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El Paso County, CO
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RESOLUTION NO. 23-222

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

RESOLUTION TO APPROVE A MEMORANDUM OF AGREEMENT AND A NON-EXCLUSIVE PERMANENT EASEMENT (PE-1) ASSOCIATED WITH THE LOCH FYNE LANE – GAS LINE REPLACEMENT PROJECT

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1)(c)-(d), 30-11-102, 30-11-103, and 30-11-107(1)(a), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board") has the authority to purchase and hold real and personal property for the use of the County when deemed by the Board to be in the best interests of the County; and

WHEREAS, the Department of Public Works has identified a need to enter into a Memorandum of Agreement to memorialize the agreement and to grant a Non-Exclusive Permanent Easement (PE-1), copies of which are attached hereto respectively as Exhibits 1, and 2, incorporated herein by reference, from property owned by El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado (hereinafter "Grantor") to the City of Colorado Springs, Colorado ("Grantee") for the Loch Fyne Lane – Gas Line Replacement; and

WHEREAS, Grantor agrees to convey and grant to the City of Colorado Springs a Non-Exclusive Permanent Easement (PE-1) for the sum of $560.00, payable to Grantor; and

WHEREAS, the Board has determined that it would serve the best interests of the public to approve the Memorandum of Agreement and the Non-Exclusive Permanent Easement to effectuate the hereinabove described transaction in furtherance of the Grantee's Loch Fyne Lane – Gas Line Replacement project; and

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby approves the Memorandum of Agreement and the Non-Exclusive Permanent Easement (PE-1).

BE IT FURTHER RESOLVED, that the duly elected, qualified member and Chair of the Board of County Commissioners, or the duly elected, qualified member and Vice Chair of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 27th day of June, 2023, at Colorado Springs, Colorado.

ATTEST:

By: _____
Steve Schleiker
El Paso County Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

By: Cami Bremer
Cami Bremer, Chair

EXHIBIT 1

MEMORANDUM OF AGREEMENT	**Parcel**	
COLORADO SPRINGS OLYMPIC CITY USA / Colorado Springs Utilities It's how we're all connected	• **Location:**	East of Tajiti Drive, Northwest of Vollmer Road
	• **Parcel # or TSN:**	52324-01-018
	Project: Loch Fyne Lane – Gas Line Replacement	

This Agreement ("Agreement") made effective the date of the last signature hereto, is between the property owner(s), **EL PASO COUNTY, BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO** ("Grantor") and the **CITY OF COLORADO SPRINGS**, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities ("City"). This conveyance is in compliance with *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, Revised 2021,* (the "Real Estate Manual"), and Colorado state law and regulations. Grantor and City hereby agree as follows:

Property Interest: Permanent Easement(s): (described and depicted in attached Exhibits B & C) Permanent Easement Area: 1,225 SF X *$0.90*/SF @ 50% =	$	560.00
Improvements: NONE	$	
Damages / Other: NONE	$	
Gross Total Compensation	$	560.00
Less Credit	$	N/A
Net Total Compensation	$	560.00

Easement Documents (attached hereto and hereby made a part of this Agreement):

- ☒ Permanent Easement(s) (1)
- ☐ Temporary Easement(s) (X)
- ☐ Statement of Authority

Other Conditions and Agreements:

A. Grantor and City agree that:

1. This Agreement is binding upon Grantor and Grantor's heirs, devisees, executors, administrators, legal representatives, successors, assigns, and designees upon execution by Grantor.
2. This Agreement may require approval by the Colorado Springs City Council pursuant to the requirements set forth in the Real Estate Manual or City Code. Once executed and approved (if required), this Agreement will then be binding upon the City and its legal representatives, successors, assigns, and designees.
3. There are no promises, terms, conditions, or obligations with respect to the transaction contemplated herein, other than those listed in this Agreement.
4. Nothing in this Agreement is intended 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 Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement. City specifically 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.
5. Payment of the compensation to Grantor shall take place at Closing. Closing may take place at the offices of a title company ("Title Company") or such other place as City may designate. Closing shall occur after City has received the executed Easement Documents, and after City is satisfied with Grantor's title to the Property Interest.
6. The City will be entitled to take possession of the Property Interest upon the earlier of City depositing the compensation into escrow with the Title Company or City tendering the compensation directly to Grantor, but in no event prior to approval of this Agreement by Colorado Springs City Council if such approval is required.
7. This Agreement is expressly made subject to the limitations of § 7-60 of the Charter of the City of Colorado Springs and of Article X, § 20 of the Colorado Constitution, which limitations are incorporated herein by reference.

B. Grantor:

1. Will execute and deliver to City the Easement Documents and such other documents as may reasonably be required by the Title Company.
2. Will not sell the Parcel or grant any easements or other encumbrances on the Parcel that are inconsistent with the Property Interest conveyed hereunder to any third party until after the Permanent Easement is recorded.
3. Agrees to deliver clear title to the Property Interest to the City, and will take all required actions to secure releases, satisfactions or subordinations of any outstanding liens, leases, mortgages, judgments or other encumbrances which may affect the Property Interest. Any costs related to such releases or subordinations required to be paid shall be paid by Grantor at or before Closing whether from the proceeds of the transaction hereby contemplated or from any other source.
4. Acknowledges the receipt and sufficiency of good and valuable consideration as shown on this Agreement which is full and just compensation for all of the land, easements, improvements and damages of any kind, occurring out of or related to City's acquisition of the Property Interest (as defined above).
5. Will remove any and all personal property from the Property Interest within thirty (30) days after the date this Agreement is executed, and shall not place additional personal property in the Permanent Easement Area.

C. City:

1. Will be entitled to specific performance of this Agreement upon tender of the compensation.
2. Will pay all recording fees and any fees charged by the Title Company.
3. Reserves the right to record this Agreement and any of the Easement Documents

Order Warrant for: $ 560.00	Payable to: El Paso County
Darlene Kennedy, Real Estate Services Manager Date:	El Paso County by and through the Board of County Commissioners of El Paso County, Colorado By: _____ Name: _____ Title: _____ Date:
Jessica Davis, Land Resource Manager Date:	Approved as to Form/Office of the City Attorney:

cc: City of Colorado Springs (original)
Grantor

RES File # 20407

PERMANENT EASEMENT AGREEMENT
El Paso County

This Permanent Easement Agreement ("Agreement") effective _____, _____, by and between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado ("Grantor"), whose address is 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903 and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation ("City"), on behalf of its enterprise, Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, Colorado 80947-1015 ("Grantee"). Both Grantor and Grantee hereinafter are individually referred to as "Party" and collectively referred to as "Parties."

Recitals

A. Grantor owns the real property described in "**Exhibit A**" attached hereto ("Property"), in, through, over, under, and across which the Improvements (as defined in Section 1 below) will pass; and

B. Grantee has determined that such Improvements must be constructed, installed, and maintained within the Property along a certain utilities' corridor;

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

Agreement

1. **Conveyance of Permanent Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive permanent easement to enter, occupy, and use the real property depicted in the legal description attached hereto as "**Exhibit B**" ("Permanent Easement"), to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove one or more pipelines, conduits, poles, vaults, meters, regulator stations, switches, transformers, valves, hydrants, manholes, access roads or any other utility structures (including, but not limited to, communication facilities), and all necessary underground or aboveground cables, wires, and appurtenances thereto, including, but not limited to, electric or other control systems, cables, wires, connections, and surface appurtenances ("Improvements") and to make any cuts and fills in the earth necessary to the performance of such work, in, on, under, through, over and across such real property.

2. **Easement Map.** "**Exhibit C**" attached hereto is a graphic representation of the Permanent Easement. In the event of an ambiguity in Exhibit B, Exhibit C may be used to resolve said ambiguity.

3. **Ingress and Egress.** Grantee shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Permanent Easement, in order to perform Grantee's rights in the Permanent Easement. To the maximum practicable extent, Grantee shall use existing gates, roads, trails or facilities to avoid disruption of Grantor's operations on the Property.

4. **Additional Construction.** Grantee shall have the right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove at any time or from time to time, one or more additional Improvements and appurtenances thereto within the Permanent Easement. Such right shall be perpetual, and Grantor shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Permanent Easement.

5. **Grantor's Rights Unaffected.** Except as provided in Section 6 below, Grantor shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Grantee in the Permanent Easement. Grantor shall only perform or permit other persons or entities to perform construction or other work within the Permanent Easement after prior written approval by Grantee, such approval shall not be unreasonably withheld, and only if such construction or other work is performed in accordance with the terms of this Agreement, all applicable laws, rules and regulations, and Grantee's rules and regulations as they may be modified from time to time. Grantor reserves use of the Permanent Easement, whether longitudinal or otherwise, for installing the following with written

approval from Grantee: pavement, curbs, gutters, sidewalks, parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again, such as, but not limited to: stone, brick, or other masonry type fences or walls), low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee ("Grantor's Improvements"); provided however, that the exercise of such rights, in the reasonable opinion of Grantee, does not injure or interfere with, now or in the future, any of the Grantee's rights in the Permanent Easement including, but not limited to, Grantee's rights of maintenance and reasonable access.

6. **Installations within Permanent Easement.** Grantor shall not construct or place any permanent structure or building on any part of the Permanent Easement including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again; and except for garage-door porch stoops and only those retaining walls up to 4 feet in height that may be required to extend into the side lot-line easements of a residential property), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, play houses or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining wall, or any edifice projections such as, but not limited to: balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Grantee may remove any structure or building constructed or placed within the Permanent Easement. If Grantor constructs, places or permits any structure or building within the Permanent Easement, then Grantor shall reimburse Grantee for all expenses (including, but not limited to removal, court, collection, and attorneys' fees and costs) associated with or arising from removing such structure or building. Moreover, in no event shall Grantor:
   a. construct or place, longitudinally along or otherwise within the Permanent Easement any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities or other utility or appurtenance without the prior written consent of Grantee; or
   b. change, by excavation or filling, the present grade or ground level of the Permanent Easement without the prior written consent of Grantee. Grantor shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Permanent Easement unless the prior written consent of Grantee is provided. Additionally, Grantor shall not construct any new, or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Property, which might, in Grantee's reasonable discretion, endanger or interfere with any Improvements, including, but not limited to, Grantee's rights of maintenance and reasonable access, without the prior written consent of Grantee.

7. **Surface Restoration to Land.** Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Property, whether or not within the Permanent Easement, but only if such damage is caused by Grantee's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements, Grantee shall promptly restore, replace, or repair the surface of the Permanent Easement to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Grantee shall not be liable for damage to, nor shall it be obligated to repair or replace any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Permanent Easement in violation of the terms of this Agreement including, but not limited to, any tree(s) that interfere with the Improvements or Grantee's rights in the Permanent Easement.

8. **Maintenance of Permanent Easement.** Grantor shall be responsible for the surface maintenance of the easement; however, Grantee shall have the perpetual right ,but not the obligation, to cut, trim, control, and remove trees, brush, and other obstructions which injure or interfere with the Grantee's use, occupation or enjoyment of the Permanent Easement, or Grantee's right to construct, reconstruct,

install, use, operate, maintain, repair, patrol, replace, upgrade, or remove its Improvements, without liability for damages arising there from.

9. **Subjacent and Lateral Support.** Grantor shall not impair any lateral or subjacent support for the Improvements.

10. **Nature of Easement and Additional Uses.** The Permanent Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. Grantee's exercise of any rights in the Permanent Easement other than those retained by Grantor shall be within the sole discretion of Grantee. Grantee shall permit and authorize such other uses of the Permanent Easement that are consistent with the uses described in paragraph 1 herein and not hereby reserved in Grantor.

11. **Warranty of Title.** Grantor warrants that it has good and merchantable title to the Property and has the full right and lawful authority to grant the Permanent Easement.

12. **Waiver.** The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

13. **Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with the laws of the State of Colorado, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

14. **Binding Effect.** Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors, transfers, agents, and assigns of the Parties.

15. **No Third Party Beneficiaries.** Except as expressly provided otherwise, this Permanent Easement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

16. **Severability.** The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

17. **Incorporation of Exhibits.** All exhibits described in and attached to this Agreement are herein incorporated by reference. Grantor hereby acknowledges that Exhibits A and B must be prepared by or under the supervision of a Professional Land Surveyor licensed by the State of Colorado.

18. **Notice.** Any notice provided in accord with this Agreement, shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid and return receipt requested to either Party's address as shown below or to the property owner of record ("Notice"). Such Notice shall be effective upon the date received and acknowledged by signature of the Party that receives Notice. Either Party may change its address to which any Notice is to be delivered under this Agreement by giving Notice as provided herein.

PERMANENT EASEMENT AGREEMENT

Grantee:
Colorado Springs Utilities:
Utilities Development Services
P.O. Box 1103, Mail Code 1812
Colorado Springs, CO 80947-1812

Grantor:
El Paso County, Department of Public Works
c/o Joshua Palmer, County Engineer
3275 Akers Drive
Colorado Springs, CO 80922

19. **Entire Agreement.** This Agreement represents the entire agreement between the Parties and no additional or different oral representation, promise or agreement, oral or otherwise, shall be binding on any of the Parties hereto with respect to the subject matter of this instrument, unless stated in writing explicitly referring to this Permanent Easement Agreement and signed by the Parties.

PERMANENT EASEMENT AGREEMENT

IN WITNESS WHEREOF, the representatives of each Party hereto certify that, by their execution of this Agreement, they are duly authorized to commit their organization to this Agreement in its entirety. The Parties hereto have executed this Agreement effective as of the day and year first above written.

GRANTOR: Entity: El Paso County by and through the Board of County Commissioners of El Paso County, Colorado

By: _____

Name: _____

Title: _____

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____, by _____ as _____ of the Board of County Commissioners of El Paso County, Colorado.

Witness my hand and official seal.

My Commission Expires: _____

(SEAL)

_____
Notary Public

GRANTEE: CITY OF COLORADO SPRINGS, on behalf of its enterprise, Colorado Springs Utilities

By: _____
Jessica Davis, Land Resource Manager

Accepted By:

_____ _____
Darlene Kennedy Date
Real Estate Services Manager

Approved as to Form:

_____
City Attorney's Office

Exhibit A

A parcel of land lying within Section 32, Township 12 South, Range 65 West of the 6th P.M. El Paso County, Colorado, being more particularly described as Tract D, Highland Park Filing No. 2, as recorded in the Real Property Records of El Paso County, Colorado, at Reception No. 202145110.

Exhibit B

A portion of a parcel of land lying within Section 32, Township 12 South, Range 65 West of the 6th P.M. El Paso County, Colorado, being more particularly described as Tract D, Highland Park Filing No. 2, as recorded in the Real Property Records of El Paso County, Colorado, at Reception No. 202145110.

Basis of Bearings: The northeasterly property line of said tract. Said line is monumented at the northwesterly end by a rebar with an illegible yellow plastic cap, flush with ground, and at the southeasterly end by a rebar with yellow plastic cap stamped "WKC&ASSOC PLS4842", flush ground, with an assumed bearing of N49°48'46"W, a distance of 391.37 feet;

Beginning at the northwesterly end of said line which is also the southern end of the eastern property line;

Thence along said eastern property line N00°11'05"W, a distance of 33.38 feet;

Thence S89°20'25"W, a distance of 30.00 feet to the western property line of said tract;

Thence along said property line S00°11'05"E, a distance of 40.00 feet;

Thence N89°20'25"E, a distance of 37.71 feet to said northeasterly property line;

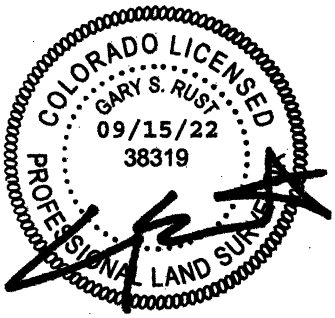
Thence along said line N49°48'46"W, a distance of 10.12 feet to the **Point of Beginning.**

Containing 1,225 Sq. Ft., or 0.028 acres, of land more or less.

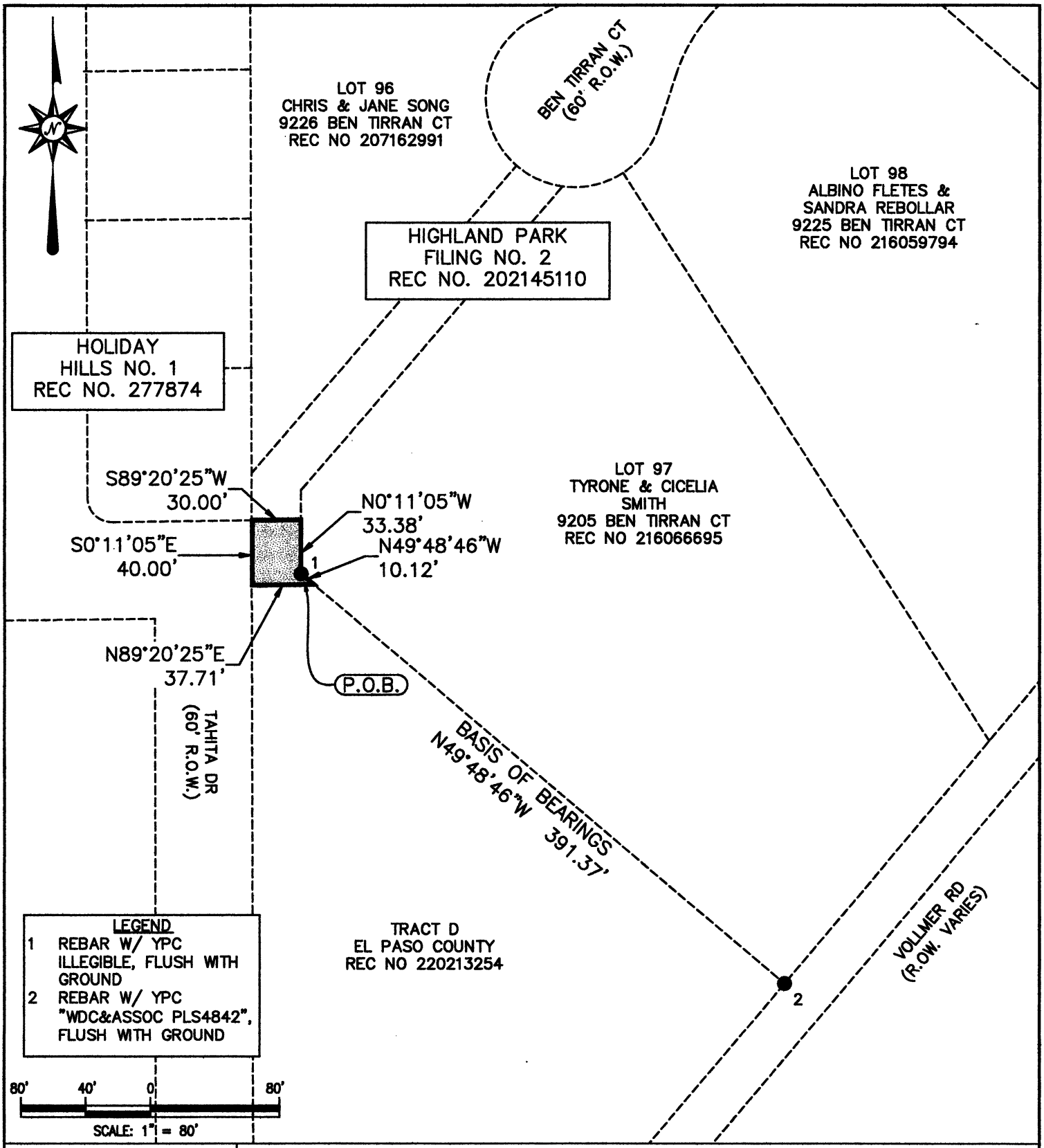
The above statement is neither a warranty or guarantee, either expressed or implied.

Legal description statement:

I, Gary S. Rust, a Professional Land Surveyor in the State of Colorado, do hereby state that the above legal description and attached exhibit were prepared under my responsible charge and on the basis of my knowledge, information and belief are correct.



Gary S. Rust, Professional Land Surveyor
Colorado P.L.S. No. 38319
For and on behalf of Colorado Springs Utilities



Colorado Springs Utilities
It's how we're all connected

Advanced Geomatics
1521 Hancock Expy.
Colorado Springs, CO
80947

EXHIBIT C

NOTE :
THIS SKETCH DOES NOT REPRESENT A MONUMENTED LAND SURVEY.

Drawn by: P. CLIFTON	Date: SEPTEMBER 9, 2022
Checked by: G. RUST	Date: SEPTEMBER 9, 2022