

**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 \_\_\_ day of \_\_\_\_\_, 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

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 will take all necessary steps to transfer such approval authority for The 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, as well as the limitations as provided for in this Agreement. Once the approval authority status has been transferred to the City, The Sands Districts 1-3 agree that the governing document for The Sands Districts 1-3 shall remain the Service Plan, as expressly modified by this Agreement.

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.

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.

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 they will not exercise either eminent domain or dominant eminent domain without the prior written approval of the City. Notwithstanding the foregoing, if The Sands Districts 1-3, or any Annexation Property, cannot acquire off-site easements, rights-of-way, or other property necessary to develop the Annexation Property in accordance with approved development plans of the City, The Sands Districts 1-3 may request the City's assistance in acquiring the necessary easements, rights-of-way or other property for development of the Annexation Property. In such event, the City agrees that it will exercise eminent domain on behalf of The Sands Districts 1-3 and/or the Developer, as appropriate. Such assistance by the City shall not be unreasonably withheld or delayed.

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.

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

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: \_\_\_\_\_  
\_\_\_\_\_, City Attorney