

MEMORANDUM

TO: City of Colorado Springs

FROM: Spencer Fane, LLP
On behalf of Babcock Land Corporation and Lorson South Land Corporation

DATE: February 22, 2018

SUBJECT: The Sands Annexation and The Sands Metropolitan District Nos. 1-4 Service Plan and approval jurisdiction
- City of Colorado Springs Service Plan vs. El Paso County Service Plan

We discussed two primary matters that needed to be addressed regarding the Sands property Annexation and The Sands Metropolitan District Nos. 1-4 Service Plan. Currently the property being annexed comprises only the property within The Sands Metropolitan District Nos. 1-3, District No. 4 is not currently being annexed and will, for now, remain in El Paso County.

I. **Jurisdiction of the existing Sands Metropolitan District Nos. 1-4.**

The Sands Metropolitan District Nos. 1-4 (the “Districts”) is currently within El Paso County and subject to the County rules and regulations regarding special districts. Colorado Revised Statutes Section 32-1-204.7 provides for the designation of a municipality as the approving authority:

(1) If a special district that was originally approved by a board of county commissioners becomes **wholly contained within the boundaries of a municipality** or municipalities by annexation or boundary adjustment, the governing body of the special district may petition the governing body of any such municipality to accept a designation as the approving authority for the special district. The municipality may accept the designation through the adoption of a resolution of approval by the governing body of the municipality.

(2) Upon the adoption of the resolution by the governing body of any municipality pursuant to subsection (1) of this section, all powers and authorities vested in the board of county commissioners pursuant to this article shall be transferred to the governing body of the municipality, which shall constitute the approving authority for the special district for all purposes under this article.

As we are not annexing 100% of the property of the Sands Metro District Nos. 1-4, we cannot have the City as the approving jurisdiction for part but not all of the Districts. Additionally, any changes or modifications of jurisdiction if not taken in total and changing the approving jurisdiction, could



constitute a “material modification” necessitating both a Service Plan Amendment and approvals of both the County and the City for any changes.

As the Districts would be still subject to the County Service Plan, absent a subsequent amendment approved by the Board of County Commissioners there can be no changes with regard to changes of a basic or essential nature, including but not limited to the types of services provided by the special district; a decrease in the level of services; a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area. The annexation of the property would not trigger a material modification as defined in 32-1-207 C.R.S. and the property could still be subject to the approved development plans of the City for those areas being annexed without a need to amend the service plan or adversely affect the property or the service plan.

II. Comparison of the County vs. City Service Plan.

The following summarizes some of the substantive differences between the model service plan utilized by the City of Colorado Springs (“City Service Plan”) vs. the Consolidated Service Plan of The Sands Metropolitan District Nos. 1-4 approved by El Paso County (“County Service Plan”).

- A) Maximum Debt Service Mill Levy
 - City Service Plan: 30 mills (residential), 50 mills (commercial), subject to Gallagher adjustment going forward
 - County Service Plan: 50 mills (residential), subject to Gallagher adjustment as of date of County approval ;
35 mills (commercial)

- B) Debt Service Mill Levy Imposition Term
 - City Service Plan: 40 years (residential), No Limitation (commercial)
 - County Service Plan: 30 years (without prior approval of BOCC)

- C) Maximum Operating Mill Levy
 - City Service Plan: 10 mills, subject to Gallagher Adjustment
 - County Service Plan: 10 mills, subject to Gallagher Adjustment

- D) Maximum Special Purpose Mill Levy
 - City Service Plan: not referenced or allowed without unique approval
 - County Service Plan: Up to 5 mills

- E) Maximum Combined Mill Levy
 - City Service Plan: 40 mills (residential), 60 mills (commercial), subject to Gallagher adjustment going forward
 - County Service Plan: 65 mills, subject to Gallagher Adjustment



- F) Fee Limitations
- City Service Plan: fees generally allowed for operations and maintenance; limitations regarding “end user debt service fees; front end development fees such as platting fees or building permit fees are not prohibited
 - County Service Plan: Development fees permitted (\$2,500 per SFE unit; service fees for covenant enforcement/design review through special mill levy)
- G) Maximum Voted Interest Rate
- City Service Plan: not expected to exceed 18%
 - County Service Plan: Unstated, but 12% per submitted Executive Summary
- H) Maximum Underwriting Discount
- City Service Plan: 5%
 - County Service Plan: Unstated, but 5% was submitted and referenced in the Plan’s Executive Summary
- I) Debt Authorization Coverage
- City Service Plan: Not expressly stated
 - County Service Plan: 125% debt authorization coverage ratio
- J) Maximum term for repayment of a developer funding agreement
- City Service Plan: Not expressly addressed
 - County Service Plan: 20 years
- K) Eminent Domain
- City Service Plan: Prohibited from exercising power of eminent domain except with prior written consent of City
 - County Service Plan: May exercise eminent domain/dominant eminent domain “only as necessary to further the clear public purposes of the Districts”
- L) Annual Reports and Disclosure
- City Service Plan: Disclosure required, including to purchasers; form provided as exhibit to service plan; no updated annual disclosure required; annual report requirements stipulated in body of service plan, including requirements for copies of budgets and audits as applicable
 - County Service Plan: Disclosure required, including annual disclosure; form provided as exhibit to service plan; annual report requirements addressed by separate resolution outside of service plan; accessible but not made available to the City.



- M) Inclusion
- City Service Plan: Inclusion of additional property requires prior written consent of City
 - County Service Plan: Per condition 5 in the BOCC authorizing resolution, if more than 5 miles from boundary lines, considered a material modification requiring prior approval
- N) Development Plan and Construction Compliance
- City Service Plan: Requires Approved Development Plan and approvals for proposed Public Improvements
 - County Service Plan: Per condition 10, prior review and compliance with El Paso County Land Development Code and guidelines/regulations
- O) Funds from Other Government Sources
- City Service Plan: Prohibited except under an intergovernmental agreement with the City; use of Conservation Trust funds specifically prohibited without prior consent.
 - County Service Plan: Per condition 11, may not apply/utilize Conservation Trust funds without prior consent; can receive other grant funds, e.g. GOCO funds
- P) Authorization Prior to Issuance of Formal Debt
- City Service Plan: Required in service plan and by City Charter if debt exceeds 10% of assessed valuation.
 - County Service Plan: Not require or addressed
- Q) Conditions
- County Service Plan:
 1. Mill levy maximums (see A, C, D and E above)
 2. Maximum authorized debt (I above)
 3. Use of eminent domain (see K above) – condition emphasizes that exercise of eminent domain will be considered a material modification requiring prior approval
 4. Further restriction on eminent domain (see K above and P(3) above) – cannot use eminent domain “except when required for right-of-way for infrastructure purposes”
 5. Future annexation into district (see M above) – considered a material modification requiring prior approval
 6. Disclosure requirements, including disclosure to purchasers (see L above)
 7. Prohibition on creating sub-districts, Public Improvement Corporations or development corporations, except with notice and possible material modification designation – no comparable condition in City Service Plan



8. Covenant enforcement permitted – no comparable condition in City Service Plan; With the City Model Service Plans this function is not allowed unless it is included as an allowable function in Exhibit D of the service plan
9. County may require compliance with El Paso County Land Development Code and Engineering Criteria Manual – no comparable condition in City Service Plan
10. Construction activities require prior approval by Planning and Community Development (see N above)
11. No authority to apply/utilize Conservation Trust funds without prior consent; can receive other grant funds, e.g. GOCO funds (see O above)
12. No debt authorization until certain planning approvals obtained – no comparable condition in City Service Plan
13. Future alteration of densities/land uses constitutes a material modification requiring approval – no comparable condition in City Service Plan
14. Requirement to form a Citizens Advisory Council in the case of certain multiple district structures – no comparable condition in City Service Plan
15. Requirement to transition back to conventional district upon full development – no comparable condition in City Service Plan