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El Paso County, CO
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RESOLUTION NO 18-371

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION TO APPROVE A REVOCABLE LICENSE AGREEMENT WITH BLACK HILLS CORPORATION FOR THE INSTALLATION OF A SEWER LINE WITHIN THE PALMER LAKE RECREATION AREA

WHEREAS, El Paso County ("County") owns real property within the Town of Palmer Lake known as the Palmer Lake Recreation Area ("Park"); and

WHEREAS, the Palmer Lake Sanitation District ("District") owns and operates a sewer line within the northern portion of the Park along County Line Road; and

WHEREAS, the Black Hills Corporation ("Licensee") purchased real property immediately adjacent to the Park for an operations center; and

WHEREAS, the Licensee is proposing to install a sewer line from their property to the Districts sewer line located within the Park; and

WHEREAS, the Licensee will install and maintain the sewer line and requires ingress and egress across the Park property for this purpose; and

WHEREAS, the Licensee will pay a fee of $1,510 to offset impacts to the Park; and

NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby approves the Revocable License Agreement, subject to the terms and conditions cited therein.

BE IT FURTHER RESOLVED, that the Board of County Commissioners hereby recognizes revenue and appropriate expenditures for $1,510 in the following manner:

Recognize Revenue:

11228.36601	Other Miscellaneous	$1,510

Appropriate Expenditure:

11228.42482.01	Repair and Maintenance	$1,510

Done this 2nd day of October, 2018 at Colorado Springs, Colorado.

EL PASO COUNTY, COLORADO
EST. 1861

ATTEST:

By: _____
County Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

By: _____
President

REVOCABLE LICENSE AGREEMENT
(Black Hills Corporation)

THIS REVOCABLE LICENSE AGREEMENT (hereinafter "Agreement"), dated and delivered this ____ day of _____, 2018, is made by EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (the "Licensor"), whose address is 200 South Cascade Avenue – Suite 100, Colorado Springs, CO 80903, and Black Hills Corporation ("Licensee"), whose address is 7001 Mount Rushmore, Rapid City, SD, 87702. The Licensor and the Licensee may be collectively referred to herein as the Parties.

RECITAL:

WHEREAS, the Licensor owns real property located in El Paso County, Colorado at Oakdale Drive and County Line Road, Palmer Lake, CO 80133, commonly referred to as the Palmer Lake Recreation Area, and known as that part of blk 5 town of palmer lake which is 70 ft wide ly alg nwly ln of sd blk 5, at El Paso County Tax Schedule No. 7105113002, (hereinafter "Property"); and

WHEREAS, the Licensee wishes to install, own, and operate a sewer line running north/south within the Palmer Lake Recreation Area, which is located on the Property; and

WHEREAS, the Licensor is agreeable to allowing the installation of a sewer line from the Licensee, that connects to an existing sewer line, to provide sewer service to a facility located adjacent to the Property; and

WHEREAS, Licensee desires to use the Licensor's property, for the following purposes that include, but are not limited to: installation of the sewer line and other equipment and fixtures and as incident thereto, and in connection therewith, to construct, maintain, and operate the sewer line (hereinafter "Utilities") for use by Licensee, and for the benefit of Licensor, with reasonable ingress and egress across Licensor's property for any purpose necessary in connection therewith; and

WHEREAS, the Licensee is required to obtain all necessary permits and pay any permit fees that may be required prior to performing any work in the Licensor's property and right-of-way under this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.

2. Description and Use of the Licensed Premises: The Licensor hereby grants to Licensee a license for ingress and egress onto the Property, legally described and depicted in Exhibit A, which is attached hereto and incorporated herein, in which area depicted in the Exhibit shall be hereinafter referred to as the "Licensed Premises". The License is granted to Licensee to access, construct, install, maintain and repair the Utilities (referenced above) within the Licensed Premises. As this Agreement only creates a license, each Parties' rights and obligations stated hereunder are exclusively contractual. Thus, each Party agrees and understands that this Agreement does not create any type of real estate interest of any kind or nature or any type of possessory estate or possessory interest in the Licensed Premises. The entire Licensed Premises shall be for the use of Licensee, their employees, agents, servants and invitees for any lawful purposes associated with the Utilities, and related purposes for the benefit of the Licensee and the Property.

Licensee agrees to pay a fee of $1,510.00 to the Licensor for the easement area. Licensor shall be responsible for all costs and fees and for construction of the Utilities.

3. Term and Commencement of Use: The License shall commence on the date first written above, hereinafter referred to as the Commencement Date, and it shall continue in perpetuity unless terminated in whole or in part by the Licensor as more fully set forth in Paragraph 4 below.

4. Termination by Licensor for Valid Public Purpose: The Licensor shall be entitled to terminate the License on all or part of the Licensed Premises for any valid public purposes, upon 180 days written notice to the Licensee. Upon the Licensor's exercise of its right to terminate, the Licensee shall be entitled to compensation from Licensor for the cost of removal, and relocation if applicable, of the Utilities within the 180-day notice period; however, Licensee shall not be entitled to any additional payment of any compensation or just compensation under any cause of action at law or in equity for the retaking of the Licensed Premises. Licensor and the Licensee shall retain their respective rights and obligations under this Agreement only with respect to any part of the Licensed Premises not so utilized by the Licensor for a valid public purpose. The Licensee shall have the right to remove all or a portion of the Utilities in the area where the License is being terminated within the 180-day notice period. The Licensee shall not have any further rights or obligations with respect to any part of the Licensed Premises utilized by the Licensor for a valid public purpose. In the event of a termination under this Section 4, and if Licensee does not remove the Utilities within the 180-day

termination notice period, Licensor will make best efforts to salvage or allow for Licensee to recover any Utilities, but Licensee shall not be entitled to any compensation if the Utilities are recovered outside of the 180-day notice period.

5. Condition of the Licensed Premises, Obligation to Make Repairs, Obligation to Remain in Compliance with Laws: The Licensee agrees and understands that it commences its use of the Licensed Premises "AS IS" and without any warranties of any kind or nature, including without any warranties as to the state of the Licensor's title to the Licensed Premises. It shall be the Licensee's sole obligation to maintain and make any necessary repairs to the Utilities. Upon termination of the License for any reason other than termination by the Licensor as set forth in Paragraph 4 above, the Licensee shall return the Licensed Premises to substantially the same condition as existed immediately prior to the Commencement Date, ordinary wear and tear excepted.

The Licensee agrees, for itself, its successors and assigns, if allowed, that it will not interfere in any way with the Licensor's primary purpose and use of the Licensed Premises, which is for public open space and parks purposes. Additionally, Licensee shall not alter the grade or ground level without the prior written consent of the Licensor, except for any and all activities associated with the construction, maintenance, repair and replacement of the Utilities Infrastructure for which this License is granted, which the parties expressly agree and acknowledge will result in temporary disruption of Licensor's use of the Premises, and temporary disturbance and alteration of grade and ground level. Licensee shall take all reasonable actions to minimize any and all such disturbances related to such activities, and shall upon completion promptly restore the Premises to its prior condition, including grade and ground level, as applicable. The Licensee, its successors and assigns, shall have the right, upon ten (10) days written notice to the Licensor and at the expense of the Licensee (or Licensee's successors or assigns), to remove objects interfering with the construction, maintenance, operation, control or use of said Utilities, to restore grade, or to relocate Licensee's facilities in order to remove the interference, except for construction or installation by Licensor of a valid public purpose, for which termination of the License shall be triggered pursuant to Paragraph 4 above. Notwithstanding the above, the Licensor shall retain the right to make use of the Licensed Premises, except for such use as might unreasonably endanger or interfere with the rights of the Licensee in its construction, operation or maintenance of the facilities described herein.

6. Reciprocal Indemnification/Hold Harmless Liability and Governmental Immunity. The Licensee and Licensor shall each be solely responsible for their own respective liability from participation in this Agreement, including that of the Licensee's and Licensor's respective heirs, successors and/or assigns, and any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with each Party's participation in this Agreement, and their respective contractor's, agent's, or employee's failure(s) to comply with the terms of this Agreement, including but not limited to Licensee's failure to maintain the Utilities in a safe condition or for use of the Utilities, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Licensee's, its contractor's, agent's, or employee's, negligence or

willful misconduct, but specifically not as to actions of, or use of the licensed area by, the general public for Public Purposes associated with Licensor's use of the Premises. Nothing in this section shall be deemed to waive or otherwise limit the defense available to either the Licensor or Licensee pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

7. Assignment: Licensee shall not assign or otherwise transfer this License or Agreement or any right or obligation hereunder without the prior written consent of the Licensor, except to another municipal or quasi-municipal provider of sewer services for continued operation, maintenance, repair and replacement of the Utilities subject of this License Agreement.. Should the Licensor agree to such assignment, Licensor and Licensee hereby expressly agree that the intent of such benefit to said successors in title is not to create an easement in the Licensed Premises, but rather, a License. Licensor and Licensee, both for themselves and for their successors in title, agree that this License is terminable at the will of the Licensor, upon 180 days prior written notice, as set forth in Paragraphs 4 and 5 above.

8. Construction. The rule of strict construction does not apply to this instrument. This License shall be given a reasonable construction in light of the intention of the Licensor to confer on Licensee a usable right to construct, maintain, repair, and replace the Utilities described herein.

9. Right to Inspect: Licensee shall permit the Licensor to enter upon the Licensed Premises at reasonable times and without notice to inspect the condition of the Licensed Premises.

10. Remedies: The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved at law or in equity.

11. Entire Agreement: This Agreement, together with exhibit attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

12. Binding: The Licensee and Licensor hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the Licensor and the Licensee

13. Authority. The undersigned hereby acknowledge and represent that they have legal authority to bind their respective Party to this Agreement.

14. Applicable Law. The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement. The Parties understand and agree that, in the event of any litigation

that may arise under this Agreement, jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.

15. Execution. This Agreement, including facsimile and email copies of this Agreement, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event facsimile copies of this Agreement are executed, the original signatures shall be compiled and attached to form the original Agreement.

16. Recording. This Agreement shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

IN WITNESS WHEREOF, the Parties have executed this License effective as of the day and year first written above.

Licensor:

BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

By: _____

Darryl Glenn, President

Attest:

_____

County Clerk and Recorder

Approved as to Form:

OFFICE OF THE COUNTY ATTORNEY

By: _____

Licensee:

BLACK HILLS CORPORATION

By: _____

ERIC MONROE

Its:

FACILITIES MANAGER

NOTARY SEAL PUBLIC STATE OF SOUTH DAKOTA

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

The foregoing instrument was acknowledged before me this 2nd day of Oct, 2018, by Darryl Glenn, President of the Board of County Commissioners of the County of El Paso, State of Colorado, ~~and as attested to by Chuck Broerman, County Clerk and Recorder~~.

WITNESS my hand and official seal.

KRISTY MARIE SMART
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184023988
MY COMMISSION EXPIRES JULY 2, 2022

My commission expires: July 2, 2022.

My address is: 4424 Wimbley Ct. Colorado Springs CO 80906

Notary Public: _____

STATE OF ~~COLORADO~~ South Dakota)
) SS.
COUNTY OF ~~EL PASO~~ Pennington)

The foregoing instrument was acknowledged before me this 7th day of September, 2018, by Eric Monroe as Facilities Manager of Black Hills Corporation.

WITNESS my hand and official seal.

My commission expires: 1/28/2022.

My address is: Rapid City, SD

JAMIE M. HUNTINGTON NOTARY PUBLIC SEAL STATE OF SOUTH DAKOTA

Notary Public: _____

METES AND BOUNDS FOR SANITARY SEWER EASEMENT ON EL PASO COUNTY LOT – PALMER LAKE, COLORADO

BEGINNING at the north lot corner of a lot owned by El Paso County, Schedule Number 7105100007, a Tract in the NE ¼ of the E ½ of Section 5, Township 11, Range 67 of the 6th Prime Meridian: thence S33°59'56"E, 6.63 feet along the NE property line of the El Paso County Lot to the POINT OF BEGINNING of the Sanitary Sewer Easement: thence S33°59'56"E, 41.09 feet along the NE property line of the El Paso County Lot; thence S12°53'43"W, 35.33': thence 7.68 feet along a curve to the left having a radius of 179.24 feet to a point of intersection; thence N77°06'17"W, 25.75 feet; thence N12°53'43", 69.80 feet to the POINT OF BEGINNING for a Total Area of 0.04+/– acres (1659.09 SF).

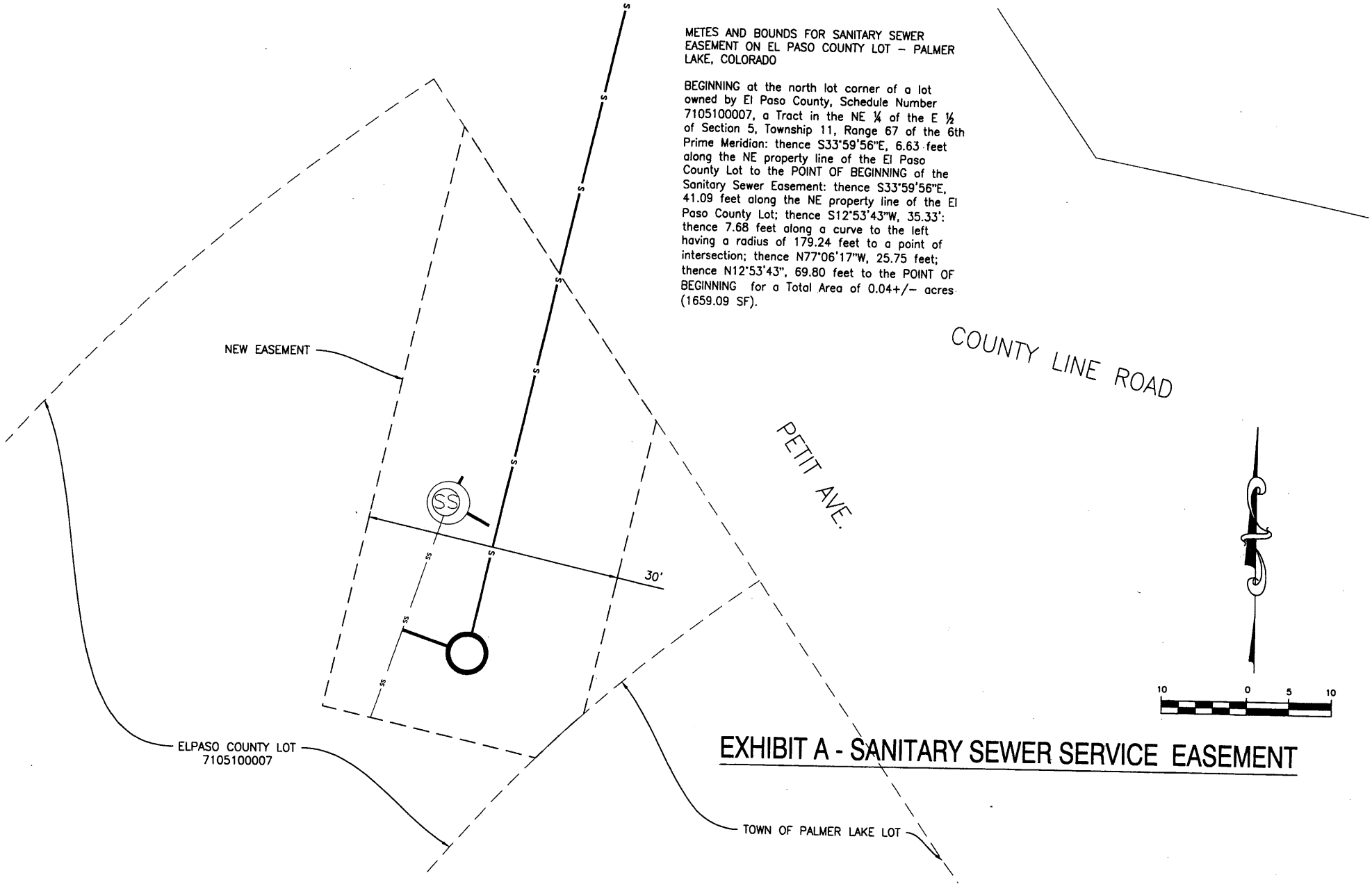
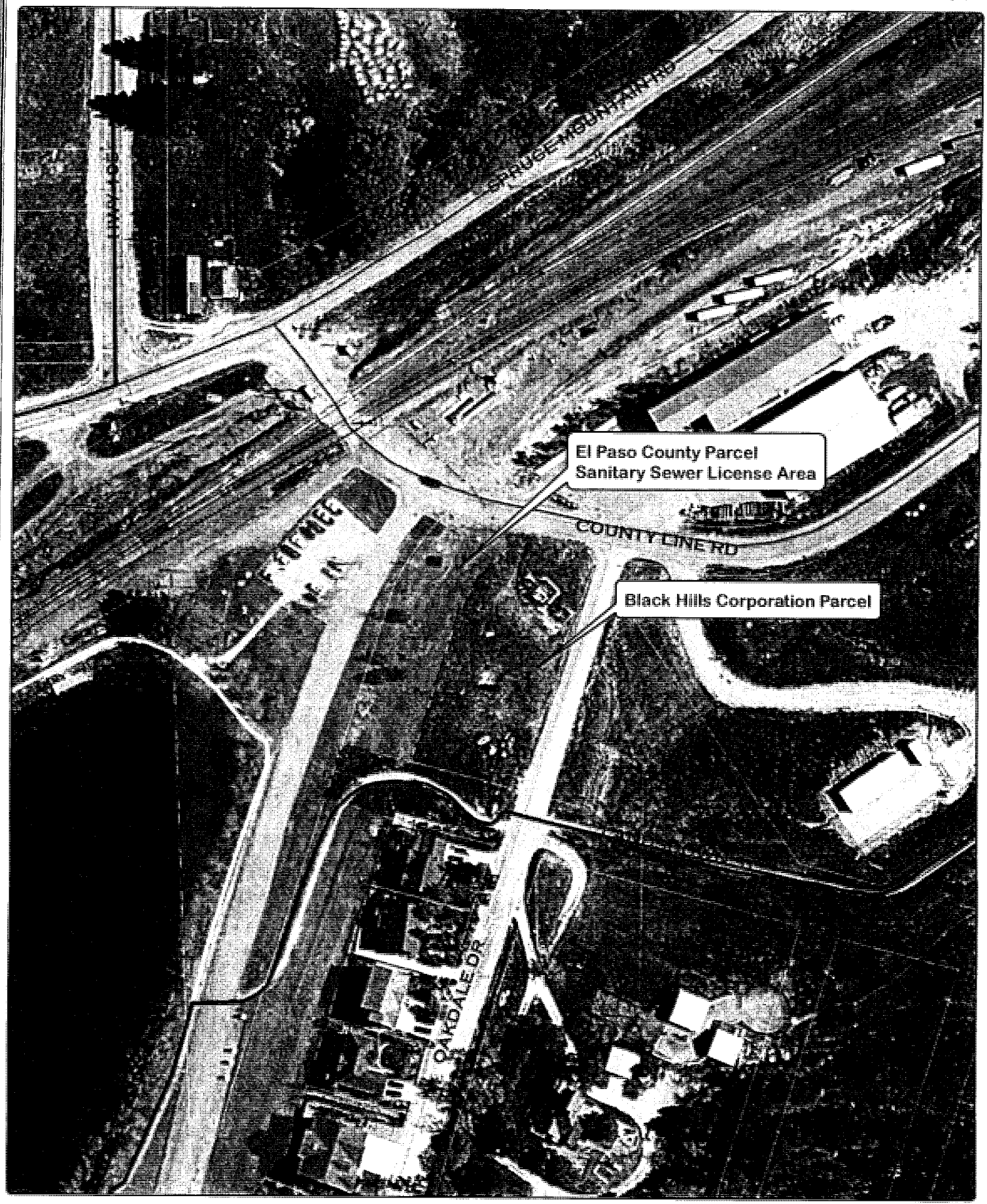


EXHIBIT A - SANITARY SEWER SERVICE EASEMENT



El Paso County, Colorado

Black Hills Corp
Sanitary Sewer License Area