

**AMENDED AND RESTATED
BANNING LEWIS RANCH ANNEXATION AGREEMENT**

THIS AMENDED AND RESTATED BANNING LEWIS RANCH ANNEXATION AGREEMENT ("Amended Agreement"), dated this ___ day of _____, 20__, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and the owners of the Property, as defined below, which are listed on Exhibit "A" attached hereto and incorporated herein (each an "Owner" and collectively "Owners" or "Property Owners").

I.
INTRODUCTION

The Owners own all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit "B" (the "Property"). The Property was annexed into the City of Colorado Springs by City Council Ordinances Nos. _____. As a result of those annexations, the Property is subject to that certain Annexation Agreement dated September 23, 1988, by and between nineteen (19) annexors and the City of Colorado Springs, often referred to as the "Aries Annexation Agreement" and referred to herein as the "Aries Annexation Agreement"; which was recorded in the records of the El Paso County Clerk and Recorder's Office at Book 5557 page 405. The terms of the Aries Annexation Agreement were incorporated into the annexation agreements for Banning Lewis Ranch Annexation Nos. 8 through 20. The Aries Annexation Agreement and the annexation agreements for Banning Lewis Ranch Annexation Nos. 8 through 20 are referred to herein collectively as the "Original Annexation Agreement". The Original Annexation Agreement was the subject of litigation. The litigation was resolved by Settlement Agreement that clarified several of the obligations in the Original Annexation Agreement. The District Court issued an order approving the Settlement Agreement, under which the City was required to conduct a study of the shared infrastructure obligations and to develop a method to equitably apportion the costs and reimbursements of the identified shared infrastructure among the Owners. The City conducted the study and developed a method to equitably apportion the development costs and reimbursements ("Shared Obligation Study"). One additional agreement has been entered into affecting the Property pursuant to the above agreements, which is identified on Exhibit "C" hereto and referred to as the "Related Agreement" herein. As a result of the continued litigation and the lack of development on the Property over the years since the annexation in 1988, the Owners and the City agreed to review the Original Annexation Agreement and the Shared Obligation Study and the Related Agreement to determine whether modifications would be beneficial to both sides.

The Owners believe that the obligations as outlined in the Original Annexation Agreement are too onerous and inhibit development of the Property. The City believes it would benefit from the development of the Property in many ways, including increased utility and tax revenue. Therefore, a small group of the Owners that own the majority of the Property and the City have renegotiated the terms of the Original Annexation Agreement for the purposes of (1) making development of the Property equal in terms of development charges with development in other parts of the City, and (2) ensuring that the City does not subsidize development of the Property and development of the Property does not subsidize the City. This Amended Agreement represents the terms reached through those settlement negotiations. As such, both the City and Owners wish to and do hereby (i)

terminate the Related Agreement, and (ii) amend and restate the Original Annexation Agreement in its entirety as stated herein to help ensure the Property's orderly and efficient development.

This Amended Agreement is entered into pursuant to the provisions of Section 8 of that certain Order and Judgment of the El Paso County District Court recorded on March 16, 2005 at Reception No. 205037381, records of El Paso County, Colorado. Provided however, there are certain parts of the Property that have already been developed in compliance with the Original Annexation Agreement. The parties hereto agree that any Owner that has fully performed its obligations under the Original Annexation Agreement with respect to property platted prior to the date of this Amended Agreement has no further obligations under the Original Annexation Agreement or under this Amended Agreement with respect to such property. In addition, those properties are not entitled to any additional benefits under the Original Annexation Agreement or this Amended Agreement other than those benefits to which all properties within the boundaries of the City are entitled.

As used in this Amended Agreement, "City Code" means those provisions of the City's Charter, City of Colorado Springs Code, 2001, as amended, Utilities Tariffs, Utilities Rules and Regulations, Utilities Line Extension Service Standards, and Policies as they now exist or may be subsequently amended to the extent all of the foregoing are uniformly applicable throughout the City, provided any fees or other charges assessed pursuant to them do not exceed similar charges uniformly applicable throughout the City, except utility recovery agreement charges assessed in accordance with City Code. Any provisions of the City's code, utilities tariffs, utilities rules and regulations and policies as they now exist or may be subsequently amended which are not uniformly applicable throughout the City, including, but not limited to, any Banning Lewis Ranch specific provisions, shall have no applicability to the Property after the effective date of this Amended Agreement, and shall not be included in the definition of City Code as that term is used in this Amended Agreement.

In consideration of the mutual covenants contained in this Amended Agreement, the receipt and sufficiency of which are acknowledged by each of the parties, the City and Owners agree as follows:

II.
LAND USE

Subject to Article III below, development of the Property will be generally consistent with the approved master plan or an amended master plan approved in accord with City Code (the "Master Plan"). Master Plan amendments shall be accompanied by a fiscal impact analysis performed by the City, as required by City Code.¹

III.
ZONING

The City agrees that the Owners' Property shall retain its current zoning as exists on the effective date of this Amended Agreement in accordance with the City Code. Prior to any development occurring on any Owner's

¹ Pursuant to Chapter 7, Article 5 of City Code, major Master Plan amendments must be accompanied by a fiscal impact analysis. The criteria for determining whether a Master Plan amendment is major or minor are set forth in City Code.

portion of the Property, if an Owner wants to develop its portion of the Property inconsistent with the current zoning, the Owner of such property will seek City approval of a rezoning of such property to an appropriate new zone (s) in accordance with the City's zoning regulations. All zoning requests will be accompanied by a concept plan, or a similar plan as required by City Code at the time of submittal. Any such rezoning requests must be for a minimum of 300 contiguous acres, except when an ownership interest is less than 300 contiguous acres, the entire contiguous ownership interest must be included in the rezoning request.

The City will not impose any conditions for approval of any land use applications that are inconsistent with City Code and the requirements of this Amended Agreement. Owners acknowledge and understand that the City Council shall in all cases determine what an appropriate zone or condition of the approval is for the Property so long as such are consistent with City Code and this Amended Agreement.

A development agreement meeting the requirements of Chapter 7, Article 9, part 2 of the City Code shall be required with each requested rezoning to specify development requirements as outlined in this Amended Agreement and City Code, provided such does not impose any conditions or obligations on the property involved in excess of what is allowed under City Code uniformly applied throughout the City. If rezoning is not required, a development agreement will be required with a concept plan application and may be amended with the approval of a development plan, or if a concept plan is not required, then a development agreement will be required with the development plan application. In addition, a development plan approved in accordance with City Code shall be required for any development of all or any portion of the Property after the effective date of this Amended Agreement.

IV.
PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development, the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by the Owners and accepted by the City, shall be maintained by the City or another public entity, including but not limited to a metropolitan district, special district, public improvement district, or intergovernmental authority. In limited cases, such improvements may be constructed or maintained by public improvement corporations or other non-governmental entities so that they do not create a financial burden upon the City. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code as modified by this Amended Agreement (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: (1) Utility facilities and extensions for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (for water, wastewater, gas and electric utility service, refer to Chapter 12 of the City Code and Section V. "Utilities Services" of this Amended Agreement.); (2) Highways, streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; (3) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; (4) Arterial roadway bridges; (5) Parks; (6) Schools; and (7) Other facilities and improvements warranted by a specific land development proposal.

It is understood that all public facilities and improvements shall be subject to the provisions of the Chapter 7, Article 7 of the City Subdivision Code, unless otherwise specifically provided for under the terms and provisions of this Amended Agreement or an applicable development agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. The parties acknowledge that metropolitan districts are subject to the requirements of Colorado law and City Code, including the City's Special District Policy.

1. Banning Lewis Ranch Regional Metropolitan District. As a condition to its approval of this Amended Agreement, City Council has approved a restructuring of the Banning Lewis Ranch Regional Metropolitan District and its service plan in a manner consistent with this Amended Agreement and has also approved a resolution terminating the Modified and Restated Wastewater Facilities Participation Utilization and Service Agreement recorded February 20, 2009 at Reception No. 209017179, records of El Paso County, Colorado as subsequently amended and/or assigned, together with all intergovernmental agreements entered into pursuant to it (the "Wastewater Agreement") in its entirety.
2. Future Districts. The parties anticipate that some Owners will seek formation of special districts as part of future development of the Property. The City will review applications for such districts upon request of the Owner involved and in accordance with applicable Colorado law, City Code and the City's Special District Policy.

C. Streets, Bridges and Traffic Control. Unless otherwise expressly agreed to the contrary elsewhere in this Amended Agreement, the Owners agree to construct, at the Owners' expense and in accordance with City Code, all those highway, street, bridge and/or traffic improvements adjacent to or within the portion of the Property owned by them. These improvements shall also include mutually acceptable dedications of right-of-way and easements, and extension and widening of highways, streets and right-of-way.

1. On-Site or Adjacent Streets. The City will act on requests to vacate excess portions of rights-of-way previously dedicated which are no longer needed as determined by PUD and future rezonings to PUD as provided by this Amended Agreement, including any previously dedicated rights-of-way for Banning Lewis Parkway in excess of one hundred forty-two feet (142'), in accordance with the City's legislative process for vacating rights-of-way. Vacations under this Section will be considered upon request from the Owner involved after the applicable PUD (or other zoning as provided in Section III above) has been approved by City Council. No vacation shall result in any Owner being denied all reasonable access to his property from a roadway included in the transportation plan. No vacation shall be approved unless all matters regarding fees and credits collected, granted or applied at the time of, or in connection with, the original dedication are resolved to the City's satisfaction.
2. Traffic Control Devices. Traffic and street signs, striping, and traffic control devices, and landscaped medians and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City will be provided in

accord with City Code and may be outlined in a future development agreement for each zoning or rezoning of the Property. Installation of traffic signals may be deferred until after proposed development warrants signals, as determined by the City Traffic Engineer applying the criteria set forth in the Manual on Uniform Traffic Control Devices in use at the time or other nationally accepted standard. Once any intersection meets the specified criteria, the City will notify the Owners of the portion of the Property involved in writing and the traffic device involved thereupon shall be installed as provided by City Code.

D. Drainage. The Sand Creek Drainage Basin and the Jimmy Camp Creek Drainage Basin are both located on the Property. Subject to required approvals, Sand Creek Drainage Basin and the Jimmy Camp Creek Drainage Basin as contained on the Property may each be developed as separate “closed basins,” with Owners being responsible, at their sole cost, to construct such storm water control systems and “Best Management Practices” (“BMPs”), drainage detention and other related facilities in conformance with the City’s then-current Drainage Criteria Manual and the applicable drainage basin planning studies so as to discharge stormwater from the Property onto adjacent and downstream properties at no more than historic flows as to location, quantity and velocity. Owners will amend any existing drainage basin planning studies affecting their Property and seek the required approvals as necessary to implement this “closed basin” concept, including closure of tributary and sub-basins. In recognition of developing as “closed basin” systems, the Property shall not be subject to any additional requirement for payment of drainage fees under City ordinances. Upon receipt of appropriate approvals of the modification of the drainage basin studies showing “closed” drainage basins, the City will convey to the applicable Owners, or vacate, any land previously dedicated to the City for drainage facilities no longer needed pursuant to the “closed basins” drainage systems. In exchange for such conveyances, any credits received by the Owners for previously-dedicated property that is conveyed pursuant to this Section will be cancelled, with any deficiency in otherwise payable fees being adjusted accordingly.

The Owners agree to maintain the detention/water quality ponds and storm water control systems and channels until areas tributary to those facilities are stabilized. Once the tributary areas are stabilized and the facilities are finally accepted by the City pursuant to City Code, the City will take ownership of the storm water control systems, channels and the areas within the detention/water quality ponds that may include items such as the trickle channels, forebays, micropools, orifice plates, trash racks and outlet structures. The Owners agree to maintain the perimeter of, and side slopes into, the detention/water quality ponds.

E. Parks

1. Dedication. Dedication of land for parks, trails and/or open space or payment of fees in lieu of the dedication shall be required in accordance with City Code at the time of submittal of an application for a concept plan or development plan, if not previously dedicated or paid. When offered to the City, open space dedications shall be assessed pursuant to the Park Site Dedication Ordinance (City Code Chapter 7, Article 7, Part 12). If the Parks and Recreation Advisory Board determines that the offered open space meets the assessment criteria and wishes to accept the dedicated open space, the dedicated open space shall be granted at least 50% credit toward the park dedication requirement. No more than 50% of the parkland dedication requirement for any Owner's property may be satisfied by open space credits granted pursuant to this Amended Agreement. However, an Owner may elect to receive credit for open space as provided in the then applicable City Code and policy in lieu of the above provisions. Owners may submit and the City may approve a comprehensive parks, trails and open space master plan for Banning Lewis Ranch, or any portion thereof, in accordance with the applicable parks master plan review criteria establishing general location and size of parks, trails and open space areas, and access thereto from public rights of way. Upon approval by the City, such plan will be used for dedication of land with concept plan or development plan submittals. The acreage of the Jimmy Camp Creek Park shall be included in determining the total regional and community (but not neighborhood) park requirements for the Property pursuant to City Code, but no Owner will be entitled to a credit against future park dedication or fee-in-lieu of dedication requirements on account of the prior donation of Jimmy Camp Creek Park. Land dedicated for neighborhood parks will be platted and platting fees therefor paid by the Owner involved. Land for parks which are not required pursuant to a particular development (larger than a neighborhood park) will not be required to be platted by the Owner.

Owners agree to provide by deed or easement sufficient right-of-way, to the extent owned by Owners, not to exceed the City's standard trail configurations for a multi-use trail in the Jimmy Camp Creek Drainage Basin and for the Rock Island Loop as shown in the Master Plan.

2. Vacation. The City will act on requests to vacate excess trail corridors previously dedicated which are in excess of the City's standard trail configurations. Vacations under this Section will be made upon request from the Owner involved after PUD (or other applicable zoning) has been approved by City Council.

F. Schools: School site dedications or fees in lieu will be determined in accordance with City Code. When it is determined that land is to be dedicated (rather than fees paid), the land identified for the school site will be reserved by the Owner until the school district indicates that it is prepared to develop the school site for school purposes, at which time the Owner will convey the school site to the school district free of any monetary encumbrances. If no development activity has occurred on the reserved property within fifteen (15) years of reservation, upon the request of Owner, the City will coordinate with the school district to determine future use of the reserved property. If the school district determines reserved property is no longer needed for school purposes, then the land involved will no longer be reserved for school purposes and the then-applicable fees in lieu for the portion of the Property involved will be paid as provided by City Code.

G. Improvements Adjacent to Park and School Lands. Streets and other required public improvements adjacent to park and school lands dedicated within the Property will be designed and constructed by the Owners, subject to reimbursement as provided by City Code.

H. Airport/Avigation Easements. Owners agree to provide an avigation easement to apply to all the Property which lies under the Part 77 approach surfaces as defined by the Federal Aviation Administration prior to platting any Property impacted by aircraft traffic as determined by the City's Director of Aviation. Such avigation easement shall be provided upon a form acceptable to the City.

V.
UTILITY SERVICES

A. Colorado Springs Utilities' Services: As the City's utility enterprise, Colorado Springs Utilities' ("CSU") water, non-potable water, wastewater, electric, streetlight, and natural gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to CSU's facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and CSU determine that the applicant meets all applicable requirements of the City Code and CSU Tariffs, Utilities Rules and Regulations ("URRs"), and Line Extension and Service Standards ("Standards") for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication of real and personal property, public rights-of-way, private rights-of-way, or easements that CSU determines are required for the extension of any proposed Utility Service from CSU's system facilities that currently exist or that may exist at the time of the proposed extension.

Owners shall ensure that the connections and/or extensions of Utility Services to the Property are in accordance with City Code and CSU's Tariffs, URRs, and Standards, and Pikes Peak Regional Building Department codes in effect at the time of Utility Service connection and/or extension. Extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by CSU shall be provided as specified in City Code, except as expressly modified by this Amended Agreement. Owners further acknowledge that such connection requirements shall include Owners' payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service as provided by City Code. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owners are responsible for contacting CSU's Utilities Development Services to ascertain which fees or charges apply to the Property in advance of development of the Property.

Owners acknowledge that annexation of the Property does not imply a guarantee of Utility Service supply or capacity, and CSU does not guarantee Utility Service to the Property until such time as permanent service is initiated and approved. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owners upon annexation, and the City and CSU make no commitments as to the availability of any Utility Service at any time in the future. Furthermore, CSU may

require Owners to enter into CSU-approved Utility Service developer agreements to further define and identify the facilities needed to serve the Property and Owners' responsibilities related to such facilities.

B. Dedications and Easements: Notwithstanding anything contained in Article XI, of this Amended Agreement to the contrary, Owners, at Owners' sole cost and expense, shall dedicate or convey by recorded document, all property (real and personal) and easements that CSU determines are required for all utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system.

Owners shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU in its sole discretion.

Further, all dedications and conveyances of real property must comply with the City Code shall be subject to CSU's environmental review. Neither the City nor CSU has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using CSU's then-current Permanent Easement Agreement form with such modifications as may be reasonably required and appropriate to reflect current or planned site conditions and development.

If Owners, with prior written approval by CSU, relocate, require relocation, or alter any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owners' sole cost and expense. If CSU, in its sole discretion, determines that Owners' relocation or alteration requires new or updated easements, Owners shall convey those easements prior to relocating or altering the existing utility facilities using CSU's then-current Permanent Easement Agreement form without modification. CSU will only relocate existing gas or electric facilities during time frames and in a manner that CSU determines will minimize outages and loss of service.

C. Extension of Utility Facilities by CSU:

1. Electric and Gas Facilities: Subject to the provisions of this Article and City Code, CSU will extend electric and gas service to the Property if CSU, in its sole discretion, determines that there will be no adverse effect to any Utility Service or utility easement. Owners shall cooperate with CSU to ensure that any extension of gas or electric facilities to serve the Property will be in accordance with City Code. Notwithstanding anything else in this paragraph to the contrary, in the event any of the Property is receiving electric utility service from an electric service provider other than CSU as of the date of this Amended Agreement, Owners agree to pay the then-current electric service provider for the costs specified in C.R.S. §§ 40-9.5-204 (1) (a) and 40-9.5-204 (1) (b) within 30 days of receipt of an invoice for such costs.
2. Water and Wastewater Facilities: In accordance with City Code, CSU shall be responsible for the construction of centralized water and wastewater treatment facilities needed to serve the Property. In the event CSU or other developers design and construct other water or wastewater system improvements CSU determines are needed to serve the Property, Owners shall be required to pay cost recovery for the engineering, materials, and installation costs incurred by CSU or the other developer in its design, construction, upgrade, or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or

other water system facilities and appurtenances and any wastewater pump stations, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances. For the purpose of this Agreement, interceptor lines, or those collection mains located outside of the City to which there are no CSU connections other than the initial connections to the CSU wastewater system, shall be considered centralized wastewater treatment facilities. Notwithstanding the above, if the additional wastewater system improvements are necessitated by extension of City wastewater services to land outside the City limits as of the Effective Date of this Amended Agreement, or to a change of land use for land within the City, but outside the Property, Owners shall not be required to contribute to the cost of those wastewater system improvements, except pursuant to cost recovery agreements with third parties for wastewater improvements installed by those third parties which provide wastewater capacity to Owners.

D. Water System Extensions by Owners: Owners must extend, design, and construct all City-owned potable and non-potable water system facilities and appurtenances to and within the Property in accordance with City Code in effect at the time of each specific request for water or wastewater service. Consistent with City Code § 7.7.1102 (B), Owners shall complete the design and installation and obtain preliminary acceptance of such utility facilities prior to CSU's approval of Owners' water service requests.

E. Wastewater System Extensions. Except as otherwise provided for in this Amended Agreement, Owners shall construct, at their expense, all wastewater collection mains and service lines as provided by City Code, and may enter into cost recovery agreements with CSU for these lines as provided in City Code. All the Property outside the Jimmy Camp Creek basin shall be required to pay an advance recovery charge of \$469.00 per single family equivalent unit toward the cost of off-site facilities required for the property involved. This payment will be due, and may be increased, as provided by City Code. All funds held by CSU in the escrow account established by Section VIII(B)(2) and (3) of the February 10, 2009 "Modified and Restated Wastewater Facilities Participation, Utilization and Service Agreement" will be released to CSU. Notwithstanding the above requirements, CSU agrees that it may share in the cost of the Deep Pipe Diversion and Zig Zag Main identified in Exhibit "D" attached hereto and incorporated herein by reference (the "Utilities' Wastewater System Improvements") if such improvements have been determined to provide a benefit to CSU by reducing demand on existing wastewater facilities.

F. Interim Utility Facilities and Service: In some instances, it may be in the interest of the Owners and the City to construct interim facilities to serve development within the Property until such time as the Property may be feasibly served by permanent facilities. For purposes of this paragraph, "interim facilities" include those that do not conform to CSU's long-range system master plan(s), as well as those needed to connect the Property to facilities of another utility service provider, so long as service is approved by CSU. In the event interim facilities are required to serve the Property, the Owners will dedicate any required land or easements and are responsible for the full cost of the interim facilities on a non-refundable basis. Land dedicated for interim facilities shall revert to the Owners if CSU determines that such land is no longer required for interim or permanent Utility Service. Any interim facilities will comply with all applicable requirements of City Code and Colorado law.

G. Southeastern Colorado Water Conservancy District: CSU and Owners acknowledge that the Property should have previously been included within the boundaries of the Southeastern Colorado Water Conservancy

District ("District") as required by C.R.S. § 37-45-136 (3.6), and the rules and procedures of the District. In the event it is determined that any portion of the Property is not within the District, the Owners shall be responsible for taking all actions required for inclusion of that portion of the Property into the boundaries of the District, including but not limited to, any action required to obtain consent to inclusion from the United States Bureau of Reclamation. The Owners acknowledge that water service for any portion of the Property will not be provided by CSU until such time as CSU has confirmed with the District and/or the United States Bureau of Reclamation that the portion of the Property has been included within the boundaries of the District. The Owners further acknowledge that following inclusion into the District, the Property shall be subject to a property tax mill levy imposed by the District.

H. Water Rights: The City and the Property Owners acknowledge that all right, title, and interest to any and all groundwater underlying or appurtenant to the Property and any and all other water rights appurtenant to the Property (collectively, the "Water Rights"), including but not limited to the rights listed on Exhibit "E", were previously granted to the City as part of the Original Annexation Agreement. By executing this Agreement, Owners confirm such grant.

Pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, and as previously acknowledged in the Original Annexation Agreement, on behalf of Owners and all successors in title, Owners previously irrevocably consented 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 conveyed, Owners agree 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 Owners' Property without additional consent from Owners.

CSU and the City agree that Owners may construct and use any wells or groundwater now or hereafter developed by Owners for agricultural uses on or within the Property. Owners may also construct and use additional groundwater wells on the Property in accordance with Colorado law and City Code for non-potable, non-residential purposes, including for parks, commonly owned or maintained landscaping, golf courses and other recreational areas, and non-potable industrial uses, such as evaporative cooling. The City will provide augmentation service for any such groundwater use as required by state law pursuant to its existing augmentation decrees, and the Owners of the Property using the groundwater will pay CSU rates and charges therefor in accordance with the applicable CSU Tariff. No commingling of well and City water supply will be permitted, unless otherwise approved by Utilities.

I. Limitation of Applicability: The provisions of this Amended Agreement set forth the requirements of the City and CSU in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or CSU to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Amended Agreement so long as these conform to the definition of City Code contained in Section I of this Agreement.

VI.
FIRE PROTECTION

The Owners acknowledge that portions of the Property may be located within the boundaries of the Falcon Fire District or the Cimarron Hills Fire District (the "Fire Districts") and is subject to property taxes payable to the Fire Districts for its services. The Owners further acknowledge that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the Fire Districts until such time as the Property is excluded from the boundaries of the Fire Districts. After annexation of the Property to the City, fire protection services will be provided by the City through its Fire Department and by the Fire Districts unless and until the Property is excluded from the Fire Districts. After annexation, the Property will be assessed property taxes payable to both the City and the Fire Districts until such time as the Property is excluded from the boundaries of the Fire Districts.

The Owners understand and acknowledge that the Property may be excluded from the boundaries of the Fire Districts under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the City's request agrees to apply to the Fire Districts for exclusion of the Property from the Fire Districts. The Owners understand and acknowledge that the Owners, their heirs, assigns and successors in title are responsible for seeking any exclusion from the Fire Districts and that the City has no obligation to seek exclusion of any portion of the Property from the Fire Districts, nor to bear any responsibility for the indebtedness of the Fire Districts or otherwise be responsible for the obligations of the Districts.

VII.
FIRE PROTECTION FEE

Unless otherwise provided by City Code, the Owners agree to pay a fee of \$1,631.00 per gross acre (the "Fire Protection Fee") of the Property as Owner's share of the capital costs of new fire stations and the initial apparatus purchases required to service the Property as well as adjacent areas of future annexation. The Fire Protection Fee shall be subject to a yearly escalation factor, as determined by the City, equal to the increase in the City of Colorado Springs Construction Index, or in the event such index is no longer published or available, a comparable index, from the date of this Amended Agreement. The Fire Protection Fee shall be due and payable upon issuance of a building permit. As each plat of portions of the Property is approved, the Planning Director will determine the per-building permit fee for that plat, based on the then applicable per-acre Fire Protection Fee and the acreage of residential, commercial and industrial land within the plat and the densities provided for in that plat. The per-building permit fee will then be subject to annual escalation in the same manner as the Fire Protection Fee. All or a portion of the Fire Protection Fee may be waived if an Owner dedicates or has dedicated land for a new station. The amount of the Fire Protection Fee that will be waived will be based on the acreage of the site dedicated times the then current per-acre value used to establish park and school in-lieu fees pursuant to City Code. The City agrees as future annexations occur within the service area of the proposed fire station, the owners of future annexations will be required to pay the same per-acre Fire Protection Fee to the City as is then applicable to the Property. All Fire Protection Fees collected from platting the Property will be held by the City in a restricted account which may be used only for acquisition, construction and equipping fire stations within the Property.

VIII.
POLICE SERVICE FEE

Unless otherwise provided by City Code, the Owners agree to pay a fee of \$677.00 per gross acre (the "Police Service Fee") of the Property as Owner's share of the capital costs of new police stations and the initial equipment purchases required to service the Property as well as adjacent areas of future annexation. The Police Service Fee shall be subject to a yearly escalation factor, as determined by the City, equal to the increase in the City of Colorado Springs Construction Index, or in the event such index is no longer published or available, a comparable index, from the date of this Amended Agreement. The Police Service Fee shall be due and payable upon issuance of a building permit. As each plat of portions of the Property is approved, the Planning Director will determine the per-building permit fee for that plat, based on the then applicable per-acre Police Service Fee and the acreage of residential, commercial and industrial land within the plat and the densities provided for in that plat. The per-building permit fee will then be subject to annual escalation in the same manner as the Police Service Fee. All or a portion of the Police Service Fee may be waived if an Owner dedicates or has dedicated land for a new station. The amount of the Police Service Fee that will be waived will be based on the acreage of the site dedicated times the then current per-acre value used to establish park and school in-lieu fees pursuant to City Code. The City agrees as future annexations occur within the service area of the proposed police station, the owners of future annexations will be required to pay the same per-acre Police Service Fee to the City as is then applicable to the Property. All Police Service Fees collected from platting the Property will be held by the City in a restricted account which may be used only for acquisition, construction and equipping police stations within the Property.

IX.
PUBLIC LAND DEDICATION

Owners shall provide City all written and executed instruments necessary or desirable to effect conveyances prior to platting or prior to the development of the Property as determined by City in accordance with this Amended Agreement. Owners shall pay all fees and costs applicable to and/or associated with the dedication to the City as required by City Code and this Amended Agreement, and all fees and costs associated with the conveyance of real property interests, including but not limited to, Phase 1 and Phase 2 environmental assessments, closing costs, title policy fees, and recording fees for any and all deeds, correction deeds, permanent or temporary easement documents, or other required documents. Except as otherwise provided in this Amended Agreement, dedicated and/or deeded properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded or dedicated to the City free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802 and *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests*.

Further, all dedications and conveyances of real property must comply with the City Code, and shall be subject to City or CSU's environmental review.

Except as otherwise provided herein, Owners agree that all land dedicated or deeded to the City for municipal or utility purposes, including neighborhood park sites and excluding regional and community parks and open space, shall be platted and all applicable development fee obligations paid. Except as otherwise provided herein, all fees that would be applicable to the platting of land that is to be dedicated to the City shall be paid

by Owners. Except as otherwise provided herein, fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. Except as provided above, all dedications shall be platted by the Owners prior to conveyance, unless waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

- A. All property deeded to the City shall be conveyed by Warranty Deed.
- B. Owners shall convey the property to the City within thirty (30) days of the City's written request.
- C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.
- D. All property taxes levied against the property shall be paid by the Owners through the date of conveyance to the City.
- E. An environmental review or audit of the property must be completed for review and approval by the City as provided in City Code and *The City of Colorado Springs Manual for the Acquisition and Disposition of Real Property Interests*.
- F. Acceptance by the City, in its sole discretion.

X.

RELATIONSHIP OF OWNERS

Each Owner shall: (a) develop its property in such manner, and at such time, as it chooses in accordance with applicable law, (b) solely be responsible for its on-site development costs and obligations as evidenced in development plans approved by the City, and (c) have no obligation, liability, or responsibility for the on-site development of another Owner (including the obligations of another Owner for development obligations of such other Owner), other than as provided by City Code or pursuant to cost recovery agreements for streets and oversized facilities as provided by City Code. The Owners are entering into this Amended Agreement as owners of real property and not as members of a joint venture with, or as partners of, one or more of the other Owners. No Owner has the authority to act as agent for, or bind, another Owner.

XI.

ORDINANCE COMPLIANCE

Owners will comply with City Code as it now exists or is amended or adopted in the future, including those related to the subdivision and zoning of land, provided such are uniformly applicable throughout the City, except as expressly modified by this Amended Agreement. This Amended Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, standards, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Amended Agreement so long as these are uniformly applicable throughout the City.

XII.
ASSIGNS AND HOLDERS OF LIENS

When in this Amended Agreement, the term the "Owners" or "Property Owners" is used, the terms shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owners and all these parties shall have the right to enforce and be enforced under the terms of this Amended Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Amended Agreement shall always be to the Owners signing this Agreement unless specifically assigned to another person.

By executing this Amended Agreement, all holders of liens upon any of the Property agree that: (1) should it become Owner of any of the Property through foreclosure or otherwise, that it will be bound by the terms and conditions of this Amended Agreement which accrue after the date it acquired such ownership to the same extent as Owner, and (2) should it become owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Amended Agreement shall be subordinate to this Amended Agreement.

XIII.
RECORDING

This Amended Agreement shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and its provisions shall constitute covenants running with the land. This Amended Agreement shall be binding on future assigns of the Owners and all other persons who may purchase land within the Property from the Owners or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Amended Agreement shall be made to the Owners and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XIV.
AMENDMENTS

This Amended Agreement may be amended by agreement of any Party, including their respective successors, transferees, or assigns, with the City, without the consent of any other party or its successors, transferees, or assigns, so long as the amendment does not adversely impact property owned by another Party and applies only to that property owned by the amending party. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Amended Agreement remains in full force and effect as to property owned by any non-amending party. The City Council may, in its sole and absolute discretion, refuse to agree to any amendment, or delay or condition its agreement to an amendment.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment."

XV.
HEADINGS

The headings set forth in this Amended Agreement for the different sections of this Amended Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of this Amended Agreement.

XVI.
DEFAULT AND REMEDIES

If any of the Owners or City fails to perform any material obligation under this Amended Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Amended Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Amended Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Amended Agreement, as well as any other remedies provided by law.

XVII.
GENERAL

Reserved.

XVIII.
NO THIRD-PARTY BENEFICIARIES

It is specifically agreed between the Parties that this Amended Agreement is not intended by any of its terms, provision, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Amended Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions, or provisions of this Amended Agreement. The City does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as now written or amended in the future.

XIX.
SEVERABILITY

If any provision of this Amended Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.

XX.
COUNTERPARTS

This Amended Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

XXI.
INDEMNIFICATION

By executing this Amended Agreement each Owner represents and warrants to the City and the other Owners: (1) that he, she or it is the sole lawful owner of the portion of the Property on behalf of which he, she or it is executing this Amended Agreement; (2) that he, she or it has received all necessary approvals and is authorized to execute this Amended Agreement and bind said portion of the Property; and (3) that he, she or it shall indemnify, defend and hold harmless the other Owners and the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, causes of action, or any liability whatsoever, resulting from, or arising out of any breach of the warranties included in clauses (1) and (2) above.

XXII.
EFFECTIVE DATE

This Amended Agreement shall be effective as to all Owners who have signed this Amended Agreement forty-five (45) days from the date the City Council of the City of Colorado Springs approves this Agreement by Resolution. If all Owners or lienholders who have an interest in the Property have not executed or consented to this Amended Agreement within forty-five (45) days from the date of City Council approval of this Amended Agreement, the Parties acknowledge that the City will pursue obtaining an order from a court of law having jurisdiction over the Owners and lienholders having an interest in the Property and the matters contemplated herein binding all such Owners and lienholders to the terms of this Amended Agreement. If requested by the City, all Owners or lienholders who have executed this Amended Agreement will join in an application by the City for such court order and no such Owner shall object to the City's application or to the jurisdiction of the court.

During the pendency of a court action filed by the City as described above, the City will authorize development of any portion of the Property by an Owner pursuant to this Amended Agreement, upon execution by the City and the Owner of an agreement under which the Owner will agree that if the court action results in a final order not adopting this Amended Agreement, the Owner shall pay all fees and charges payable on account of that development under a new Shared Obligation Study identifying those common infrastructure improvements the City then determines will be reasonably required for the contemplated development of Banning Lewis Ranch under this Amended Agreement, unless proceeding in this manner would be inconsistent with the decision of the court, in which case, the City and the Owners will comply with the order of the court. The cost of this new study will be jointly paid for by the Owners of the Oakwood and Nor'wood parcels. Any Owner who had or would have been entitled to receive credits under the Original Annexation Agreement will be entitled to apply those credits to such fees.

In addition, if any Owner who is a signatory to this Amended Agreement sells, transfers, assigns, or otherwise conveys ownership of property subject to this Amended Agreement to a third party, the Owner shall include a requirement in the contract for sale or transfer or assignment that the third party acquiring ownership from the Owner acknowledges and ratifies the Owner's signature on this Amended Agreement and affirmatively agrees to be bound by this Amended Agreement.

DRAFT

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the ____ day and ____ year first written above.

CITY OF COLORADO SPRINGS

BY: _____
John W. Suthers, Mayor

ATTEST:

BY: _____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY: _____
Wynetta Massey, City Attorney

PROPERTY OWNER:

(Owner)

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ ,
by _____ as Owner(s).

Witness my hand and notarial seal.

My commission expires: _____

Notary Public
Address: _____

DEED OF TRUST HOLDER:

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___,
by _____ as _____.

Witness my hand and notarial seal.

My commission expires: _____

Notary Public
Address: _____

EXHIBITS STILL TO BE UPDATED

EXHIBIT "A"

PROPERTY OWNERS

EXHIBIT "B"

DESCRIPTION OF THE PROPERTY

EXHIBIT "C"

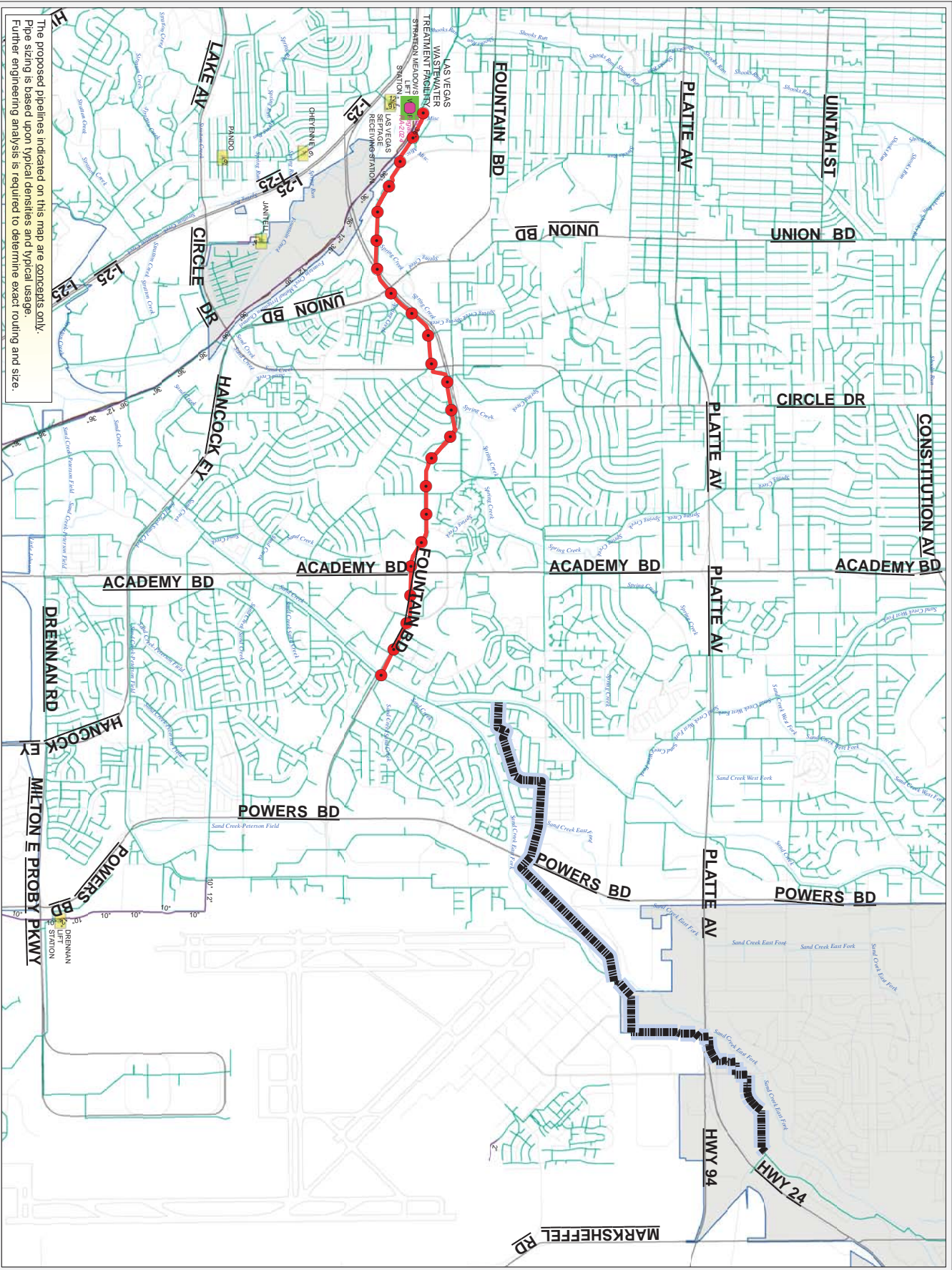
RELATED AGREEMENT

1. Subdivision/Development Improvements Agreement between the City of Colorado Springs, MREC Oakwood Colorado Ranch LLC, MREC Oakwood Colorado Investments LLC, and MREC Oakwood Colorado IV-VI LLC dated June 20, 2013, regarding drainage improvement and fee obligations.

EXHIBIT "D"

UTILITIES' WASTEWATER SYSTEM IMPROVEMENTS

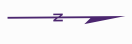
See Attached Map



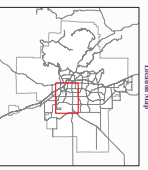
The proposed pipelines indicated on this map are concepts only. Pipe sizing is based upon typical densities and typical usage. Further engineering analysis is required to determine exact routing and size.



Scale 1" = 24,000'



Plan File Created: 2/5/2018



Legend

- Planning Pipes - Deep Pipe Diversion
- Planning Pipes - Zig-Zag Main
- Lift Station
- Gravity Main
- Sanitary Mains
- COLO SFGS
- SUBURBAN
- Treatment Plants

Sand Creek Basin Outfall Enhancements Deep Pipe Diversion and Zig-Zag Projects

EXHIBIT D

EXHIBIT "E"

WATER RIGHTS

The following ground water rights decreed in District Court in and for Water Division No. 2, Case No. W-1174 on November 23, 1973:

Name	Permit	State ID #
BL-24	21355-F	1005040
BL-54	18228-C	1005043
BL-52	18228-A	1005041
BL-53	18228-B	1005042
BL-55	18228-H	1005049
BL-56	18228-D	1005045
BL-57	18228-I	1005046
BL-58	18228-J	1005047
BL-59	15891-K	1005048
BL-60	15892-L	1005044
BL-61	15893-M	1005050
BL-62	21356-F	1005051
BL-63	21357-F	1005052

The following ground water rights decreed in District Court in and for Water Division No. 2, Case No. W-2694 on June 21, 1976:

Name	Well Permit
Janitell Well No. 202	19273-2
Janitell Well No. 207	19273-7
Janitell Well No. 209	19273-9
Janitell Well No. 211	19273-11
Janitell Well No. 213	19273-13
Janitell Well No. 215	12547
Janitell Well No. 218	12541
Janitell Well No. 219	19753
Janitell Well No. 221	19273-Swap 1
Janitell Well No. 222	19273- Swap 2

The following ground water rights decreed in District Court in and for Water Division No. 2, Case Nos. 83CW133(A) on May 5, 1987:

Name
Aries A-11
Aries A-12
Aries A-13
Aries A-14
Aries A-16
Aries A-17
Aries A-18
Aries A-19
Aries A-20

The following ground water rights decreed in District Court in and for Water Division No. 2, Case Nos. 83CW134(A) May 5, 1987:

Name

Aries LF-11
Aries LF-12
Aries LF-14
Aries LF-15
Aries LF-16
Aries LF-18
Aries LF-19
Aries LF-20
Aries LF-21
Aries LF-22
Aries LF-23
Aries LF-24
Aries LF-26
Aries LF-28
Aries LF-29
Aries LF-30

The following ground water rights decreed in District Court in and for Water Division No. 2, Case Nos. 83CW135(A) May 5, 1987:

Name

Aries D-11
Aries D-12
Aries D-13
Aries D-14
Aries D-15