

PROPERTY LEASE AND RECLAMATION AGREEMENT

This PROPERTY LEASE AND RECLAMATION AGREEMENT ("LEASE AGREEMENT"), dated July 5, 2022 ("EXECUTION DATE"), is entered into by and between REI Limited Liability Company, a Wyoming limited liability company ("REI"; "LESSOR"), and the Farmers Reservoir and Irrigation Company, a Colorado mutual ditch company ("FRICO"; "LESSEE"). For purposes of this Lease Agreement, Lessor and Lessee are sometimes jointly referred to as "PARTIES," or individually as "PARTY."

WHEREAS, FRICO owns and operates a reservoir located in the (Insert a general legal description) ("MILTON RESERVOIR"), adjacent to a portion of land owned by REI; and

WHEREAS, the Milton Reservoir is in need of maintenance and repair, including but not limited to, removing a build-up of sediment that materially affects the reservoir's water storage capacity; and

WHEREAS, FRICO desires to remove the sediment from the Milton Reservoir in order to increase reservoir capacity ("DREDGING PROJECT"); and

WHEREAS, as part of the Dredging Project, FRICO is in need of land in which to de-water the sediment and temporarily stockpile the sediment; and

WHEREAS, REI is the owner of approximately 2,700 acres of real property located in unincorporated Weld County and adjacent to the Milton Reservoir to the west and north (the "PROPERTY"); and

WHEREAS, REI has agreed to lease approximately 427.85 acres of the Property ("LEASED PROPERTY") to FRICO for the purposes set forth herein in connection with the Dredging Project.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. CONSIDERATION AND GRANT OF LEASE. Lessor hereby leases the Leased Property to Lessee for the Dredging Project for \$1 per lease term.
2. PURPOSE OF LEASE. The purpose of the Lease Agreement is to allow for Lessee's use of Lessor's property for the Dredging Project. The Dredging Project shall consist of, but not be limited to: settling ponds, de-watering facilities, areas for the stockpiling of dredged sediment, and areas to be reclaimed at project completion.
3. TERM. The initial term of this Lease Agreement shall be five (5) years beginning on the Execution Date (the "TERM"). By notice to Lessor of its intent to extend the term of this Lease Agreement at least sixty (60) days before the end of the then-current term, and a payment of \$1 per additional term, FRICO has the option to extend the Lease Agreement for successive periods of two (2) years until the Dredging Project is complete.
4. USE OF LEASED PROPERTY.
 - a. Lessee's activities on the Leased Property pursuant to the Dredging Project shall be at Lessee's sole cost and expense.

- b. Lessee shall have the right of ingress and egress over Lessor's property in order to access the Leased Property for purposes of the Dredging Project.
 - c. Only sediment material from the Dredging Project may be deposited on the Leased Property.
 - d. Lessee's operations during the Dredging Project will consist of:
 - i. Removal of sediment material from Milton Lake using a hydraulic dredge and earth moving equipment.
 - ii. Transport of the dredged material from Milton Lake to the Leased Property.
 - iii. Construction of dredge settling ponds on the Leased Property to allow sediment to accumulate and dry before being moved to a final fill location or stockpile. The ponds will be constructed with industry standard earth moving equipment such as bulldozers, scrapers, road graders, excavators, and compactors.
 - iv. Consolidation of sediment material and dewatering processes using storage tanks, pumps, and cyclones within the Leased Property.
 - v. Further consolidation and dewatering by directing the waste stream of flow from the cyclone to the settling ponds within the Leased Property.
 - vi. Use of earth moving equipment within the Leased Property, such as loaders, haul trucks, tractor trailers, conveyors, and stackers to move the material from the cyclone processing area to the final fill area or the stockpile area.
 - vii. Installation of three phase power at the Leased Property to run equipment, including pumps, conveyor, and stackers.
 - viii. Use of earth moving equipment and trucks within the Leased Property to haul material from the stockpile area.
 - e. Any other uses of the Leased Property reasonably required to complete the Dredging Project.
5. RECLAMATION OF LEASED PROPERTY PRIOR TO LEASE TERMINATION. At its sole cost and expense, Lessee shall exercise reasonable efforts to reclaim the Leased Property prior to the termination of this Lease Agreement. Reclamation of the Leased Property shall include removing all machinery and structures utilized in the Dredging Project, filling and grading the Property, and planting native seed mix. Lessee shall also, at its sole cost and expense, transport sediment from the Leased Property to a site depicted and described in Exhibit A ("FINAL DEPOSITION SITE"). Title to this processed sediment resulting from the Dredging Project shall pass to Lessor upon final placement through the reclamation process.

6. **BEST MANAGEMENT PRACTICES.** In order to protect the Property and other of Lessor's interests, Lessee shall install and maintain all stormwater BMPs required at all phases of the Dredging Project, pursuant to state and federal law, at its sole cost and expense.
7. **GOVERNMENT APPROVALS AND PERMITS.** Lessee is solely responsible for obtaining any and all necessary permits and/or approvals for the Dredging Project from federal, state, and local government, and for utilizing the Leased Property as described by this Lease Agreement. Lessor shall promptly provide any consents that are reasonably required for Lessee to pursue such permits and approvals.
8. **LEGAL COMPLIANCE, HAZARDOUS MATERIALS, AND REMEDIATION.**
 - a. *Compliance with Environmental Law.* Lessee shall comply with all federal, state, or local laws, statutes, rules, regulations, and ordinances pertaining to health, industrial hygiene, or environmental or ecological conditions, including, but not limited to, each of the following (and their respective successor provisions and all their respective state law counterparts): the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601, et seq.; the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.; the Federal Water Pollution Control Act (a.k.a. "CLEAN WATER ACT"), as amended, 33 U.S.C. § 1251, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; the Solid Waste Disposal Act, Subchapter IX, Regulation of Underground Storage Tanks, 42 U.S.C. § 6991, et seq.; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency ("EPA") and of all other agencies, boards, commissions, and other governmental bodies and officers having jurisdiction over the Leased Property (collectively, "ENVIRONMENTAL LAWS") as may be applicable to Lessee's activities in the Dredging Project.
 - b. *Hazardous Materials.* Lessee shall not use, store, dump, spill, release, or deposit any hazardous materials ("HAZARDOUS MATERIALS") within the Leased Property. Hazardous Materials, for the purposes of this Lease, are defined as hazardous, explosive, radioactive, or toxic substances, material, or waste that is or becomes regulated by any local government authority, the State of Colorado, or the United States Government. Hazardous Materials include, but are not limited to, any material or substance that is:
 - i. defined as a "hazardous substance," "hazardous material," "toxic substance," "pollutant," "hazardous waste," "regulated substance," or "solid waste" in any Environmental Law;
 - ii. listed in the U.S. Department of Transportation Hazardous Materials Table, 49 C.F.R. § 172.101, as may be amended from time to time;

- iii. listed by the U.S. Environmental Protection Agency ("EPA") (or any successor agency) as hazardous substances, see 40 C.F.R. § 301, et seq., as may be amended from time to time;
 - iv. qualified as an "unlisted hazardous substance" pursuant to 40 C.F.R. § 302.4(b), as may be amended from time to time;
 - v. asbestos; and,
 - vi. any petroleum product.
- c. *Exceptions.* Subsection b. does not prohibit the consumption of motor fuels and use of lubricants in motor vehicles and equipment as necessary for their operation during the Dredging Project.
- d. *Remediation.*
- i. If any of Lessee's uses of the Leased Property results in the release of Hazardous Materials, then Lessee shall clean, remediate, cure, repair, and correct any and all related damage, in full compliance with all applicable federal, state, or local laws, regulations, or orders.
 - ii. If any investigation, site monitoring, containment, remediation, removal, restoration, or other remedial work of any kind or nature ("REMEDIAL WORK") is necessary, as determined by: (1) an independent environmental consultant selected by Lessor; (2) any judicial or administrative order or judgment; or (3) any governmental entity; because of or in connection with the current or future presence, suspected presence, release, or suspected release of a Hazardous Material into the air, soil, groundwater, or surface water at, on, under or within the Leased Property or any portion thereof, then Lessee shall within thirty (30) days after written demand by Lessor, commence and thereafter diligently complete all such Remedial Work. The 30-day time period shall be reduced in the event that a shorter time is required to comply with applicable law, regulation, ordinance, order, or agreement, or an immediate response is required to prevent, contain, or remediate a discharge onto the Leased Property.
 - iii. All Remedial Work shall be performed by contractors under the supervision of a consulting engineer, both of which shall be approved in advance by Lessor. All costs and expenses of such Remedial Work shall be paid by Lessee.
 - iv. If Lessee shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently complete such Remedial Work, Lessor may (but shall not be required to) cause such Remedial Work to be performed at Lessee's expense (including, without limitation, the reasonable fees and expenses of Lessor's counsel).

9. MAINTENANCE. Lessee is responsible for all maintenance of the Leased Property during the term of the Lease Agreement.
10. NUISANCE. Lessee will not cause or maintain any nuisance condition, as defined by applicable state or local law, on the Leased Property.
11. INSURANCE.
 - a. *Required Insurance.* Lessee shall maintain all of the following insurance (collectively, "REQUIRED INSURANCE"):
 - i. Commercial General Liability insurance that includes bodily injury and property damage and contractual liability in an amount of not less than \$1,000,000.00 per occurrence (bodily injury and property damage) and \$2,000,000.00 in the general aggregate, a damages to premises limit of \$1,000,000, and a medical expense limit of \$5,000. The policy shall list Lessor as an additional insured with respect to this Lease.
 - ii. Workers' compensation insurance that meets statutory amounts.
 - iii. Employers Liability Insurance with limits of not less than \$500,000 per employee incident.
 - b. *Additional Provisions.*
 - i. All Required Insurance shall provide that the period of indemnity for such coverage shall extend beyond the date of expiration of the policy or policies by twelve (12) months.
 - ii. Upon written and reasonable request from Lessor, Lessee shall deliver to Lessor a certificate from its insurer declaring such insurance to be in full force and effect, names Lessor as certificate holder, and names Lessor and any lender to Lessor as additional insureds.
 - iii. Required Insurance shall be underwritten by companies maintaining no less than an A-VIII rating under A.M. Best.
 - iv. Should Lessee fail to purchase or keep in force the Required Insurance, Lessor may, in Lessor's discretion: (a) upon three (3) days' notice to Lessee, purchase such policies of insurance on Lessee's behalf and charge Lessee the premiums for such policies, plus a \$1,000 administrative fee; or (b) require Lessee to suspend its use of the Leased Property until the Required Insurance is obtained.
12. INDEMNITY AND WAIVER OF LIABILITY. Lessor shall not be responsible or liable for any damage or injury to any property, fixtures, buildings, or other improvements, or to any person or persons occurring at any time, including any damage or injury to Lessee or to any of Lessee's customers, guests, officers, agents, servants, employees, contractors, customers, members, invitees, assignees, licensees, sublicensees, or sublessees (collectively, with Lessee, "Lessee's Responsible Parties").

Lessee shall indemnify and save harmless REI and any other party reasonably requested by REI, and their affiliates, members, managers, partners, directors, officers, stockholders, employees, and agents (collectively, with Lessor, "Lessor's Responsible Parties") from and against any and all liability, damage, penalties, or judgments arising from injury to person or property sustained by anyone in and about the Leased Property or otherwise resulting from or attributable to Lessee's use, operation, or maintenance of the Leased Property, or any act or omission of Lessee, or Lessee's Responsible Parties. Lessee shall, at its own cost and expense, defend any and all suits or actions (just or unjust) that may be brought against Lessor or in which Lessor may be sued, joined, or impleaded upon any such above mentioned matter, and against any and all claim or claims, except for the willful act or gross negligence of Lessor.

13. ASSUMPTION OF RISKS.

- a. *"AS-IS, WHERE-IS, WITH ALL FAULTS."* The Parties understand that the Leased Property consists of mostly undeveloped land, and the Lessee has had an opportunity to inspect the Leased Property and accepts the Leased Property in an "as is, where is, and with all faults" condition, and further, Lessee understands that its proposed use may involve inherently dangerous activities, and that there may be hazards (known and unknown, hidden and observable), including, but not limited to, dangers such as holes, cracks or openings in the earth, fence wire, snakes, wells, swamps, brush and other growth, ponds, harmful plants, wild or poisonous animals, insects, bats, unauthorized or careless persons on the land, or other risks that may be dangerous and cause injury and/or death and Lessee assumes all such risks as its own responsibility, without liability to or recourse against Lessor.
- b. *Assumption of Risk.* Lessee has inspected the Leased Property and found it suitable for Lessee's intended use. Lessee ASSUMES ALL RISKS of Lessee's use, for itself and its customers and guests, and for other persons or property owners who may be impacted by Lessee's use of the Leased Property, whether or not such persons or property owners are on or off the Leased Property.
- c. *No Identification of Hazards.* Although Lessor may have a greater knowledge of the Leased Property than Lessee, it is impracticable and virtually impossible for Lessor to list or to physically show Lessee each and every potential hazard on the Leased Property and Lessee enters onto the Leased Property despite same and at Lessee's own risk and without liability to Lessor.
- d. *Trespassers and Third Parties.* Lessor shall have no obligation to prevent trespassing on the Leased Property and assumes no responsibility for the acts of any third parties thereon. Lessee shall have the right at its sole risk and expense to post the Leased Property and (subject to the reserved rights of Lessor) exclude trespassers.
- e. *No Liability for Personal Property.* All property of every nature and description that may be on the Leased Property during the Term shall be at the sole risk of Lessee. Lessor shall

not be liable to Lessee or any other person for loss or damage to any personal property on the Leased Property.

14. MECHANIC'S LIENS.

- a. The Parties agree that Lessee shall never, under any circumstances, have the power to subject the interest of Lessor in the Leased Property to any mechanic's or materialmen's lien or liens of any kind. All persons who may hereafter during the term of this Lease, including any extensions thereof, furnish work, labor, services, or materials to the Leased Property upon the request or order of Lessee or any person claiming under, by, or through or under Lessee, must look for claims or compensation wholly to the interest of Lessee and not to that of Lessor.
- b. Lessee shall provide Lessor with not less than seven (7) days' notice prior to the commencement of construction work, such that Lessor may post the Leased Property in appropriate locations with Notices of Non-Liability pursuant to C.R.S. § 38-22-105.
- c. Lessee shall promptly pay costs when due, so that the Leased Property is at all times free of liens for labor and materials ("MECHANICS LIENS").
- d. Should any Mechanics Liens be filed or recorded against the Leased Property with respect to work done for, or materials supplied to, or on behalf of Lessee, or should any action affecting the title thereto be commenced, Lessee shall cause such liens to be released of record within five (5) days after notice thereof.
- e. If Lessee desires to contest any such claim of lien, Lessee shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be required by law.
- f. If Lessee shall be in default in paying any charge for which such mechanic's lien or suit to foreclose such lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Lessor may (but without being required to do so) pay such lien or claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Lessee to Lessor.
- g. Lessee hereby agrees to indemnify, defend, and hold Lessor harmless of and from all liability, loss, damages, costs, or expenses, including reasonable attorneys' fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials or supplies furnished to Lessee, including lien claims of laborers, materialmen, or others.

15. TAXES. Lessor shall timely pay prior to delinquency all ad valorem real estate taxes assessed against the Property during the Term of this Lease Agreement.

16. NOTICE. All notices required by this Lease Agreement shall be in writing and shall be delivered to the other party at the address set forth below by one or more of the following methods: personal

delivery; certified class mail, postage pre-paid and return receipt requested; or email, with confirmation of receipt. Each Party shall acknowledge a notice when received.

To the Lessor: REI Limited Liability Company
PO Box 156
Red Feather Lakes, CO 80545

To the Lessee: General Manager
Farmers Reservoir and Irrigation Company
80 S. 27th Avenue
Brighton, CO 80601

17. **TERMINATION.** Lessor may terminate this Lease Agreement upon written notice to Lessee if Lessee does not comply with all of the terms and conditions of this Lease Agreement. Lessee may terminate this Lease Agreement immediately and at any time upon written notice to Lessor.

18. **DEFAULT AND TERMINATION.**

- a. *Notice and Cure.* If Lessee is in violation of any covenant, condition, restriction, or agreement set forth in or referred to in this Lease ("DEFAULT") and the Default remains uncorrected for a period of thirty (30) days after Lessor has given written notice thereof, then Lessor may pursue the remedies provided in subsection c.
- b. *Exceptions to Notice and Cure.* The following Defaults shall not be subject to subsection a., and Lessor shall be immediately entitled to pursue the remedies provided in subsection c.:
 - i. Interference with Lessor's access and use of the Leased Property;
 - ii. Material damage to Lessor's Property;
 - iii. Failure to timely remediate a discharge of Hazardous Materials;
 - iv. Abandonment of the Leased Property.
- c. *Remedies.* At Lessor's option, Lessor may pursue any of the following remedies for default without limitation:
 - i. Declare the Term of the Lease ended;
 - ii. Terminate Lessee's right to possess, access, and use the Leased Property and reenter and repossess the Leased Property pursuant to applicable law;
 - iii. Recover all present and future damages, costs, and other relief to which Lessor is entitled;
 - iv. Pursue Lessor's lien remedies;
 - v. Pursue breach of contract remedies; and,

- vi. Pursue any and all available remedies in law or equity.
 - d. *Disposition of Abandoned Personal Property.* In the event of termination after Default, Lessee's personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Leased Property and stored in a safe and secure location until such time that Lessee may recover its property. Any storage fees shall be reimbursed by Lessee to Lessor. Lessor shall not be deemed a bailee of the property removed and Lessor shall not be held liable for the property.
19. **FORCE MAJEURE.** Neither Party shall be liable for any failure or delay in performing an obligation under this Lease Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the COVID-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy.
20. **LICENSING AND SUBLEASING.** Lessee shall not assign, license, sublicense, or sublease the Leased Property to third parties unless the assignee, licensee, sublicensee, or sublessee is approved in advance by Lessor, which shall not be unreasonably withheld, in Lessor's sole discretion.
21. **REPRESENTATION.** Lessor represents and warrants that it has valid title to the Leased Property and that it has the authority to enter into this Lease Agreement.
22. **PREVAILING PARTY.** In the event that either Party commences suit to recover damages arising from a Default or otherwise to seek enforcement hereof, the prevailing party shall be entitled to an award of reasonable attorneys' fees, together with court costs and litigation expenses reasonably incurred and actually paid.
23. **HOLDOVER.** It is mutually agreed that, if after expiration of this Lease, Lessee shall remain in possession of the Leased Property without a written agreement as to such holding, then such holding over shall be deemed and taken to be a holding upon a tenancy from month-to-month. Any month-to-month tenancy or tenancy-at-sufferance hereunder shall be subject to all other terms and conditions under this Lease Agreement and nothing contained in this section shall be construed to alter or impair any of Lessor's rights of re-entry or eviction or constitute a waiver thereof.
24. **INTEGRATION AND AMENDMENT.** This Lease Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Lease Agreement may be amended only by an instrument in writing signed by the Parties.
25. **HEADINGS.** Section and subsection titles or captions contained in this Lease are inserted only as a matter of convenience and for reference. Such titles and captions in no way define, limit, extend, or describe the scope of this Lease, nor the intent of any text following the title or caption.

26. **GOVERNING LAW.** This Lease Agreement shall be deemed to be a contract entered into in the State of Colorado and shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to principles of conflicts of law thereof.
27. **WAIVER.** The failure of any Party to insist upon the performance of any provision of this Lease Agreement or to exercise any right or privilege granted to such Party under this Lease Agreement will not be construed as waiving such provision or any other provision of this Lease Agreement.
28. **SEVERABILITY.** If any covenant, term, condition, or provision under this Lease Agreement shall, for any reason, be held to be invalid or unenforceable, it is the intention of the Parties that any such covenant, term, condition, or provision may be modified or amended by a court of competent jurisdiction to render it enforceable to the maximum extent permitted by the laws of that state. If such modification or amendment is not practicable, it is the intention of the Parties that such covenant, term, condition, or provision be severed from this Lease Agreement with no effect upon the remaining provisions of this Lease Agreement.
29. **COUNTERPARTS.** This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[signature page follows]

In Witness Whereof, Lessor and Lessee have duly executed this Lease Agreement as of the Execution Date.

LESSEE

THE FARMERS RESERVOIR AND IRRIGATION COMPANY,
a Colorado mutual ditch company

DocuSigned by:
Scott Edgar
D1BE84FB647F497...

By: Scott Edgar, General Manager

LESSOR

REI LIMITED LIABILITY COMPANY
a Wyoming limited liability company

By: Graystone Realty, LLC, its Manager

DocuSigned by:
Christine Hethcock
7522F8E583124DA...

Christine Hethcock, Manager

Exhibit A
Final Deposition Site

Exhibit A: Final Deposition Area



Source: Esri, DigitalGlobe, GeoEye, AeroGRID, IGN, and the GIS User Community