material. Any release required to be reported to any governmental or regulatory agency must also be reported to Utilities

"Hazardous Substance" or "Hazardous Material" means any and all substances, materials, and wastes that are or become regulated under any Environmental Requirement, including, but not limited to, asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), used oil or any petroleum products, natural gas, radioactive materials, pesticides, and all substances which are currently listed or may be listed in the future under 40 CFR 261, 40 CFR 302, 40 CFR 355, 49 CFR 172, 29 CFR 1910.120, CFR 1910.1000 and other substances which may be listed under any Environmental Federal or State statute.

23.2 Compliance. Lessee must comply with all Environmental Requirements in its use of the Lease Area. Lessee, its employees, contractors and representatives, must not cause by their willful, wanton or negligent acts or omissions, the unpermitted release or presence on Property of oil or Hazardous Substances, or any other material or substance that violates any Environmental Requirements. Lessee agrees to defend, indemnify and hold harmless Utilities, the City of Colorado Springs, the Colorado Springs City Council, Utilities Board, and their officers, directors, employees and agents, from those costs or claims caused by the willful, wanton or negligent failure of Lessee, its employees, contractors or representatives to comply with Environmental Requirements. Lessee is not responsible for any Hazardous Environmental Condition brought onto the Property by Utilities or caused by the willful, wanton or negligent failure of Utilities, its employees, contractors or representatives.

Lessee must immediately report to Utilities, any of the following events or conditions arising out of Lessee's use or occupancy of the Lease Area: (i) the Environmental Release or threatened Environmental Release of Hazardous Substances or Hazardous Materials at, to, from, on, or through the Property, including the Lease Area and Non-Exclusive Area and any responses to Lessee or any governmental agency, and (ii) exposure of any person to any Hazardous Substance or Hazardous Material. Lessee and Utilities must immediately report to the other party any claim, demand, action or notice made against Lessee or Utilities with regard to any violation or alleged violation of any Environmental Requirement relative to Lessee's use and occupancy of the Lease Area and Non-

Exclusive Area or the Property, and each party must immediately provide the other party with copies of any written claims, demands, actions, or notices so made.

Utilities and Lessee agree to provide to the other party all non-privileged correspondence, notices, approvals, certifications, reports, test results, submissions and all written communication regarding an Environmental Release or threatened Environmental Release of any Hazardous Substance or Hazardous Material arising out of Lessee's use and occupancy of the Lease Area or Non-Exclusive Area or use of Property. Utilities and Lessee agree to provide the other party all written submissions regarding the environmental condition arising out of Lessee's use and occupancy of the Lease Area or Non-Exclusive Area or use of the Property within three (3) business days that the same are provided to or by a governmental entity.

In the event of the Environmental Release of any Hazardous Substance or Hazardous Material as a result of Lessee's use or occupancy of the Lease Area or Non-Exclusive Area or use of the Property, Lessee must immediately control and remediate the contaminated media as provided by and to the standards applicable under the Environmental Requirements.

Lessee must undertake any work necessary to remediate or remove any Hazardous Substance or Hazardous Material arising out of Lessee's use and occupancy of the Lease Area or License Area or use of the Property as is necessary to protect the public health and safety and the environment from actual or potential harm and to bring Lessee's property in the Lease into compliance with all applicable Environmental Requirements. Any work conducted for such purpose will be conducted at Lessee's expense after Lessee submits to Utilities and any appropriate governmental authority a written plan for completing such work and receives the prior written approval of Utilities and such other governmental authorities. Utilities has the right to inspect at Utilities' own expense such work at any time using consultants and representatives of their choice.

At the request of Utilities, Lessee must conduct testing, monitoring, sampling, and analysis as is reasonably necessary to ascertain (i) whether Lessee is using the Lease Area and Non-Exclusive Area in compliance with all Environmental Requirements or (ii) whether there has been an Environmental Release of a Hazardous Substance or Hazardous Material arising out of Lessee's use and occupancy of the Lease Area or Non-Exclusive Area or use of the Utilities' Property. This will only occur if Utilities provides Lessee with a written description of facts providing a reasonable basis to conclude that Lessee is using or permitting use of the Lease Area or Non-Exclusive Area in violation of this Section. Any such tests, monitoring, sampling, and analysis must be conducted by qualified independent experts chosen by Lessee and subject to reasonable approval by Utilities. Copies of results from and reports of such testing, monitoring, sampling, and analysis must be promptly provided to Utilities.

If Lessee fails to comply with any Environmental Requirements, Utilities, in addition to its other rights and remedies under this Lease, and at its election, may enter the Lease Area and Non-Exclusive Area and take such measures as may be reasonable and necessary to ensure compliance with Environmental Requirements, and may charge Lessee for its costs arising out of Lessee's use and occupancy of the Lease Area or Non-Exclusive Area or use of the Property.

Lessee specifically recognizes that Utilities is held to strict compliance and may be

responsible for any resulting penalties with respect to failure to comply with Environmental Requirements. Lessee therefore agrees to respond immediately, at Utilities' demand, to any violations of any applicable Environmental Requirements caused by Lessee's use and occupancy of the Lease Area or Non-Exclusive Area or use of the Property.

24. No Joint Venture. In the performance of Lessee's obligation under this Lease, it is understood, acknowledged, and agreed between the Parties that Lessee is at all times acting and performing independently from Utilities, and that Utilities will not exercise any control or direction over the manner and means by which Lessee performs Lessee's obligations under this Lease, except as otherwise stated in this Lease. Lessee understands and agrees that Lessee, its employees, agents, servants, or other personnel are not Utilities employees. Lessee is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Lessee or any of Lessee's employees, agents, servants, or other personnel performing service under this Lease.

25. Holding Over/Renewal. It is mutually agreed that if, after the expiration of this Lease, the Lessee shall remain in possession of the Premises, without a written agreement as to such holding over, then such holding over shall be deemed and taken to be a holding upon a tenancy from month to month at a monthly rental equal to two times the monthly rental last payable hereunder, payable in advance on the 1st day of each calendar month. Any month-to-month tenancy or tenancy at sufferance hereunder shall be subject to all other terms and conditions of this Lease and nothing contained in this Section shall be construed to alter or impair any of Utilities' rights of re-entry or eviction or constitute a waiver thereof. The Parties agree and acknowledge that renewal of this Lease, on terms then agreeable to the Parties, is preferred and intended in light of the municipal water infrastructure represented by the Improvements, and commit to work in good faith upon any such renewal or extension of this Lease, to the extent mutually beneficial.

26. Entire Agreement. This Lease represents the entire agreement between the Parties concerning the Lease of the Lease Area and Non-Exclusive Area and no additional or different oral representation, promise or agreement is binding on any of the Parties with respect to the subject matter of this instrument, unless stated in writing signed by Utilities and Lessee.

27. Notice. Any notice provided as a result of this Lease must be in writing and sent by delivery service or mailed by certified mail, postage prepaid, and return receipt requested to the address provided below. Such notice is effective upon the date received, as acknowledged by signature of the Party that receives the notice, or the date upon which delivery is rejected. Either Party may change its notice address by giving notice as provided herein.

For payment send to:

Colorado Springs Utilities
Attn: Land Resource and Facility Management
121 S. Tejon Street, Mail Code 950
Colorado Springs, CO 80903

If to Lessee:

Triview Metropolitan District
Attn: General Manager
16055 Old Forest Point, Suite 302

P.O. Box 849
Monument, CO 80132

If to Utilities:

Colorado Springs Utilities
Attn: Jessica Davis, Land Resource Manager
121 S. Tejon Street, Mail Code 950
Colorado Springs, CO 80903
Tel: 719-668-7581
Email: jedavis@csu.org

And

Real Estate Services Manager
30 South Nevada Avenue, Suite 502
Colorado Springs, Colorado 80903
Tel: 719-385-5605

The Parties may change any address to which Notice is to be given by giving notice as provided above of such change of address.

28. Survival of Obligations. All express representations and indemnifications will survive this Lease, including any duties or obligations that are required in the event of termination.

29. Governing Law and Jurisdiction. This Lease is construed in accordance with the laws of the State of Colorado, the Colorado Springs City Charter, the Colorado Springs City Code, and all ordinances, rules, and regulations adopted by the City of Colorado Springs or Utilities, and by the Triview Metropolitan District. In the event of any dispute over this Lease or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder 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.

30. Other Covenants of Lessee.

30.1. Compliance with Insurance Requirements. Lessee covenants and agrees that nothing shall be done or kept on the Premises which might impair or increase the cost of insurance maintained with respect to the Premises, which might increase the insured risks, or which might result in cancellation of any such insurance.

30.2. No Waste or Impairment of Value. Lessee covenants and agrees that nothing shall be done or kept on the Premises which impair the value of the Premises or which would constitute waste.

30.3. No Noxious or Offensive Activity. Lessee covenants and agrees that no noxious or offensive activity shall be carried on upon the Premises nor shall anything be done or kept on the Premises which may be or become a public or private nuisance or which may cause embarrassment, disturbance, or annoyance to others on adjacent or nearby property.

30.4. No Unsightliness. Lessee covenants and agrees that no unsightliness shall be

permitted on the Premises that is visible from any adjacent or nearby property. Without limiting the generality of the forgoing, all unsightly conditions, equipment, objects and conditions shall be kept enclosed within the Premises; no refuse, scrap, debris, garbage, trash, bulk materials, used automobile parts, or waste shall be kept, stored or allowed to accumulate on the Premises except as may be enclosed within the Premises; no storage of abandoned vehicles shall be permitted on the Premises; and no vehicles shall remain parked on the Premises longer than that period of time which is reasonably required to service or repair said vehicles, and in no event longer than seventy-two (72) hours.

30.5. Restrictions on Signs. Lessee covenants and agrees that no signs or advertising devices of any nature shall be erected or maintained by or on behalf of Lessee on the Premises unless such shall be in compliance with all zoning or other applicable regulations of any governmental body or authority having jurisdiction thereof, and approved in writing, in advance, by Utilities.

30.6. OFAC Compliance. Lessee represents and warrants to Utilities that Lessee is currently in compliance with and shall at all times during the term of this Lease (including any further extensions or renewals) remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action relating thereto.

Lessee is not a "Prohibited Person" which is:

- a. a person or entity that is listed in the Annex to the Executive Order;
- b. a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to the Executive Order;
- c. a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tlisdn.pdf> or at any replacement website or other replacement official publication of such list; and
- d. a person or entity that is controlled by, under common control with, or controlled by any entity listed above.

31. Taxes. Lessee is responsible for any taxes, local, state or federal, if any, associated with its activities on the Lease Area and/or possession of the interest provided in the Lease. Lessee covenants and agrees to obtain all proper licenses or permits for the conduct of its operations hereunder, and to pay when due all taxes lawfully assessed or imposed by any governmental authority upon the fees, rentals, and charges and upon the property of the Lease Area and Non-Exclusive Area or any improvements erected or installed thereon.

32. No Waiver. No waiver of any breach of any one or more of the conditions or covenants of the Lease by Utilities shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder. The failure of Utilities to insist upon the strict performance of the terms, covenants, agreements, and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of Utilities' right to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. Lessee acknowledges and agrees that it has not relied upon any statements, representations, agreements, or warranties, except such as are expressed herein.

33. Casualty. If during the term of this Lease the Premises shall be so injured by fire or other casualty not arising from the fault or negligence of Lessee, or those in its employ, so that the Premises are rendered unfit for use or occupation, the rent herein reserved or a just proportionate part thereof, according to the nature and extent of the injury which has been sustained, shall be abated until the Premises are duly repaired and restored, which work or repair and restoration shall be done with all reasonable diligence. If the Premises is substantially destroyed so that the Premises cannot be repaired and restored within sixty (60) days, either party shall have the option to cancel this Lease and end the term hereof, and in case of such cancellation the rent shall be paid to the date of such fire or other casualty and all further obligations upon the part of either party shall cease.

34. Condemnation. If the whole or a substantial part of the Premises shall be taken for any public or quasi-public use, under any statute or right of eminent domain or purchase by a governmental authority in lieu of or under threat of any such taking, then, when possession shall be taken of the Premises, or any part thereof, the remaining term of this Lease and all rights of Lessee hereunder shall immediately cease and terminate, and the rent shall be adjusted as of the time of such termination.

35. Severability. Any provision or part of this Lease held to be void or unenforceable under any laws or regulations is deemed stricken, and all remaining provisions will continue to be valid and binding upon the Parties. The Parties agree that the Lease is reformed to replace a stricken provision with a new provision that comes as close as possible to expressing the intent of the stricken provision.

36. Time of the Essence. The Parties hereto agree that time is of the essence of this Lease.

37. Approvals. Unless otherwise specified in this Lease, whenever the approval or consent of either Party is required or contemplated, such approval or consent will not be unreasonably withheld or delayed.

38. Authority. The signatories hereto warrant that each has the authority to execute this Lease on behalf of the Party for which he or she is signing and that such person has been authorized to execute this Lease by such entity pursuant to its organizational documents.

39. Counterparts; Copies of Signatures. This Lease may be executed in one or more counterparts, each of which will be deemed original and all of which together constitute one and the same instrument. Copies of signatures are permitted for purposes of the binding nature of this Lease.

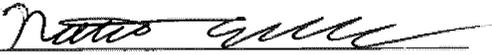
Signatures on next page

**City of Colorado Springs, Colorado,
a home-rule city and Colorado municipal corporation,
on behalf of its enterprise Colorado Springs Utilities**

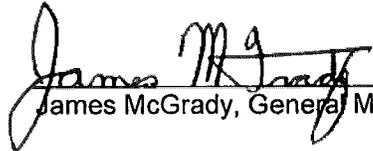
By: 
Jessica Davis, Land Resource Manager

Date: 5/22/23

Approved as to form:


City Attorney's Office – Utilities Division

**TRIVIEW METROPOLITAN DISTRICT,
a quasi-municipal corporation and political
subdivision of the State of Colorado**

By: 
James McGrady, General Manager

Date: 5-18-23

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing was acknowledged before me this 18th day of May, 2023 by James McGrady as District Manager of the Triview Metropolitan District.


Notary Public

My Commission Expires: 9-9-2023

