

RESOLUTION NO. 06 - 24

A RESOLUTION APPROVING AN AGREEMENT TO ANNEX AND TO PROVIDE WASTEWATER SERVICE OUTSIDE THE CITY LIMITS TO 7508 TUDOR ROAD IN UNINCORPORATED EL PASO COUNTY

WHEREAS, the property owners in unincorporated El Paso County at 7508 Tudor Road, (TSN: 6306000010) (the "Property") requested wastewater service directly from Colorado Springs Utilities for multi-family residential use; and

WHEREAS, City Council has previously approved Agreements to Annex and water and wastewater service to other residences in this area, which is partially surrounded by the corporate limits of the City of Colorado Springs, Colorado in unincorporated El Paso County and Colorado Springs Utilities is providing water and wastewater service for other residences in the area; and

WHEREAS, Utilities currently provides water service to the Property pursuant to pre-existing contractual obligations that were assumed by the City in the purchase of certain water companies; and

WHEREAS, there is sufficient wastewater treatment capacity available to serve the Property; and

WHEREAS, wastewater distribution facilities do not exist in the area and a main extension is required to extend service to the Property; and

WHEREAS, the property owners have executed an Agreement to Annex and irrevocably consent to annex the Property to the City and have agreed to surrender groundwater rights as a condition of service; and

WHEREAS, the Property is outside the City limits but within an enclave that is partially surrounded by the City of Colorado Springs and Colorado Springs Utilities' water and wastewater service area; and

WHEREAS, "Residential Service – Outside City Limits" of the Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, requires prior City Council approval for Colorado Springs Utilities to provide end-use wastewater service outside the corporate limits of the City of Colorado Springs in areas where wastewater service is available from Utilities.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. The City Council finds the request for wastewater service at the Property from Colorado Springs Utilities for multi-family residential use is in the best interests of the City and meets all applicable requirements of the law.

Section 2. Pursuant to "Residential Service - Outside City Limits" of the Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, City Council hereby approves wastewater service outside the corporate limits of the City of Colorado Springs to the Property for multi-family residential use. The wastewater service may not be enlarged or the use changed without the prior written approval of the City. Any requests to enlarge service or change use shall be reviewed in accord with the then-current tariffs, rules, regulations, ordinances or other applicable law, and may require the property owners execute a new Agreement to Annex.

Section 3. The President of Council is hereby authorized to execute this Resolution and the Agreement to Annex in the form attached hereto on behalf of the City of Colorado Springs and the City Clerk is authorized to attest the President of Council's signature. The Chief Executive Officer of Utilities is authorized to administer the Agreement.

Dated at Colorado Springs, Colorado this 23<sup>rd</sup> day of January 2024.

  
Randy Helms, Council President

ATTEST:

  
Sarah B. Johnson, City Clerk



AGREEMENT PROVIDING WASTEWATER  
SERVICE TO LAND LOCATED OUTSIDE THE CITY  
LIMITS  
OF THE CITY OF COLORADO  
SPRINGS AND  
AGREEMENT TO ANNEX

WHEREAS, **Wesley D. Walters** and **Lael L. Walters** (collectively referred to as "Owner") are the owners of real property in El Paso County, Colorado, as shown on the location sketch map and as described and set forth in the attached Exhibit "A" (the "property"); and

WHEREAS, Owner owns a duplex building to be used for multi-family residential purposes at **7508 Tudor Road, Colorado Springs, CO 80919 (TSN: 6306000010)**, and has requested wastewater treatment service from the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"); and

WHEREAS, the property is located within an unincorporated area in El Paso County, which enclave is partially surrounded by the corporate limits of the City and which is or will be eligible for unilateral annexation by the City under the provisions of the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S., as amended (the "Annexation Act"), and Colo. Const. Art. II, section 30; and

WHEREAS, the City currently provides water service to the property pursuant to pre-existing contractual obligations that were assumed by the City in the purchase of certain water companies.

WHEREAS, the City has considered Owner's application for wastewater service, and has determined that the property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests of the City to annex the property at this time; and

WHEREAS, the City is under no obligation to furnish but is agreeable to furnishing wastewater service upon the terms and conditions set forth below because the City has determined that the extension of service under the terms of this Agreement constitutes a community benefit.

NOW, THEREFORE, in consideration of the promises and in further consideration of the benefits which will accrue to the City and Owner, the City and Owner have entered into this Agreement Providing Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Annexation Agreement (the "Agreement") subject to the following terms and conditions:

The Agreement shall constitute the unqualified and irrevocable consent of Owner to annex the property to the City and the City shall not be required to seek legal action to compel specific performance of this Agreement to Annex, but may proceed by ordinance to annex all or part of the property as if Owner had petitioned for annexation, whenever the property becomes eligible for annexation pursuant to the Annexation Act. Owner further agrees to execute a petition for annexation, prepare annexation plats, and execute

any other documents the City determines are necessary to annex Owner's property to the City. Owner agrees that the provisions of this Agreement are applicable to the property described in Exhibit "A" or any portion of the property. It is further agreed that Owner will not annex the property or any portion or incorporate the property with any other municipality or special service district as described in Paragraph 9 without the prior written consent of the City.

1. It is specifically understood that the wastewater treatment services to be furnished by the City are for only the multi-family residential use described in this Agreement and shall be in conformity with the regulations of the City in furnishing wastewater treatment outside its corporate limits and in further conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner understands and agrees that the City imposes charges for wastewater service for service provided outside of its corporate limits at a higher rate than applicable to the provision of services within the corporate limits of the City. Upon annexation of the property to the City, charges for wastewater service subsequent to annexation shall be at the rate applicable to the provisions of services within the corporate limits of the City.

2. If Owner or Owner's successor in interest desires a different wastewater service than granted the property in this Agreement, or desires to put the property to a use other than that stated above, a request shall be made to the City Council. If granted, the request shall be upon such terms and conditions as may be imposed by the Council. If the use of the property for which the request for the changed wastewater use is made involves subdividing the property or developing the property for residential, commercial or industrial purposes, the conditions for granting Owner's request shall include full compliance with the code, ordinances, rules, regulations and policies of the City.

3. If necessary, Owner will extend wastewater main lines or service lines to the property and upon the property, at Owner's expense, in accordance with the provisions of the City's codes, ordinances, rules, regulations and policies in effect at the time of the specific wastewater request. A first-come, first-served policy will govern availability of supply. In the event Owner is not required to extend wastewater service and lines and connect to the City's wastewater system at the time of entering into this Agreement, Owner shall connect to the City's wastewater system at Owner's expense when required under applicable codes, ordinances, rules, regulations and policies of the City in effect at the time of the request for service. Capacity of the system or treatment facility is not guaranteed by this Agreement, but by availability of service at the time of request. The first-come, first-served policy will govern availability of supply.

Owner agrees to pay the pro rata share of the wastewater treatment plant facility costs through the established wastewater system development charge. Owner will pay a pro-rata share of existing trunk sewer costs through established recovery agreement charges when required by codes, ordinances, rules, regulations or policies of the City. Water distribution and/or wastewater collection facilities required to serve the Property must be designed and constructed at Owner's expense in accordance with applicable codes, ordinances, rules, regulations or policies of the City at the time of the request for service, and will be required to be oversized to serve adjacent undeveloped land within the basin planning area boundaries.

Owner agrees to participate with other developments on a fair share pro rata basis in present and future off-site relief facilities.

4. As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owner grants to the City all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as the "Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owner concurrently with this Agreement and shall be made effective immediately after execution by the City. The Deed shall be recorded at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water-rights-related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner. Utilities may authorize Owner to continue to utilize wells located on the Property that are permitted or decreed for domestic purposes, until the Property is connected to the City's water system. Owner agrees that any wells permitted or decreed for domestic purposes only that are located on the Property at the time of connection to the City's water system will be plugged and abandoned in accord with state rules and regulations. The City may permit Owner to continue to use wells for irrigation or livestock purposes only in accord with the permit or decree when the permit or decree includes use of the well for irrigation or livestock purposes, provided that the City may withdraw this authorization upon notification to Owner by Colorado Springs Utilities. No commingling of well and City water supply will be permitted.

5. Owner shall also construct facilities, if determined necessary by the City Engineer, for the safe discharge of all subsurface water into a drainage conveyance facility. These facilities are not eligible for drainage basin credit or reimbursement.

6. Owner and the City acknowledge that if the property is not located within the corporate limits of the City at the time of its development, Owner nevertheless agrees to comply with all codes, ordinances, rules, regulations, and policies of the City including but not limited to the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, Utility Extension Policies, and Comprehensive Land Development Plan as now existing or subsequently amended, except to the extent that such compliance would be unlawful under the applicable resolutions, codes, and regulations of the El Paso County Board of County Commissioners or another governmental entity having jurisdiction. In the event compliance is unlawful under the applicable resolutions, codes

and regulations of the El Paso County Board of County Commissioners or other governmental entity having jurisdiction over the Property, Owner shall post assurances to bring any improvements into compliance with City codes, ordinances, rules, regulations and policies upon annexation.

Compliance with City codes, ordinances, rules, regulations and policies pertaining to land development shall require but shall not be limited to:

- (1) Payment of all applicable Water and Wastewater Development fees or charges.
- (2) Payment of required school/park sites or fees in lieu of dedication to the City.
- (3) Dedication, design, and construction of required streets, sidewalks, curbs, gutters, drainage and utilities, to City standards, or to the standards of the entity having responsibility for maintenance, whichever standard is stricter, or post acceptable financial assurances.
- (4) Dedication of easements including but not limited to utility, drainage and other public improvements as required by the City Subdivision Code, or post acceptable financial assurances.
- (5) Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees.
- (6) Agreement to participate with other developments on a fair share pro rata basis in present and future drainage and/or off-site relief or other water facilities.
- (7) City requirements for off-street parking in connection with the property and improvements and submission for City approval plans for adequate off-street parking.

7. Owner agrees to pay fees, charges and take such other actions as set forth in Paragraph 7 at the time of annexation, when required under the provisions of the applicable City codes, ordinances, rules, regulations, and policies or at any other time as requested by the City. Fees payable and requirements imposed under Paragraph 7 shall be those in effect at the time the fees are required to be paid or other action to be taken under the provisions of Paragraph 7 and not those fees in effect or requirements in effect at the time of execution of this Agreement. The City may require proof of payment or proper dedication of land prior to the connection of any wastewater service under this Agreement. This Agreement shall not be interpreted to require the City to install any park or drainage facility at any specific location or within any period of time, nor as relieving Owner of any liability or obligation to third persons to provide or to refrain from providing drainage. The City shall incur no obligation to Owner by reason of any claims, suits, judgments, or other liability or obligation resulting from Owner providing or failing to provide drainage. Owner specifically agrees to indemnify and hold the City harmless from all such claims.

8. Owner understands that certain infrastructure serving the property may be required by the City to meet appropriate City standards at the time of utility service extension to the property or at the time of annexation of the property to the City, or at another subsequent time as the City determines is appropriate to be upgraded to meet City standards. Infrastructure may include public utilities and public works projects,

including but not limited to, paving and improvements of streets, curb, gutters, drainage facilities, drainage, water or wastewater systems necessary to serve the property subject to this Agreement. Infrastructure may be designed, financed, constructed, and/or maintained by special districts or other entities. These entities may include, but are not limited to, special districts, general improvements districts, limited improvement districts, special improvement maintenance districts, metropolitan districts, and building authorities or another district by whatever name, whether established pursuant to or subsequent to the annexation of the property to the City or established prior to the annexation of the property to the City. This Agreement shall constitute Owner's unqualified and irrevocable consent to including the property within any of the foregoing entities and assessing the property a fair share of the cost of any improvements as determined by the City Council or the governmental authority having jurisdiction. In addition to or in lieu of the construction of improvements by the foregoing entities, the City may at any time require Owner to execute a time delay or other agreement obligating Owner and the property to pay for some or all of the improvements and a fair share as the City in its sole discretion may determine is appropriate.

9. The covenants and agreements contained in this Agreement shall run with the land described and affected by this Agreement, and shall extend to and be binding upon the Owner's heirs, assigns, legal representatives and successors and Owner for himself and his heirs, assigns, legal representatives and successors in interest. This Agreement shall be recorded with the El Paso County Clerk and Recorder.

10. As further consideration for the City providing wastewater services, if all or part of the property is eligible for annexation and if for any reason Owner or Owner's successor in interest does not or cannot abide by the terms and conditions of this Agreement, then the services provided may be terminated by and at the sole option of the City.

11. Nothing in this Agreement shall abridge or shall be construed as a limitation on the City's authority to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply generally or to the property specifically.

12. Owner will comply with all ordinances, codes, rules, regulations and policies of the City as now exist or may be amended or adopted in the future which are applicable to the property under the terms of this Agreement or are otherwise applicable to the property after the annexation to the City.

Extension of wastewater services under the terms of this Agreement is for the sole benefit of Owner and shall not be interpreted to create rights in a third party beneficiary or constitute City Council's determination of any policy pertaining to extension of wastewater service to other similarly situated individuals or property.

13. As used in this Agreement, the term "Owner", shall also mean any of Owner's heirs, executors, personal representatives, successors, transferees or assigns. A subsequent owner of the property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original Owner of the property.

14. This Agreement may be amended by Owner and the City. Any amendment shall be recorded in the records of El Paso County, shall run with the land and shall be binding upon all persons or entities now having or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment.

15. The parties to this Agreement agree that for breach of any covenant, term or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy, and the City may compel specific performance of this Agreement.

16. If any part of this Agreement is declared void by a Court of competent jurisdiction, the parties agree that the void provision shall not affect the remaining terms and conditions of this Agreement, which shall continue in full force and effect.



IN WITNESS WHEREOF, the City and Owner have executed this Agreement on the 24<sup>th</sup> day of January, 2023.

CITY OF COLORADO SPRINGS

BY: Randy Helms

Randy Helms, City Council President

ATTEST:

BY: Sarah Johnson  
Sarah Johnson, CITY CLERK

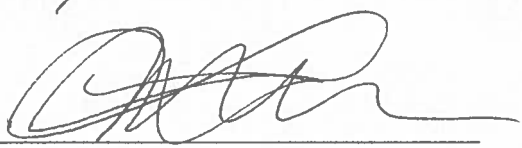


APPROVED AS TO FORM:

Renee  
City Attorney's Office

OWNER:

  
Wesley D Walters

  
Lael L Walters

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

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2023, by Wesley D Walters and Lael L Walters, as Owner.

My Commission expires: 03/11/2026

  
Notary Public

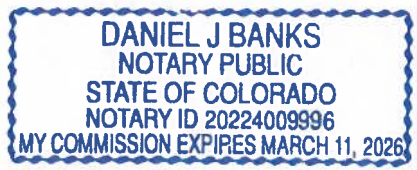
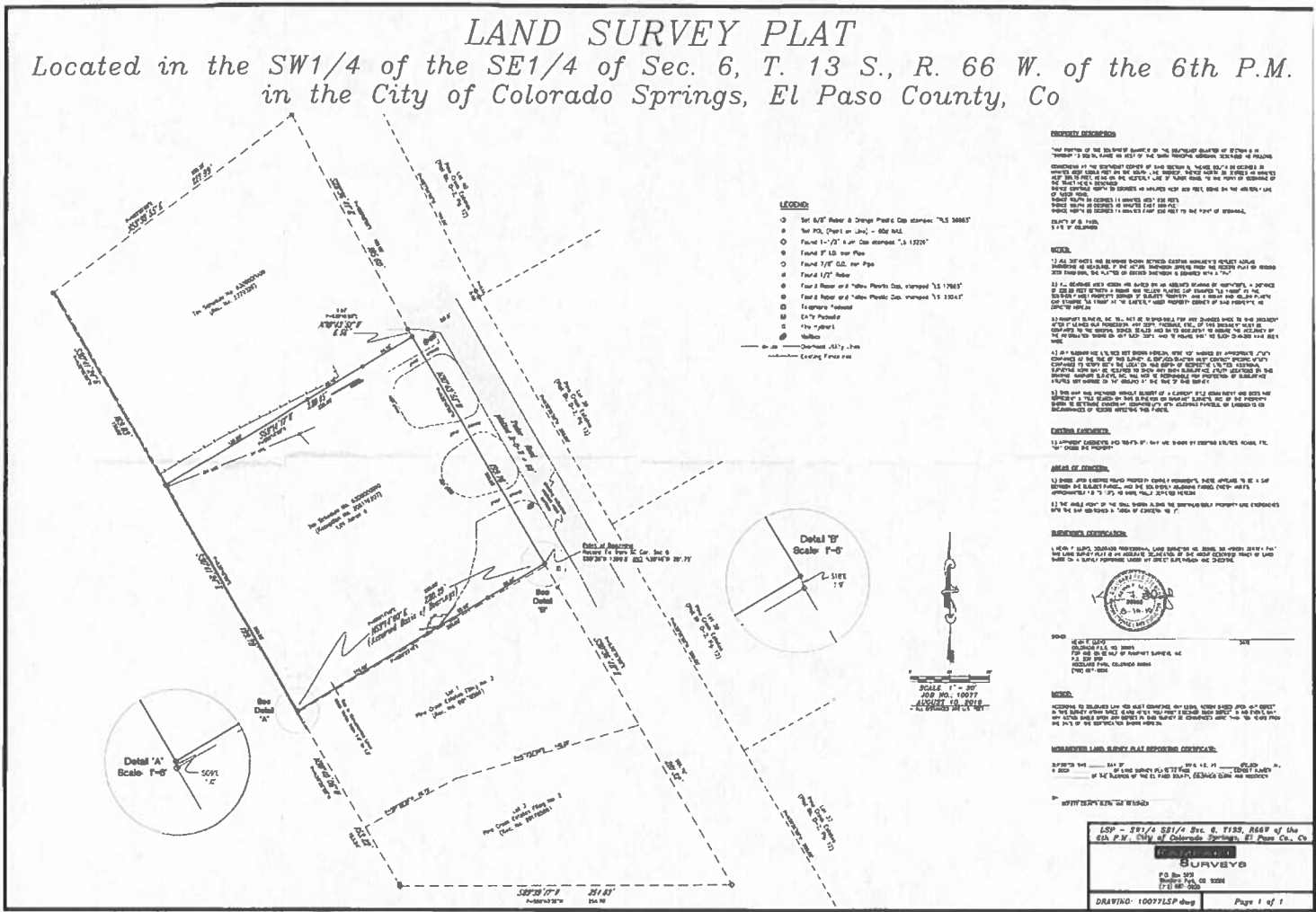


Exhibit "A"

LAND SURVEY PLAT

Located in the SW1/4 of the SE1/4 of Sec. 6, T. 13 S., R. 66 W. of the 6th P.M. in the City of Colorado Springs, El Paso County, Co



**PROPERTY RECORDS**  
 The portion of the subject quarter of the northeast quarter of Section 6, Township 13 South, Range 66 West of the 6th Principal Meridian, Colorado, as shown on the plat hereon, is shown as being owned by the following parties, to-wit: ...

**LEGEND**  
 1. 3rd 1/2" Rubber & Orange Plastic Cap stamped "LS 30885"  
 2. 3rd 1/2" (Dial on Job) - 800 N.E.  
 3. Found 1-1/2" x 1/2" Cap stamped "LS 12221"  
 4. Found 1/2" Iron Pipe  
 5. Found 1/2" O.D. Iron Pipe  
 6. Found 1/2" Iron  
 7. Found 2" Round and 1/2" Iron Plastic Cap stamped "LS 17861"  
 8. Found 2" Round and 1/2" Iron Plastic Cap stamped "LS 12041"  
 9. Iron Pipe  
 10. City Plat  
 11. 1/4" x 1/4" x 1/4"  
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EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
7508 Tudor Road Agreement to Annex

**Wesley D. Walters and Lael L. Walters** ("Grantor(s)"), whose address is 7508 Tudor Road, in consideration of the benefits received pursuant to the Agreement Providing Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex dated \_\_\_\_\_ ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property, collectively referred to as the "Water Rights," together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through, or under said Grantor(s). The Water Rights include, but are not limited to, those described in Exhibit B hereto.

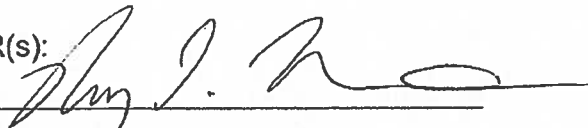
Furthermore, pursuant to C.R.S. § 37-90-137(4), as now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon its execution.

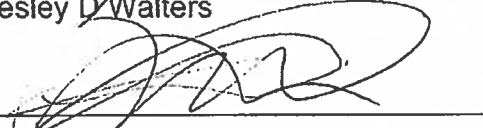
Executed this 9<sup>th</sup> day of January, 2024.

GRANTOR(s):

By:

  
\_\_\_\_\_

Wesley D. Walters

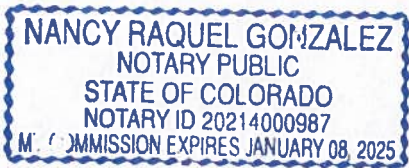
  
\_\_\_\_\_

Lael L. Walters

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 2024, by Wesley D. Walters and Lael L. Walters, Grantor(s).

My commission expires: January 8, 2025



Nancy Gonzalez  
Notary Public

Accepted by the City of Colorado Springs

By: Danley Kinsley this 25<sup>th</sup> day of January, 2024  
Real Estate Services Manager

By: Todd Shurtz this 23<sup>rd</sup> day of February, 2024

Approved as to Form:

By: Renee  
City Attorney's Office

Date: 1/24/24

Exhibit A

LEGAL DESCRIPTION

to the  
 Special Warranty Deed and Irrevocable Consent to the Appropriation,  
 Withdrawal and Use of Groundwater executed by  
Wesley D. Walters and Lael L. Walters, Grantor(s) on JAN 9, 2024

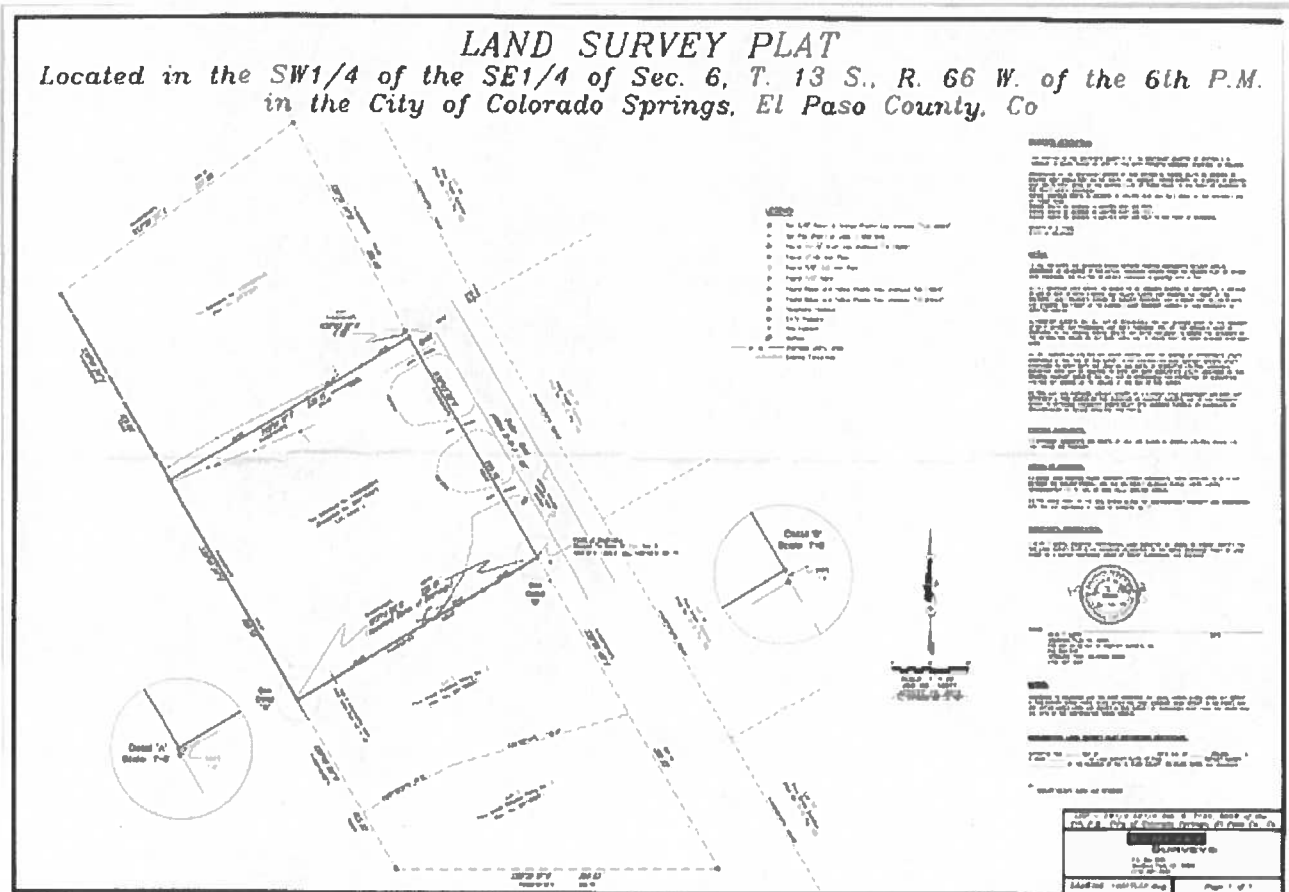


Exhibit B

to the  
Special Warranty Deed and Irrevocable Consent to the Appropriation,  
Withdrawal and Use of Groundwater Executed by  
Wesley D. Walters and Lael L. Walters Grantor(s) on Jan 9, 2024.

Decreed Groundwater Rights

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner:

Permitted Groundwater

Permit No.

Date of Permit:

Source:

Amount:

Name of Owner:

Legal Description of Well or other Structure:

Surface Water Rights

Name of Water Right:

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner: