

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE CITY OF COLORADO SPRINGS, COLORADO AND
THE SANDS METROPOLITAN DISTRICT NOS. 1, 2 AND 3**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this 6th day of JUNE, 2018 by and between the CITY OF COLORADO SPRINGS, COLORADO, a home rule city and Colorado municipal corporation (the “City”), and THE SANDS METROPOLITAN DISTRICT NOS. 1, 2 AND 3, each a quasi-municipal corporation and political subdivision of the State of Colorado (referred to individually as “District No. ___” and collectively referred to herein as “The Sands Districts 1-3”). The Sands Districts 1-3 and the City are sometimes referred to herein as the Parties collectively, or individually as a Party.

RECITALS

WHEREAS, pursuant to Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-201, *et seq.*, C.R.S., the Parties may cooperate or contract with each other to provide any function, service or facility each is lawfully authorized to provide; and

WHEREAS, pursuant to Section 32-1-1001(1)(d)(I), C.R.S., The Sands Districts 1-3 are permitted to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, a Consolidated Service Plan for The Sands Metropolitan District Nos. 1, 2 and 3, as well as The Sands Metropolitan District No. 4 (“District No. 4”), dated September 30, 2016 (the “Service Plan”) was approved by the El Paso County Board of County Commissioners on by Resolution No. 16-349, on October 4, 2016, for the purpose of providing certain parameters for the financing, development and administration of certain public facilities, improvements and appurtenances within the area legally permitted to be served by The Sands Districts 1-3, and District No. 4 (collectively, the “Districts”), and the development of the area generally located adjacent to the intersection of Constitution Avenue and Marksheffel Road (The Sands Districts 1-3), and a second parcel located near the intersection of Highway 24 and Highway 94 (District No. 4) (the Districts’ “Service Area”); and

WHEREAS, since the time of the formation of the Districts, Babcock Land Corp. and Lorson South Land Corp., who are the owners/developers of the property located within the boundaries of The Sands Districts 1-3 (collectively, the “Developer”), approached the City, through the City Council of the City (“City Council”), with a proposal to annex to the City the property within The Sands Districts 1-3 (the “Annexation Property”) under that certain Annexation Agreement by and among the City and the Developer; and

WHEREAS, the Developer organized the Districts in order to undertake that portion of the design, construction, installation, acquisition, funding, operations and maintenance of public improvements which the Districts are allowed to perform under Title 32 of the Colorado Revised Statutes and under the Service Plan, and it is contemplated that the Annexation Agreement with the City will further such efforts in connection with the public improvements within the Annexation Property; and

DN 3067576.1

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WHEREAS, the City and The Sands Districts 1-3 have determined it to be in the best interests of their respective taxpayers, residents and property owners to clearly set forth the rights and responsibilities of the Parties with respect to the Annexation Property.

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

COVENANTS AND AGREEMENTS

1. Capitalized Terms. All capitalized terms used but not defined in this Agreement shall have the meaning ascribed to such terms in the Service Plan.

2. Effective Date. This Agreement shall be effective upon the date of the City Council's final approval of the Annexation Agreement ("Effective Date"). In the event the City Council, for whatever reason, does not approve the Annexation Agreement, this Agreement shall be deemed void and unenforceable.

3. Approval Authority. The Parties acknowledge that, pursuant to the Service Plan and State law, El Paso County, Colorado (the "County"), is currently the approval authority and authorizing jurisdiction of the Districts. The Parties agree that, within three (3) years of the Effective Date of the annexation, The Sands Districts 1-3 shall take all necessary steps to transfer such approval authority for The Sands Districts 1-3, and any property annexed to the City, from the County to the City. The Parties may take such further action as necessary to separate District No. 4 from the Annexed Property, and file any necessary amendments or other required documents. In the meantime, The Sands Districts 1-3 agree to operate in accordance with the statutory authority permitted for The Sands Districts 1-3, subject to the limitations provided for in this Agreement. Once the approval authority status has been transferred to the City, The Sands Districts 1-3 agree to adopt the City's Model Service Plan, as that Model Service Plan exists as of the Effective Date, with the Maximum Mill Levies provided for below.

4. Maximum Mill Levies.

A. Maximum Debt Service Mill Levy. The Parties acknowledge that the Service Plan currently authorizes a Maximum Debt Service Mill Levy of up to fifty (50) mills, subject to Gallagher Adjustment. Notwithstanding the Service Plan, the Parties agree that, for the fiscal year beginning January 1, 2019 and going forward, the Maximum Debt Service Mill Levy shall be up to forty (40) mills, subject to Gallagher Adjustment. The Sands Districts 1-3 shall take all actions necessary to reduce the Debt Service Mill Levy to forty (40) mills, subject to Gallagher Adjustment.

B. Maximum Operational Mill Levy. The Parties acknowledge that the Service Plan currently authorizes a Maximum Operational Mill Levy of up to ten (10) mills, subject to Gallagher Adjustment. The Parties agree that, for the fiscal year beginning January 1, 2019 and going forward, the Maximum Operational Mill Levy for each District shall remain up to ten (10) mills, subject to Gallagher Adjustment.

C. **Maximum Special Purpose Mill Levy.** The Parties acknowledge that the Service Plan currently authorizes a Maximum Special Purpose Mill Levy of five (5) mills, subject to Gallagher Adjustment. Notwithstanding the Service Plan, the Parties agree that, for the fiscal year beginning January 1, 2019 and going forward, The Sands Districts 1-3 are not authorized to impose a Special Purpose Mill levy for the Annexation Property such that the Maximum Special Purpose Mill Levy for the Annexation Property shall be zero (0) mills. The Sands Districts 1-3 shall take all actions necessary to reduce the Special Purpose Mill Levy to zero (0) mills.

D. **Maximum Combined Mill Levy.** The Parties acknowledge that the Service Plan currently authorizes a Maximum Combined Mill Levy of sixty-five (65) mills, subject to Gallagher Adjustment. Notwithstanding the Service Plan, the Parties agree that the Maximum Combined Mill Levy for each of The Sands Districts 1-3 (for the Annexation Property) shall be fifty up to (50) mills, subject to Gallagher Adjustment.

5. **Eminent Domain/Dominant Eminent Domain.** The Parties acknowledge that the Service Plan currently authorizes The Sands Districts 1-3 to exercise the power of eminent domain or dominant eminent domain. Notwithstanding the Service Plan, The Sands Districts 1-3 agree that, from and after the date of this Agreement, they will not exercise either eminent domain or dominant eminent domain without the prior written approval of the City except as otherwise provided in this Section 5.

a. The Parties acknowledge that The Sands Districts 1-3 are presently in negotiations to secure three utilities easements, as further identified in the attached **Exhibit A**, in connection with the development of the Annexation Property (the "Annexation Property Easements"). The City hereby grants The Sands Districts 1-3 the approval to pursue eminent domain, but not dominant eminent domain, in the event that The Sands Districts 1-3 are unable to secure the Annexation Property Easements through good faith negotiations.

b. The Parties further agree that the foregoing does not prohibit The Sands Districts 1-3 from requesting the City's assistance in acquiring necessary easements, rights-of-way or other property necessary for the development of the Annexation Property. In such event, the City agrees that it will expeditiously consider such request, but the City shall have no obligation to provide assistance or to approve either eminent domain or dominant eminent domain. The City may impose conditions on any agreement to provide assistance, including a condition that The Sands Districts 1-3 enter into an agreement to reimburse the City for its costs.

6. **District No. 4.** The Parties understand, acknowledge and agree that District No. 4 is not a Party to this Agreement and, as a consequence, is not bound by the terms of this Agreement. The Sands Districts 1-3 represent and warrant that they have, and will continue to have, sufficient authority to cause District No. 4 to take all necessary steps to separate from the Annexed Property.

7. **Amendment.** This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties.

8. Assignment. No Party may assign any of its rights nor delegate any of its duties under this Agreement to any person or entity without having first obtained the prior written consent of all other Parties, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

9. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party/Parties shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party/Parties in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

10. Governing Law. This Agreement shall be governed and construed under the laws of the State of Colorado.

11. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

12. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

13. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than The Sands Districts 1-3 and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of The Sands Districts 1-3 and the City shall be for the sole and exclusive benefit of The Sands Districts 1-3 and the City.

14. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

16. Approval. This Agreement shall not be effective until approved by the Districts and the City Council of the City of Colorado Springs.

17. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, The Sands Districts 1-3 and the City have caused this Agreement to be effective as of the Effective Date.

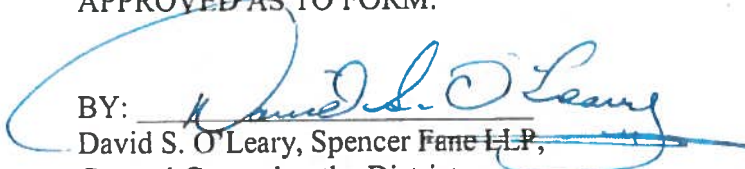
**THE SANDS METROPOLITAN
DISTRICT NOS. 1, 2 AND 3**

BY: 
Jeff Mark, President

ATTEST:

BY: 
Alan Vancil, Secretary

APPROVED AS TO FORM:

BY: 
David S. O'Leary, Spencer Fane LLP,
General Counsel to the District

CITY OF COLORADO SPRINGS

BY: _____
John Suthers, Mayor

ATTEST:

BY: _____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY: _____
_____, Office of the City Attorney

EXHIBIT A

Description of Easements

EXHIBIT A-1

To Sands Metro Districts - City of Colorado Springs IGA



20 Boulder Crescent, STE 110
Colorado Springs, CO 80903
Mail to: PO Box 1360
Colorado Springs, CO 80901
719.955.5485

PARCEL NUMBER: W01
DATE: APRIL 20, 2018

A PARCEL OF LAND IN THE EAST HALF (E 1/2) NORTHEAST QUARTER (NE 1/4) OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING A PORTION OF LOT 1 AS PLATTED IN "AKER'S ACRES SUBDIVISION NO.1" ACCORDING TO THE PLAT THEREOF IN BOOK H2 AT PAGE 48 OF THE EL PASO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WESTERLY LINE OF MARKSHEFFEL ROAD AS RECORDED UNDER RECEPTION NUMBER 210011875 IS ASSUMED TO BEAR $S00^{\circ}07'36''W$.
COMMENCING AT A POINT ON THE NORTH LINE OF LOT 1 AT THE WESTERLY RIGHT-OF-WAY LINE MARKSHEFFEL ROAD, THENCE $S89^{\circ}31'48''W$ ALONG THE NORTHERLY LINE THEREOF, 14.81 FEET TO THE POINT OF BEGINNING;

THENCE $S00^{\circ}09'04''W$ A DISTANCE OF 985.71 FEET;
THENCE $S00^{\circ}06'16''W$ A DISTANCE OF 547.94 FEET;
THENCE $S89^{\circ}49'03''E$ A DISTANCE OF 15.02 FEET TO THE WESTERLY RIGHT-OF-WAY OF MARKSHEFFEL ROAD;
THENCE $S00^{\circ}07'36''W$ ALONG SAID WESTERLY LINE A DISTANCE OF 30.00 FEET;
THENCE $N89^{\circ}49'03''W$ A DISTANCE OF 15.01 FEET;
THENCE $S00^{\circ}06'16''W$ A DISTANCE OF 19.98 FEET;
THENCE $N89^{\circ}53'44''W$ A DISTANCE OF 30.00 FEET;
THENCE $N00^{\circ}06'16''E$ A DISTANCE OF 597.93 FEET;
THENCE $N00^{\circ}09'04''E$ A DISTANCE OF 822.37 FEET TO THE WESTERLY LINE OF SAID LOT 1;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 1810.08 FEET, A CENTRAL ANGLE OF $5^{\circ}13'22''$ (THE CHORD OF WHICH BEARS $N08^{\circ}17'54''E$ A DISTANCE OF 164.94 FEET), AN ARC DISTANCE OF 165.00 FEET TO THE NORTHERLY LINE OF SAID LOT 1;
THENCE $N89^{\circ}31'48''E$ ALONG SAID NORTHERLY LINE A DISTANCE OF 6.63 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS A CALCULATED AREA OF 46,256 S.F. (1.062 ACRES MORE OR LESS).

PREPARED BY:

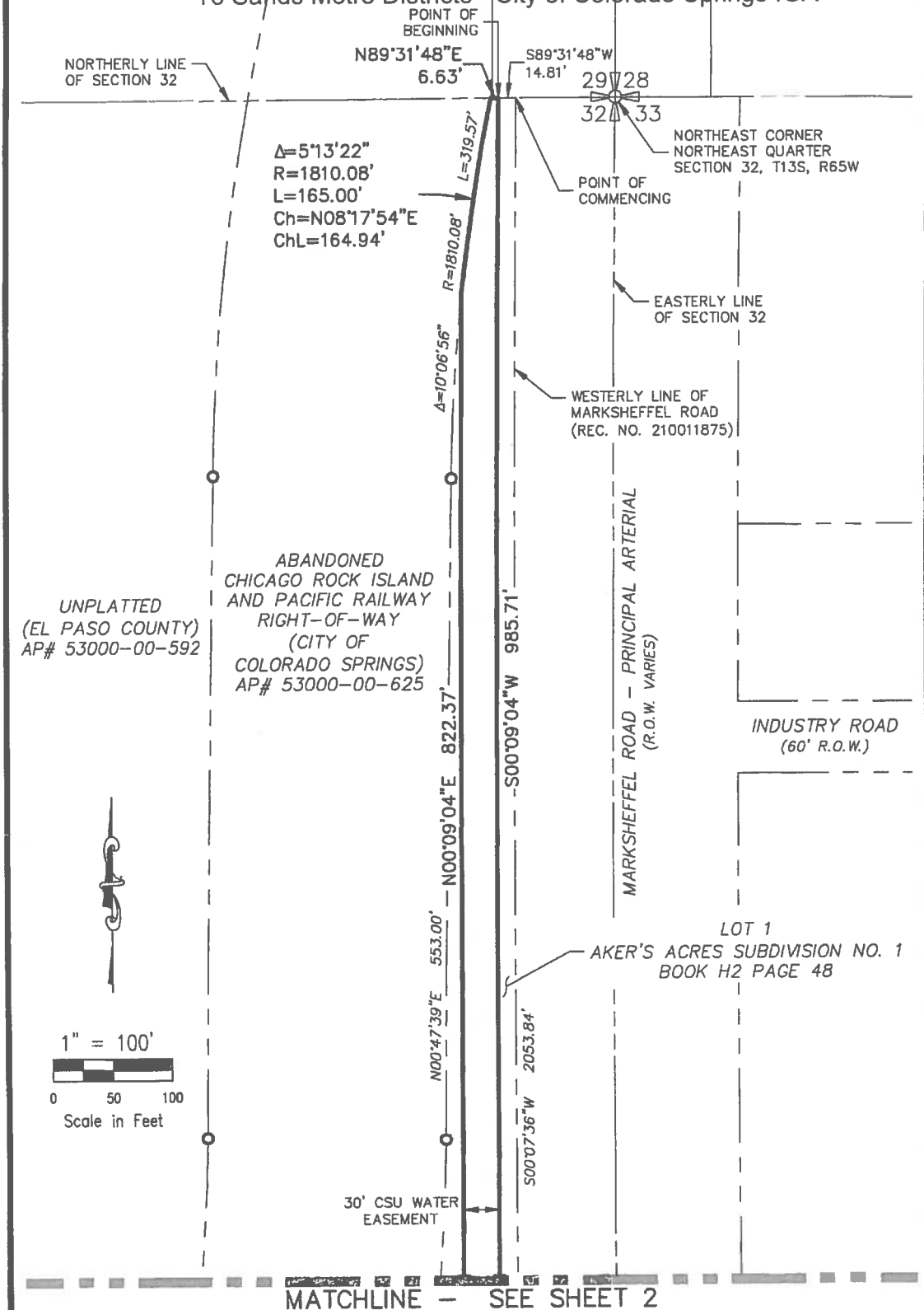
 4/20/18

VERNON P. TAYLOR, COLORADO PLS NO. 25966 DATE
FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC
20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903



**COLORADO SPRINGS UTILITIES
30' UTILITY EASEMENT
EXHIBIT A-2**

To Sands Metro Districts - City of Colorado Springs IGA



UNPLATTED
(EL PASO COUNTY)
AP# 53000-00-592

ABANDONED
CHICAGO ROCK ISLAND
AND PACIFIC RAILWAY
RIGHT-OF-WAY
(CITY OF
COLORADO SPRINGS)
AP# 53000-00-625



MATCHLINE — SEE SHEET 2

COLORADO SPRINGS UTILITIES
30' UTILITY EASEMENT
EXHIBIT "C"
JOB NO. 43-089
DATE PREPARED: 04/20/2018



20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903
PHONE: 719.955.5485

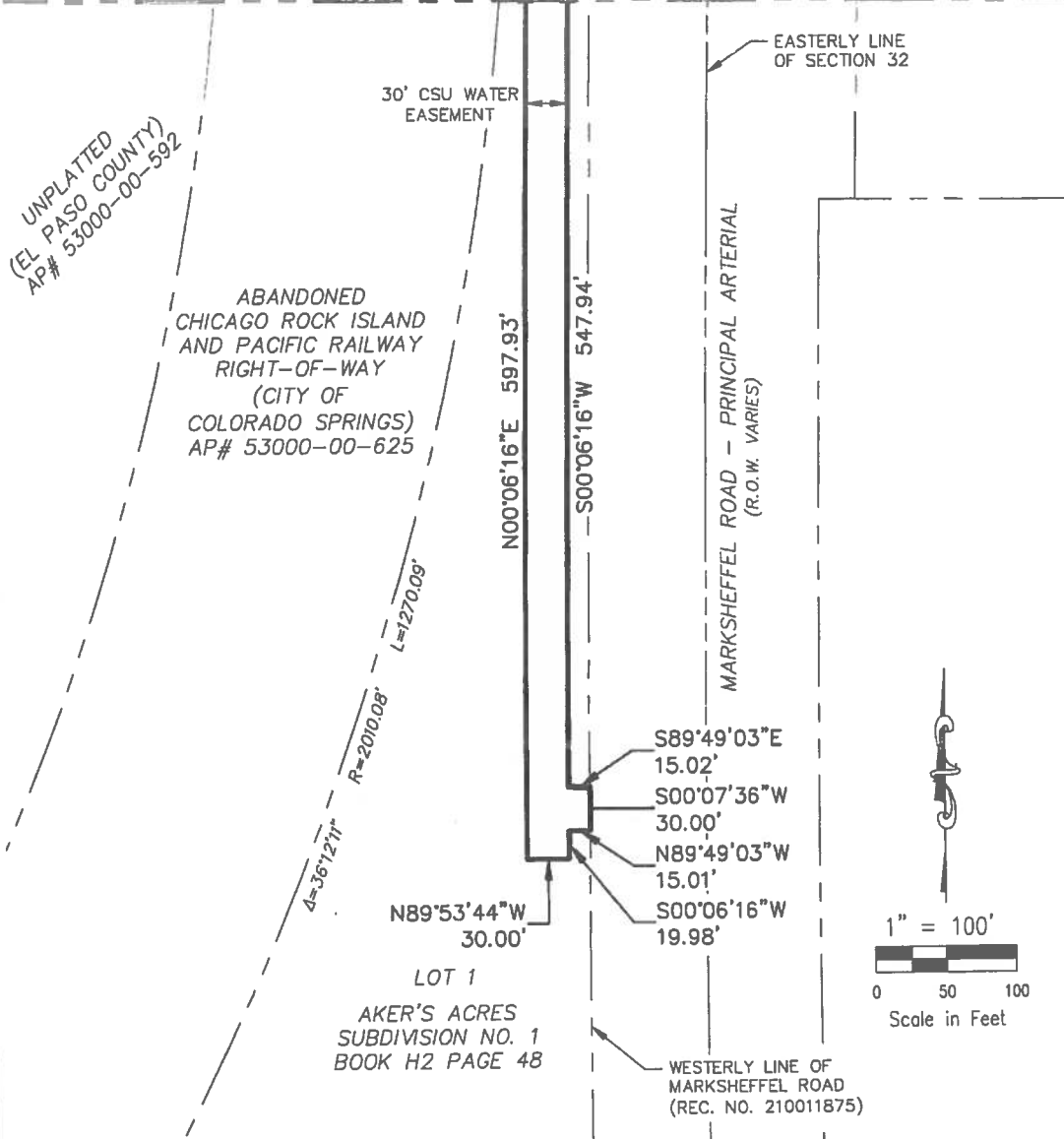
SHEET 1 OF 2

**COLORADO SPRINGS UTILITIES
30' UTILITY EASEMENT**

EXHIBIT A-2 Cont'd

To Sands Metro Districts - City of Colorado Springs IGA

MATCHLINE - SEE SHEET 1

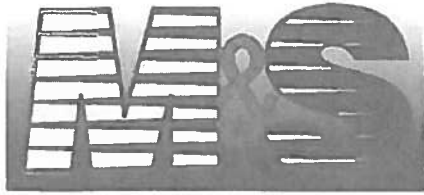


COLORADO SPRINGS UTILITIES
30' UTILITY EASEMENT
EXHIBIT "C"
JOB NO. 43-089
DATE PREPARED: 04/20/2018



20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903
PHONE: 719.955.5485

SHEET 2 OF 2



CIVIL CONSULTANTS, INC.

20 Boulder Crescent, STE 110
Colorado Springs, CO 80903
Mail to: PO Box 1360
Colorado Springs, CO 80901
719.955.5485

EXHIBIT A-5

To Sands Metro Districts - City of Colorado Springs IGA

PARCEL NUMBER: SS02

DATE: APRIL 10, 2018

A PARCEL OF LAND IN THE SOUTHEAST QUARTER (SE 1/4) SOUTHWEST QUARTER (SW 1/4) OF SECTION 33, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING A PORTION OF BLOCK 1 LOT 7 AS PLATTED IN "ROCKY MOUNTAIN INDUSTRIAL PARK FILING NO. 1" ACCORDING TO THE PLAT THEREOF UNDER RECEPTION NUMBER 202014735 OF THE EL PASO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTHERLY LINE OF CONSTITUTION AVENUE AS RECORDED IN PLAT BOOK Y-3 AT PAGE 169 AND IS ASSUMED TO BEAR S89°58'14"W.
COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 7, THENCE N00°01'38"W ALONG THE WESTERLY LINE THEREOF, 23.96 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING N00°01'38"W ALONG SAID WESTERLY LINE A DISTANCE OF 30.00 FEET;
THENCE N89°58'08"E A DISTANCE OF 74.99 FEET;
THENCE S88°06'49"E A DISTANCE OF 533.81 FEET TO THE EASTERLY LINE OF SAID LOT 7;
THENCE S00°04'46"W ALONG SAID EASTERLY LINE A DISTANCE OF 30.01 FEET;
THENCE N88°06'49"W A DISTANCE OF 534.26 FEET
THENCE S89°58'08"W A DISTANCE OF 74.49 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS A CALCULATED AREA OF 18,263 S.F. (0.419 ACRES MORE OR LESS).

PREPARED BY:

VERNON P. TAYLOR, COLORADO PLS NO. 25966
FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC
20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903

4/13/18

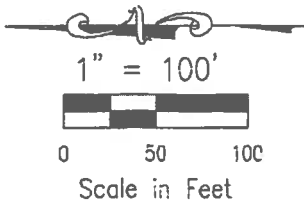
DATE



COLORADO SPRINGS UTILITIES 30' UTILITY EASEMENT

EXHIBIT A-6

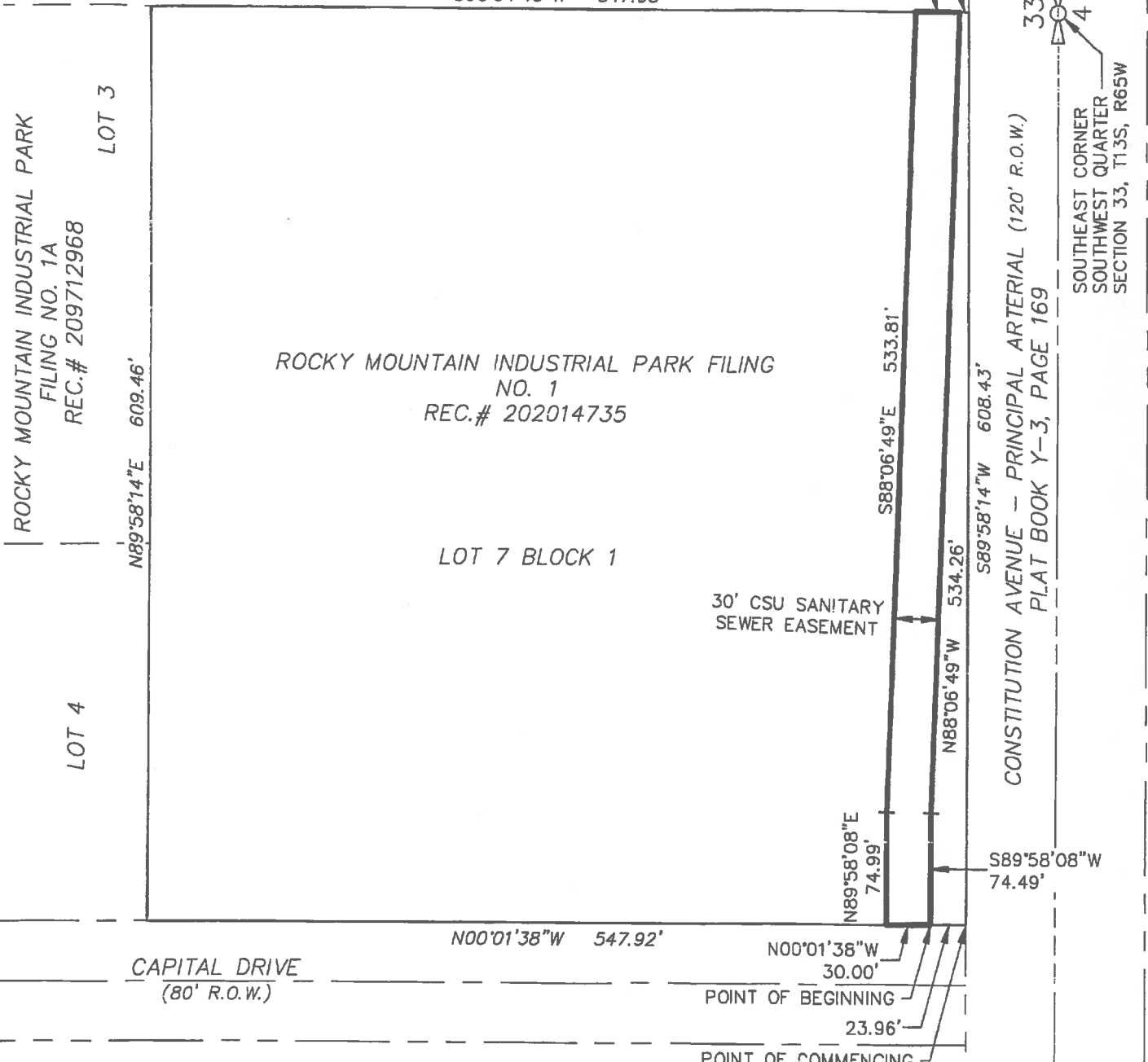
To Sands Metro Districts - City of Colorado Springs IGA



ANNEXATION PLAT
BANNING-LEWIS RANCH NO. 2
REC.# 214104175

500°04'46"W 547.93'

6.10'
500°04'46"W
30.01'



ROCKY MOUNTAIN INDUSTRIAL PARK FILING
NO. 1
REC.# 202014735

LOT 7 BLOCK 1

30' CSU SANITARY
SEWER EASEMENT

CAPITAL DRIVE
(80' R.O.W.)

CONSTITUTION AVENUE - PRINCIPAL ARTERIAL (120' R.O.W.)
PLAT BOOK Y-3, PAGE 169

SOUTHEAST CORNER
SOUTHWEST QUARTER
SECTION 33, T13S, R65W

COLORADO SPRINGS UTILITIES
30' UTILITY EASEMENT
EXHIBIT "C"
JOB NO. 43-089
DATE PREPARED: 04/10/2018

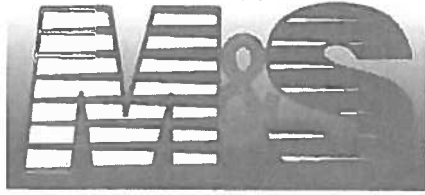


20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903
PHONE: 719.955.5485

SHEET 1 OF 1

EXHIBIT A-3

To Sands Metro Districts - City of Colorado Springs IGA



CIVIL CONSULTANTS, INC.

20 Boulder Crescent, STE 110
Colorado Springs, CO 80903
Mail to: PO Box 1360
Colorado Springs, CO 80901
719.955.5485

PARCEL NUMBER: SS03
DATE: APRIL 10, 2018

A PARCEL OF LAND IN THE SOUTHWEST QUARTER (SW 1/4) SOUTHEAST QUARTER (SE 1/4) OF SECTION 33, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING A PORTION OF THE PARCEL DESCRIBED BY SPECIAL WARRANTY DEED UNDER RECEPTION NUMBER 214104175 OF THE EL PASO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTHERLY LINE OF CONSTITUTION AVENUE AS RECORDED IN PLAT BOOK Y-3 AT PAGE 169 AND IS ASSUMED TO BEAR S89°58'14"W.

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 1 LOT 7 AS PLATTED IN "ROCKY MOUNTAIN INDUSTRIAL PARK FILING NO. 1" ACCORDING TO THE PLAT THEREOF UNDER RECEPTION NUMBER 202014735, THENCE N00°04'46"E ALONG THE EASTERLY LINE THEREOF, 6.10 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING N00°04'46"E ALONG SAID EASTERLY LINE A DISTANCE OF 30.01 FEET;
THENCE S88°06'49"E A DISTANCE OF 161.71 FEET TO THE WESTERLY LINE OF THE 30.00 FOOT UTILITY EASEMENT RECORDED UNDER RECEPTION NUMBER 205047082;
THENCE S00°18'18"W A DISTANCE OF 30.01 FEET;
THENCE N88°06'49"W A DISTANCE OF 161.60 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS A CALCULATED AREA OF 4,850 S.F. (0.111 ACRES MORE OR LESS).

PREPARED BY:


VERNON P. TAYLOR, COLORADO PLS NO. 25966 4/13/18
DATE

FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC
20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903



COLORADO SPRINGS UTILITIES 30' UTILITY EASEMENT

EXHIBIT A-4

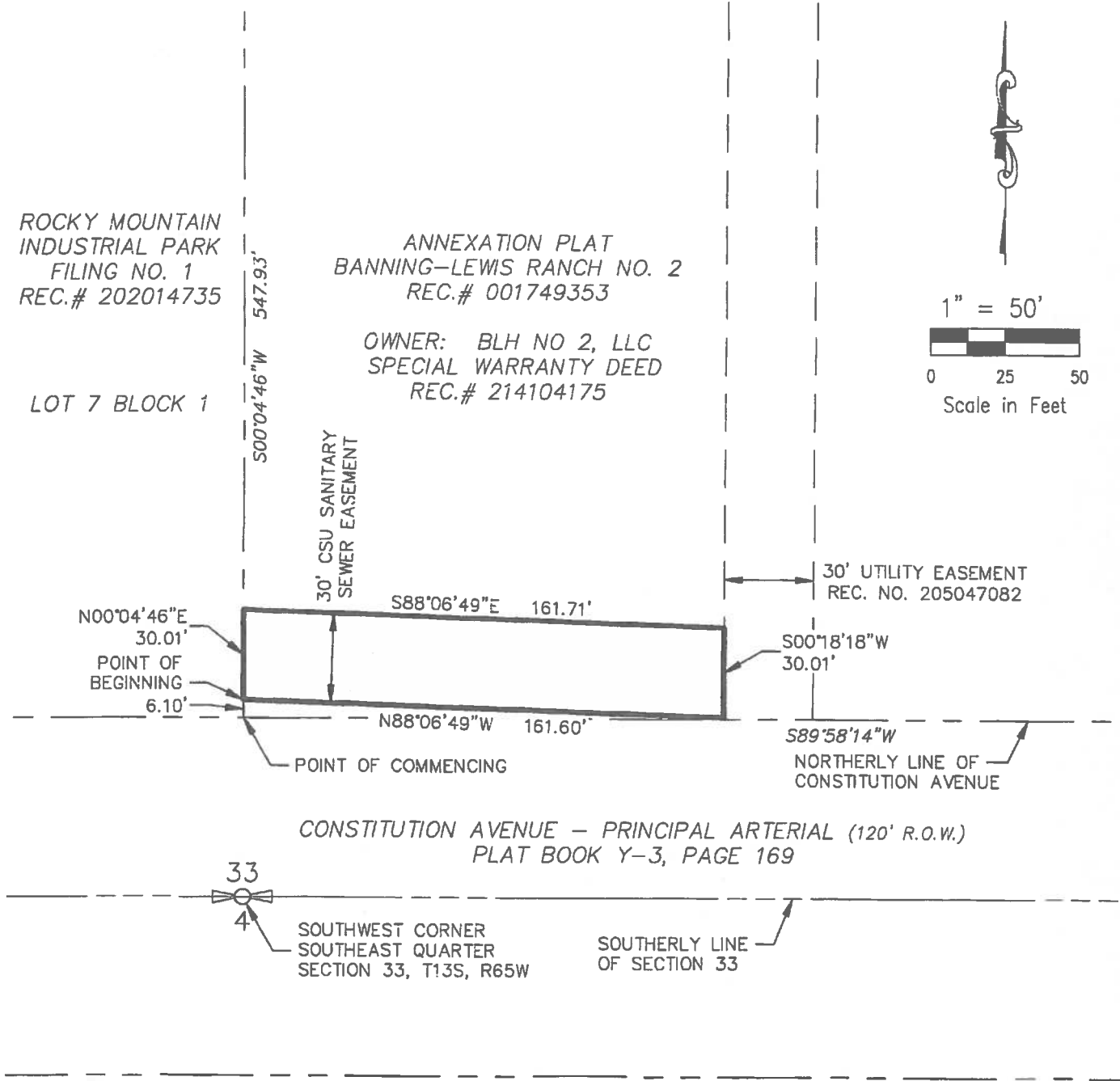
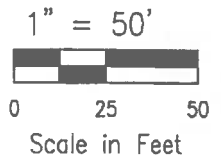
To Sands Metro Districts - City of Colorado Springs IGA

ROCKY MOUNTAIN
INDUSTRIAL PARK
FILING NO. 1
REC.# 202014735

LOT 7 BLOCK 1

ANNEXATION PLAT
BANNING-LEWIS RANCH NO. 2
REC.# 001749353

OWNER: BLH NO 2, LLC
SPECIAL WARRANTY DEED
REC.# 214104175



CONSTITUTION AVENUE - PRINCIPAL ARTERIAL (120' R.O.W.)
PLAT BOOK Y-3, PAGE 169

COLORADO SPRINGS UTILITIES
30' UTILITY EASEMENT
EXHIBIT "C"
JOB NO. 43-089
DATE PREPARED: 04/10/2018



20 BOULDER CRESCENT, SUITE 110
COLORADO SPRINGS, CO 80903
PHONE: 719.955.5485

SHEET 1 OF 1