

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 _____ day of _____, 2023.

CITY OF COLORADO SPRINGS

BY: _____

Randy Helms, City Council President

ATTEST:

BY: _____

Sarah Johnson, CITY CLERK

APPROVED AS TO FORM:

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 16th day of November, 2023, by Wesley D Walters and Lael L Walters, as Owner.

My Commission expires: 03/11/2026


Notary Public

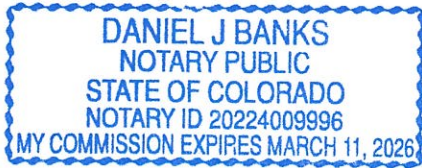
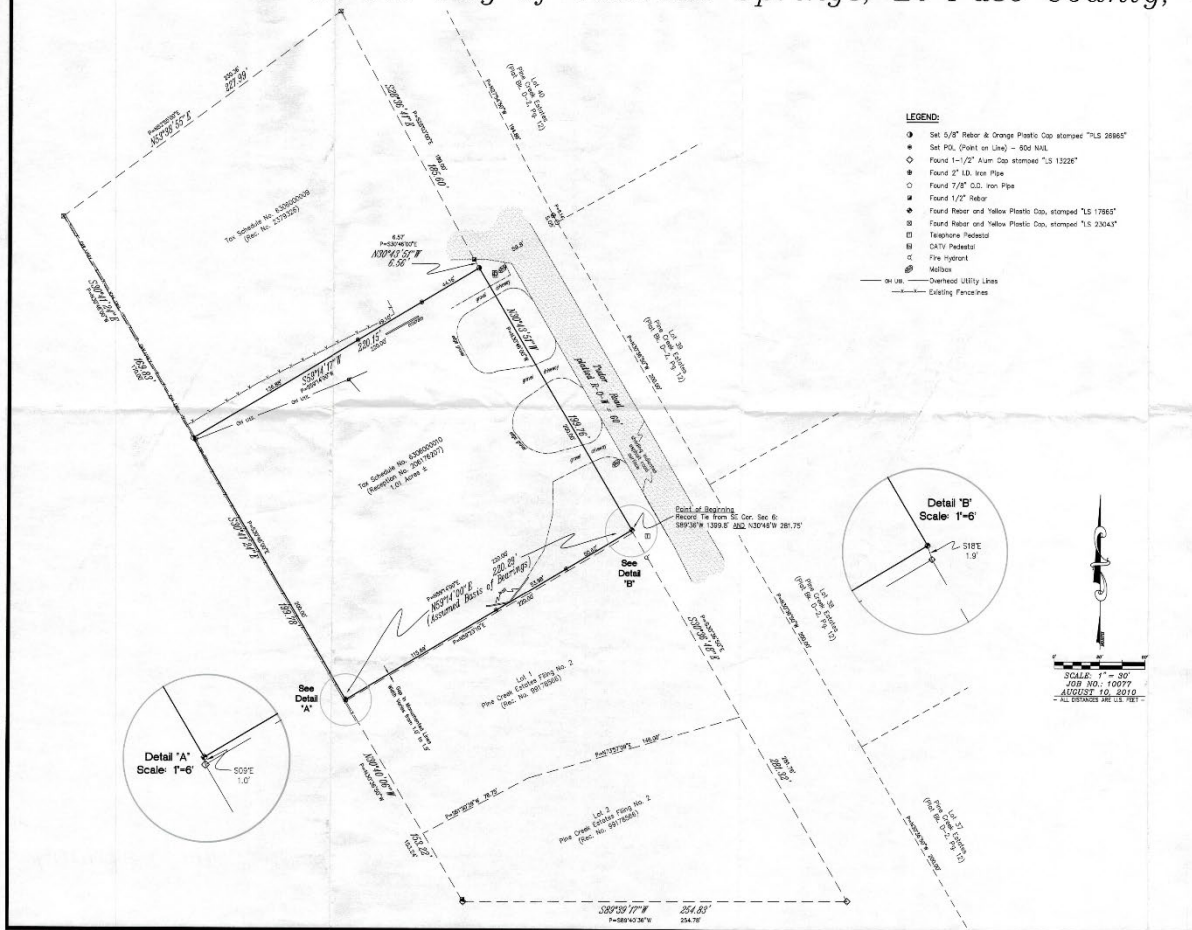


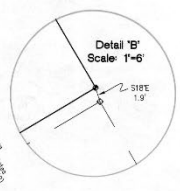
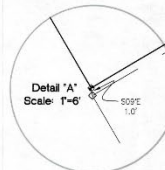
Exhibit "A"

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



- LEGEND:**
- Set 5/8" Rebar & Orange Plastic Cap stamped "T.L.S. 28867"
 - Set P.O.L. (Point on Line) - 80d NAL
 - Found 1-1/2" Alum. Cap stamped "L.S. 13226"
 - Found 2" I.D. Iron Pipe
 - Found 7/8" O.D. Iron Pipe
 - Found 1/2" Rebar
 - Found Rebar and Yellow Plastic Cap, stamped "L.S. 17867"
 - Found Rebar and Yellow Plastic Cap, stamped "L.S. 23047"
 - Telephone Pedestal
 - CATV Pedestal
 - ⊕ Fire Hydrant
 - Without
 - On/Off Overhead Utility Lines
 - Existing Fences



PROPERTY DESCRIPTION:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6 IN TOWNSHIP 13 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, INCLUDING AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 6, THENCE SOUTH BY BEARINGS AND DISTANCES AS HEREIN SET FORTH ON THE SOUTH-EAST TIERED, THENCE NORTH 30 DEGREES 45 MINUTES WEST 200 FEET, BEARING ON THE WESTERLY LINE OF FLOOR BEARING, TO THE POINT OF BEGINNING OF THE WESTERLY BOUNDARY;

THENCE SOUTH BY BEARINGS AND DISTANCES AS HEREIN SET FORTH, BEARING ON THE WESTERLY LINE OF FLOOR BEARING, 14 MINUTES WEST 200 FEET, BEARING ON THE WESTERLY LINE OF FLOOR BEARING, 30 DEGREES 45 MINUTES WEST 200 FEET, TO THE POINT OF BEGINNING;

COUNTY OF EL PASO, STATE OF COLORADO.

NOTES:

- 1) ALL DEFINITIONS AND BEARINGS SHOWN BETWEEN EXISTING MONUMENTS REFLECT ACTUAL DIMENSIONS AS MEASURED BY THE SURVEYOR, UNLESS OTHERWISE NOTED ON THE RECORD PLAT OR RECORD DEED INSTRUMENT, THE PLATES OR DEEDS DIMENSIONS IS CORRECT WITH A "P".
- 2) ALL BEARINGS GIVEN WITHIN ARE BASED ON AN ASSUMED BEARING OF MONUMENTS, A DISTANCE OF 200 FEET BEING USED AS A CHECK AND CHECKED AGAINST THE DISTANCE TO BEING 200 FEET AT THE POINT OF BEGINNING OF SAID PROPERTY CORNER. ALL BEARINGS AND DISTANCES ARE GIVEN AS BEARINGS AND DISTANCES TO THE EXTERIOR, NOT PROPERTY CORNER OF THE PROPERTY AS DEFINED THEREIN.
- 3) MONUMENT SURVEYS, INC. WILL NOT BE RESPONSIBLE FOR ANY CHANGES MADE TO THIS DOCUMENT BY THE LOCAL GOVERNMENT, ANY OTHER AUTHORITY, ETC. OF THIS DOCUMENT MUST BE COMPARED TO THE ORIGINAL RECORD, WHICH IS THE ONLY DOCUMENT TO BE USED TO VERIFY THE ACCURACY OF THE INSTRUMENT SHOWN ON ANY SURVEY, AND TO INSURE THAT ALL CHANGES HAVE BEEN MADE.
- 4) ANY SURVEYOR UNLESS NOT SHOWN HEREIN, WERE NOT MARKED BY APPROPRIATE UTILITY COMPANIES AT THE TIME OF THIS SURVEY. UTILITY COMPANIES MUST CONTACT SURVEYOR UTILITY COMPANIES MUST BE NOTIFIED OF ANY UTILITY LOCATIONS ON THIS SURVEY. SURVEYOR WILL BE RESPONSIBLE TO SHOW ANY SUCH UTILITY LOCATIONS ON THIS SURVEY. SURVEYOR WILL BE RESPONSIBLE TO SHOW ANY SUCH UTILITY LOCATIONS ON THIS SURVEY. SURVEYOR WILL BE RESPONSIBLE TO SHOW ANY SUCH UTILITY LOCATIONS ON THIS SURVEY.
- 5) THE SURVEYOR HAS REVIEWED ALL RECORDS OF RECORDS AFFECTING THIS PLAT.

EXISTING ENCUMBRANCES:

1) ALL ENCUMBRANCES AND RIGHTS-OF-WAY ARE SHOWN BY EXISTING UTILITIES, ROADS, ETC. THAT CROSS THE PROPERTY.

AREAS OF CONCERN:

1) BASED UPON EXISTING FLOOR PROPERTY CORNER MONUMENTS, THERE APPEARS TO BE A GAP BETWEEN THE SUBJECT PARCELS, AND THE SURVEYOR'S RECORDING PARCELS, WHICH WOULD APPROXIMATELY 10 TO 15 FEET, AS MORE FULLY DEPICTED HEREIN.

2) THE WALL POINT OF THE WALL SHOWN ALONG THE SOUTHWESTERN PROPERTY LINE ENCLOSES INTO THE GUTTERED IN AREA OF CONCERN, IS 7'.

SURVEYOR'S CERTIFICATION:

I, JOHN C. LEBLANC, COLORADO PROFESSIONAL LAND SURVEYOR NO. 28865, DO HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO AND THAT I AM THE SURVEYOR OF THIS SURVEY AND THAT I HAVE PERSONALLY SUPERVISED AND CHECKED THE WORK OF ANY ASSISTANTS EMPLOYED BY ME IN THE CONDUCT OF THIS SURVEY.



DATE: _____

JOHN C. LEBLANC
COLORADO P.L.S. NO. 28865
P.O. BOX 2700
WEEKS PARK, COLORADO 80866
(719) 587-8000

NOTICE:

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN 90 DAYS FROM THE DATE OF RECORDING THIS SURVEY. IF YOU HAVE ANY DEFECT IN THIS SURVEY, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN 90 DAYS FROM THE DATE OF RECORDING THIS SURVEY.

MONUMENTS LAND SURVEY PLAT DEPOSITING CERTIFICATE:

DEPOSITED THIS _____ DAY OF _____ 2010 A.S. AT _____ O'Clock P.M. IN BOOK _____ OF LAND SURVEY PLATS OFFICE OF THE COUNTY CLERK OF EL PASO COUNTY, COLORADO.

DEPOSIT CERTIFY GLEN WEISSER

LSP - SW1/4 SE1/4 Sec. 6, T13S, R66W of the 6th P.M., City of Colorado Springs, El Paso Co., Co

RAMBERT SURVEYS

P.O. Box 1001
Windsor Park, CO 80866
(719) 587-8000

DRAWING: 10077LSP.dwg Page 1 of 1

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 9th day of January, 2024.

GRANTOR(s):
By: 

Wesley D Walters

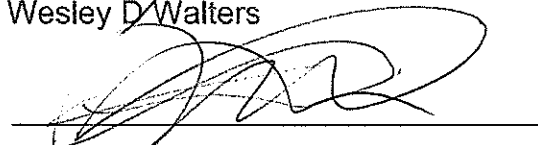

Lael L Walters

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: