RESOLUTION NO. 22-

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

RESOLUTION TO APPROVE AND GRANT A QUITCLAIM DEED FROM EL PASO COUNTY TO THE CITY OF COLORADO SPRINGS REGARDING CONVEYANCE, OPERATION AND MAINTENANCE OF MARKSHEFFEL ROAD, FROM PEACEFUL VALLEY ROAD TO WOODMEN ROAD

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1)(c), 30-11-102 and 30-11-103, the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board" or "County") has the authority to sell, convey, or exchange any real property owned by the County and make such order concerning the same and to exercise such other and further powers as are conferred by law; and

WHEREAS, the County and the City of Colorado Springs, a home rule municipality (the "City"), wish to address enclaves and partially surrounded areas within the County through the transfer of ownership of such properties prior to annexation of the relevant infrastructure into the City; and

WHEREAS, the County wishes to convey and the City wishes to accept the transfer of ownership of the Marksheffel Road area pursuant to a Quitclaim Deed as further detailed in the Memorandum of Understanding ("MOU") between the parties attached hereto; and

WHEREAS, the Board has determined that it would serve the best interests of the public to grant the Quitclaim Deed to the City regarding the Conveyance, Operation and Maintenance of Marksheffel Road, from Peaceful Valley Road to Woodmen Road to effectuate the hereinabove described transaction.

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby grants the Quitclaim Deed to the City of Colorado Springs subject to the terms and conditions cited therein.

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 day of	, 2022, at Colorado Springs, Colorado.
ATTEST:	BOARD OF COUNTY COMMISSIONERS EL PASO COUNTY, COLORADO
By: Chuck Broerman El Paso County Clerk and Recorder	By: Stan VanderWerf, Chair

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF COLORADO SPRINGS AND EL PASO COUNTY, COLORADO FOR THE CONVEYANCE, OPERATION AND MAINTENANCE OF MARKSHEFFEL ROAD, FROM PEACEFUL VALLEY ROAD TO WOODMEN ROAD

This Memorandum of Understanding ("Agreement"), dated this ________ of ________, 2022, between El Paso County, Colorado and the City of Colorado Springs, Colorado regarding the conveyance, operation and maintenance of Marksheffel Road, from Peaceful Valley Road to Woodmen Road, as defined below, is made by and between El Paso County, Colorado, a duly organized county and political subdivision of the State of Colorado ("County"), whose address is 200 South Cascade Avenue, Colorado Springs, Colorado 80903 and the City of Colorado Springs, Colorado a home rule city and Colorado municipal corporation ("City"), having an address at 30 South Nevada, Ste 401, Colorado Springs, Colorado 80903. The City and the County may be referred to collectively as "Parties" or individually as "Party."

RECITALS

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1), 30-11-103, and 30-11-107(1), the County has the legislative authority to make all contracts and settle all accounts of the County and to exercise such other and further powers as are conferred by law; and

WHEREAS, the City, as a home rule municipality, is a political subdivision of the State of Colorado and likewise has similar powers pursuant to Article XX of the Colorado Constitution, municipal home rule powers, City Charter ordinance provisions, and applicable state statutes of the Colorado Revised Statues; and

WHEREAS, the City and the County wish to address enclaves and partially surrounded areas within the County through the transfer of ownership prior to annexation of the relevant infrastructure into the City of Colorado Springs; and

WHEREAS, the City wishes to accept the transfer of ownership of Marksheffel Road Area, as further defined below, prior to installing public improvements; and

WHEREAS, the purpose of this Agreement is to describe the conditions and respective responsibilities of the Parties for the maintenance, operation, and future annexation of all Portions of Marksheffel Road and its appurtenances, from the southerly right-of-way line of Woodmen Road to the southerly right-of-way line of Peaceful Valley Road not currently owned by the City, including Barnes Road from the easterly end of Barnes Road as shown on the Plat for Stetson Hills Subdivision Filing No. 2 as recorded in Plat Book Z-3 at page 104 at Reception No. 1334812 of the El Paso County, Colorado Clerk and Recorder to Marksheffel Road; North Carefree Circle from the El Paso County boundary as of the date of this deed to Marksheffel Road; and the Right-of-Way at the intersection of Marksheffel Road and Bradley Road conveyed to El Paso County in Deed recorded in Book 5242 at page 047, all as depicted on Exhibit A of Exhibit 1, including but not limited to the real property and easement conveyances set forth in Exhibit B of Exhibit 1,

attached hereto and made a part hereof, hereinafter collectively referred to as (the "Marksheffel Road Area").

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth below, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. <u>Intent.</u> The Parties agree that the intent of this Agreement is to address the conveyance, operations and maintenance responsibilities of the Marksheffel Road Area and its appurtenant infrastructure from the County to the City. The portion of the Marksheffel Road Area impacted by this Agreement is depicted in **Exhibit A of Exhibit 1**, attached hereto and incorporated herein, and includes the roadway, intersections and their area of functional influence, and all appurtenant infrastructure, together with the rights-of-way and appurtenant easements. The County wishes to convey the ownership of the Marksheffel Road Area to the City.
- 2. <u>Annexation and Conveyance.</u> Subject to the conditions precedent set forth below, the City agrees to accept a quitclaim deed from the County for transfer of ownership of the Marksheffel Road Area as defined above. Thereafter, within a reasonable time period, the City will, to the fullest extent permitted by the City Charter and Code, Colorado Revised Statutes, and the Colorado Constitution, in good-faith, petition for annexation and process the annexation petition and recommend approval thereof to the City Council.
- 3. <u>Conditions Precedent to Annexation and Conveyance</u>. Prior to any conveyance and as a condition precedent to the City's obligation to accept or to annex the Marksheffel Road Area:
 - A. To the extent the City requires, the City shall survey the area to confirm the current rights-of-way are constructed within the platted right of way.
 - B. The conveyance of the Marksheffel Road Area real property and any future conveyance(s) of facilities or easements must be in compliance with the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, Revised 2021.
- 4. Administrative. Maintenance and Operational Responsibilities. Following transfer of ownership of the Marksheffel Road Area, all administrative control, operation, maintenance, and legal responsibility shall be the sole responsibility of the City. These responsibilities include capital improvements or betterment, roadside appearance, roadside facilities, roadway surface, snow and ice control, structure maintenance, traffic signals or other intersection traffic control devices, signage, and striping and any other traffic services, right-of-way permitting, access permitting, applicable land use permitting, law enforcement activities, fire and emergency first responder activities, and any and all other

- customary activities that are customarily performed for any other similar City infrastructure, right-of-way, easement or fee simple property. MS4 permit obligations for the Marksheffel Road Area shall be the responsibility of the City.
- 5. Facilities and Easements Necessary to the Maintenance and Operation of the Marksheffel Road Area. Following the City's acceptance of the quitclaim deed, if the City determines there are additional facilities and/or easements necessary to the maintenance and operation of the Marksheffel Road Area outside the property conveyed, the County agrees to convey such facilities and/or easements to the City at no cost to the City.
- 6. <u>Funding Provisions</u>. There are no funding provisions for the annexation and conveyance of ownership.
- 7. <u>Future Maintenance.</u> If the City fails to complete the annexation under Paragraph 2 above, the City shall continue with the administrative, maintenance, operational, and legal responsibilities as described in Paragraph 4 for the Marksheffel Road Area.
- 8. <u>Breach and Remedies.</u> The Parties shall have such remedies as provided by law or equity for breach of this Agreement.
- 9. <u>Term and Termination.</u> Upon the lawful execution of this Agreement by both Parties, this Agreement shall be effective until such time as the annexation of the portion of the Marksheffel Road Area is completed as contemplated in Paragraph 2 above. This Agreement shall be deemed terminated automatically upon full and satisfactory completion of Paragraph 2 above.
- 10. <u>Rights and Remedies Not Waived.</u> No assent, express or implied, by either Party to any breach of this Agreement by the other Party shall be held to be a waiver by such non-breaching Party of any later breach by the other Party. Neither the County nor the City shall be excused from complying with any provision of this Agreement because of any failure to insist upon, or to seek compliance with, such provision.
- 11. <u>Amendment.</u> This Agreement may only be amended in writing with consent of both Parties.
- 12. <u>Assignment.</u> The City and the County each understands and agrees that they shall not assign their respective rights and obligations under this Agreement, except upon the prior written consent and approval of the assignment by the other Party.
- 13. <u>Applicable Law. Jurisdiction.</u> and <u>Venue.</u> This Agreement is subject to and shall be interpreted under the laws of the state of Colorado, the City Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs, Colorado, applicable regulations of El Paso County, Colorado, and applicable federal law. Court jurisdiction and venue shall be exclusively in the District Court for El Paso County, Colorado.

- 14. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of acting relating to such enforcement, shall be strictly reserved to the Parties. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act C.R.S. § 24-10-101, et seq.
- 15. <u>Limitations on Jurisdiction</u>. Nothing herein shall be construed to in any manner expand upon or limit the lawful jurisdiction and authority of either the City or the County.
- 16. Entire Agreement. This Agreement together with all Exhibits attached hereto, which are incorporated herein by this reference, is intended as the complete integration of the understanding between the parties and constitutes the entire Agreement between the Parties.
- 17. <u>Parties Bound by Agreement.</u> This Agreement is binding upon the Parties hereto and upon their respective legal representatives, successors, and assigns. The undersigned representatives hereby affirm that they have the authority to sign this Agreement and to bind their respective Parties thereto.
- 18. <u>Captions</u>. All captions and headings contained in this Agreement are for convenience only and for reference, do not define or limit the scope or intent of any provisions of this Agreement, and shall not be construed to define or limit the terms and provisions hereof.
- 19. <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.
- 20. Severability. It is understood and agreed by the Parties that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any federal laws, or any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision determined by the court to be invalid.
- 21. Contacts and Notice. The County and the City will each provide a liaison through their respective entities and will be responsible for coordinating respective activities under this Agreement. Except as may otherwise be provided in this Agreement, all notices required or permitted to be given under this Agreement shall be in writing and shall be valid and sufficient if dispatched by: (a) registered or certified mail, return receipt requested, postage prepaid, in any post office in the United States, (b) hand delivery, (c) overnight courier, (d) email to the below-designated addresses with proof of receipt. The Parties agree that written notices regarding general operational issues may be accomplished through email.

City of Colorado Springs:
Travis Easton, P.E., Public Works Director
30 South Nevada Avenue, Suite 401
Colorado Springs, CO 80903
719-385-5457
travis.easton@coloradosprings.gov

Darlene Kennedy, Real Estate Services Manager 30 South Nevada Avenue, Suite 502 Colorado Springs, CO 80903 719-385-5605 darlene.kennedy@coloradosprings.gov

El Paso County:

Joshua Palmer, County Engineer 3275 Akers Drive Colorado Springs, Colorado 80922 719-520-6805 joshuapalmer@elpasoco.com

- 22. <u>Indemnification and Liability</u>. The Parties are prohibited by Article XI, Section I of the Constitution of the State of Colorado, and applicable City Charter provisions and Board resolutions, from indemnifying one another. Each party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. Further, the City agrees to assume complete liability as to the portions of the right-of-way and appurtenant infrastructure and easements within unincorporated El Paso County irrespective of this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the County or the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* and Article XI of the Colorado Constitution, or as otherwise provided by law.
- 23. Fiscal Obligations/Non-Appropriation. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the County or the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the County or the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto,

by the County or the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance or resolution and budget and specifically as to the City, the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

- 24. <u>Disclaimer of Warranties</u>. The Parties do not make any warranty or representation, either express or implied, as to the value, design, condition, merchantability, or fitness for a particular purpose for use of any County owned property or for any services rendered or any other representation or warranty with respect to any obligation or services under this agreement.
- 25. <u>Independent Entities</u>. The Parties are independent governmental entities. No Party shall be subject to the direct supervision and control of the other respective Parties. Neither the Parties nor any agents, employees, or servants of the respective Parties, shall be deemed to be an employee, agent, or servant of any other Party to this Agreement.

IN WITNESS THEREOF, the City and County have signed this Agreement on the day and year indicated below, to be effective upon signatures of both Parties, with the Term being in accord with Paragraph 9.

EL PASO COUNTY, COLORADO

By:		Date:	
•	Bret Waters, El Paso County, County Administrator		
Appr	oved as to form:		
By:	County Attorney's Office	Date:	

CITY OF COLORADO SPRINGS, COLORADO

By:	Jeff Greene, Chief of Staff	Date:	
API	PROVED TO AS FORM:		
By:	Office of the City Attorney		

EXHIBIT 1Deed with Exhibits

EXHIBIT A

QUITCLAIM DEED

EL PASO COUNTY, BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, ("Grantor"), whose street address is 200 South Cascade Avenue, Suite 100, Colorado Springs, Colorado 80903, County of El Paso, and State of Colorado, for the consideration of one dollar (\$1.00) and other good and valuable consideration in hand paid, hereby remise, release, sells, and quitclaims to the CITY OF COLORADO SPRINGS, COLORADO, a home rule city and Colorado municipal corporation ("Grantee"), whose street address is 30 South Nevada Avenue, Suite 502, Colorado Springs, Colorado 80903, County of El Paso and State of Colorado, the below specified interest, which the Grantor may have in and to the following property interest, to wit:

All Portions of Marksheffel Road, from the southerly right-of-way line of Woodmen Road to the southerly right-of-way line of Peaceful Valley Road not currently owned by Grantee, including Barnes Road from the easterly end of Barnes Road as shown on the Plat for Stetson Hills Subdivision Filing No. 2 as recorded in Plat Book Z-3 at page 104 at Reception No. 1334812 of the El Paso County, Colorado Clerk and Recorder to Marksheffel Road; North Carefree Circle from the El Paso County boundary as of the date of this deed to Marksheffel Road; and the Right-of-Way at the intersection of Marksheffel Road and Bradley Road conveyed to El Paso County in Deed recorded in Book 5242 at page 047, all as depicted on Exhibit A, including but not limited to the real property and easement conveyances set forth in Exhibit B attached hereto and made a part hereof,

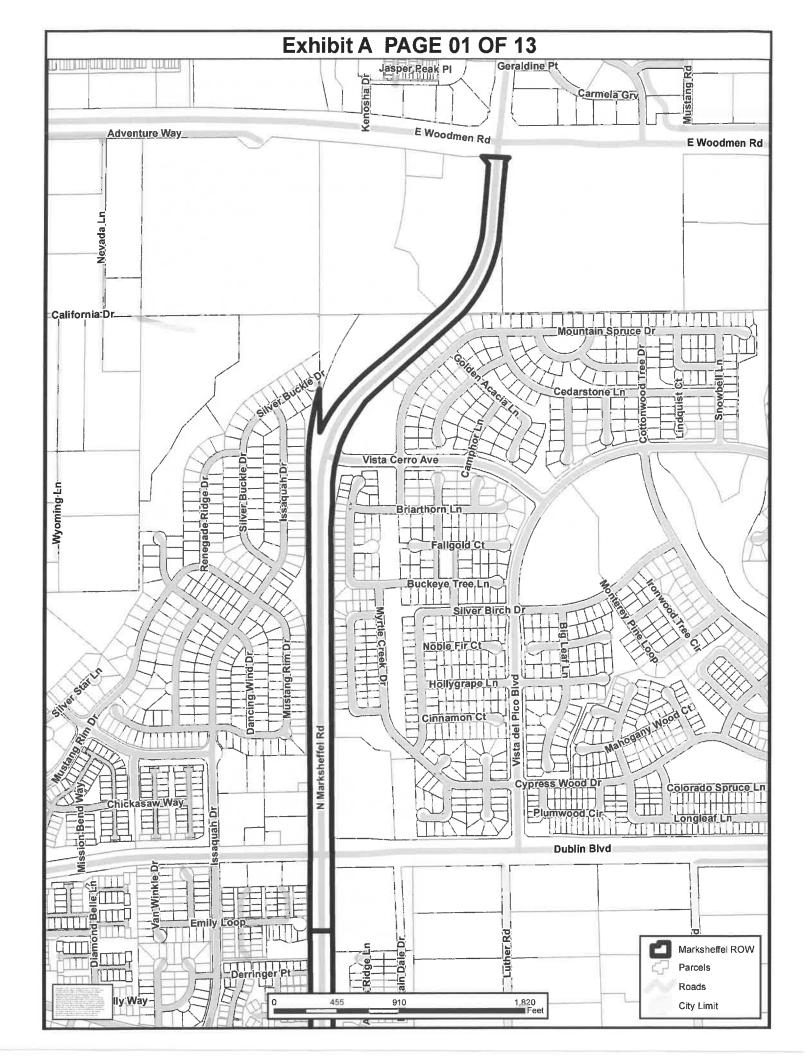
and all appurtenances.

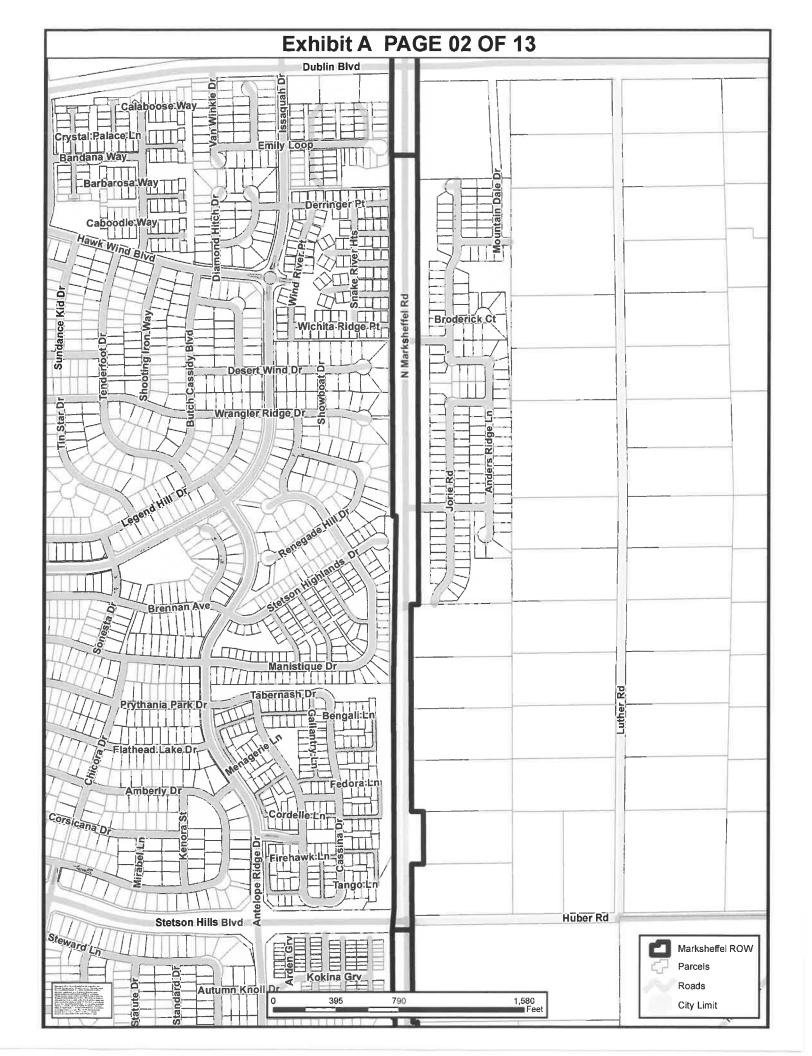
this day of	HEREOF , Grantor has caused this deed to be executed and delivered by 2022.
GRANTOR:	
ATTEST:	BOARD OF COUNTY COMMISSIONERS
	OF EL PASO COUNTY, COLORADO
By:	By:
County Clerk and Red	

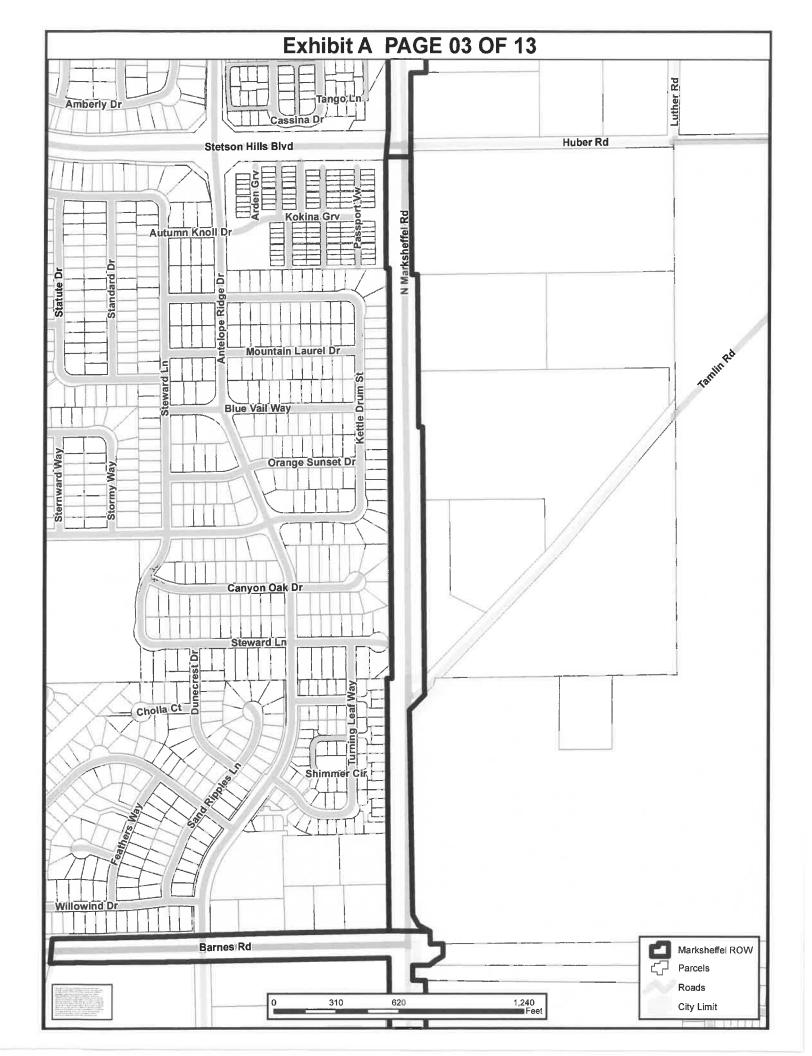
	Notary Public
Witness my hand and seal My Commission Expires:	
	ment was acknowledged before me this day of Chair of the Board of County Commissioners of El Paso County
COUNTY OF EL PASO)
STATE OF COLORADO)) SS.
Quitclaim Deed El Paso County, Colorado	

RES File Number 19953

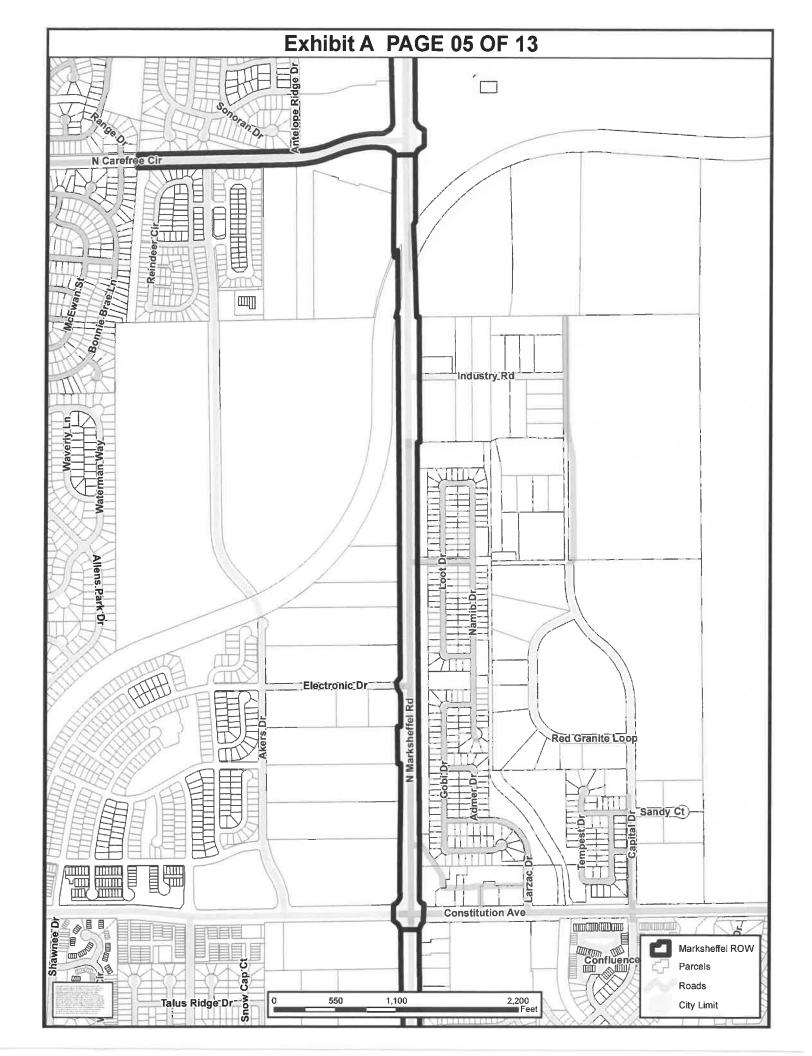
Quitclaim Deed El Paso County, Colorado	
Grantee: CITY OF COLORADO SPRINGS, COLORADO, a home rule city and Colorado municipal corporation	
By: John W. Suthers Mayor	
Attest:	
By: Sarah Johnson City Clerk	
Accepted:	
$R_{V}\cdot$	D /
By: Darlene Kennedy Real Estate Services Manager	Date:
	Date:
Real Estate Services Manager	Date:
Real Estate Services Manager City of Colorado Springs	Date:
Real Estate Services Manager City of Colorado Springs Public Works Department By: Travis Easton	Date:

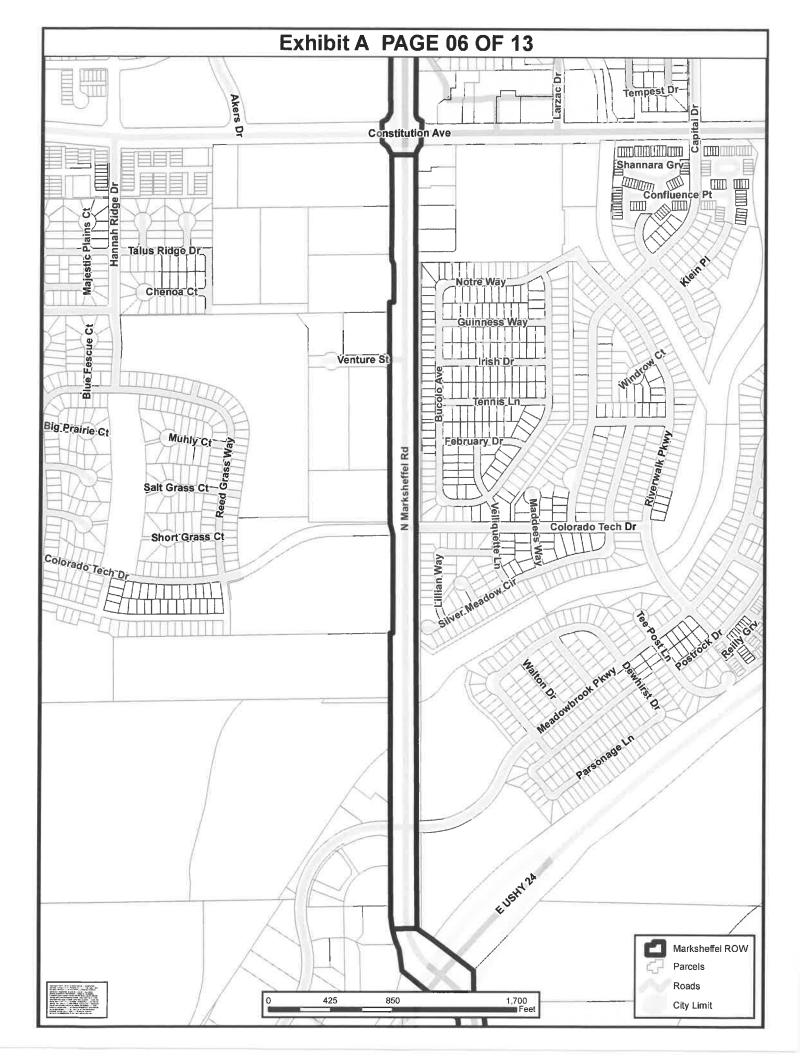


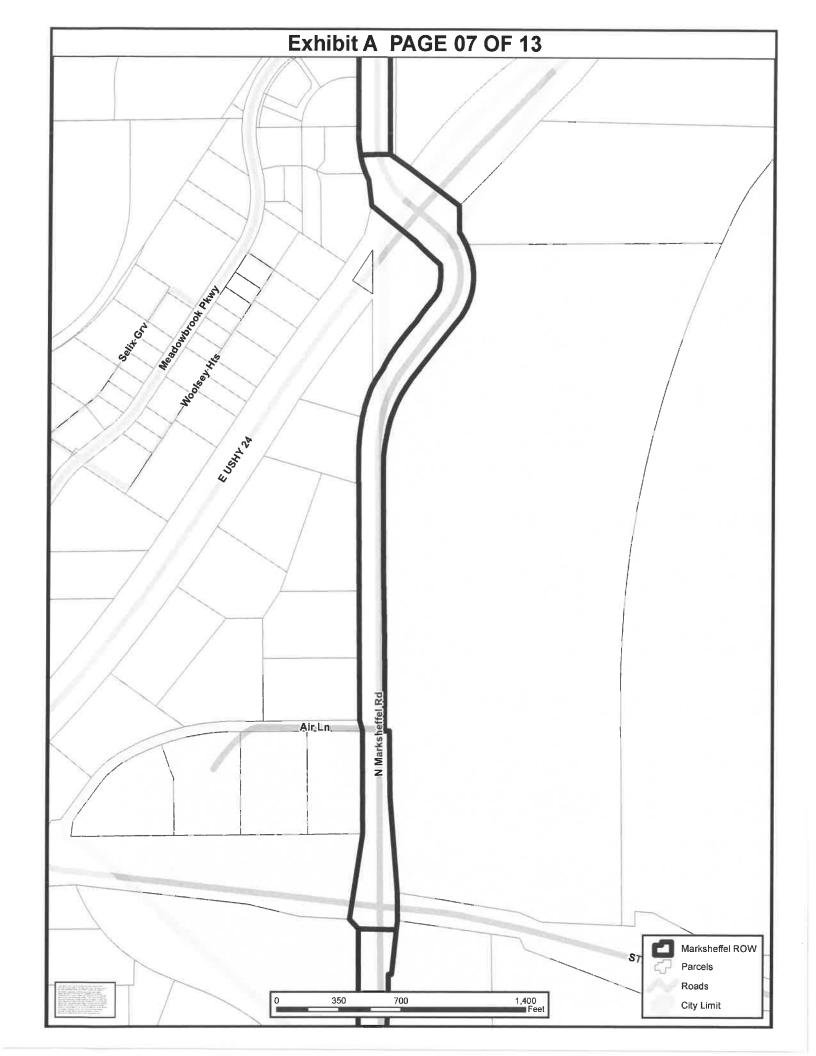


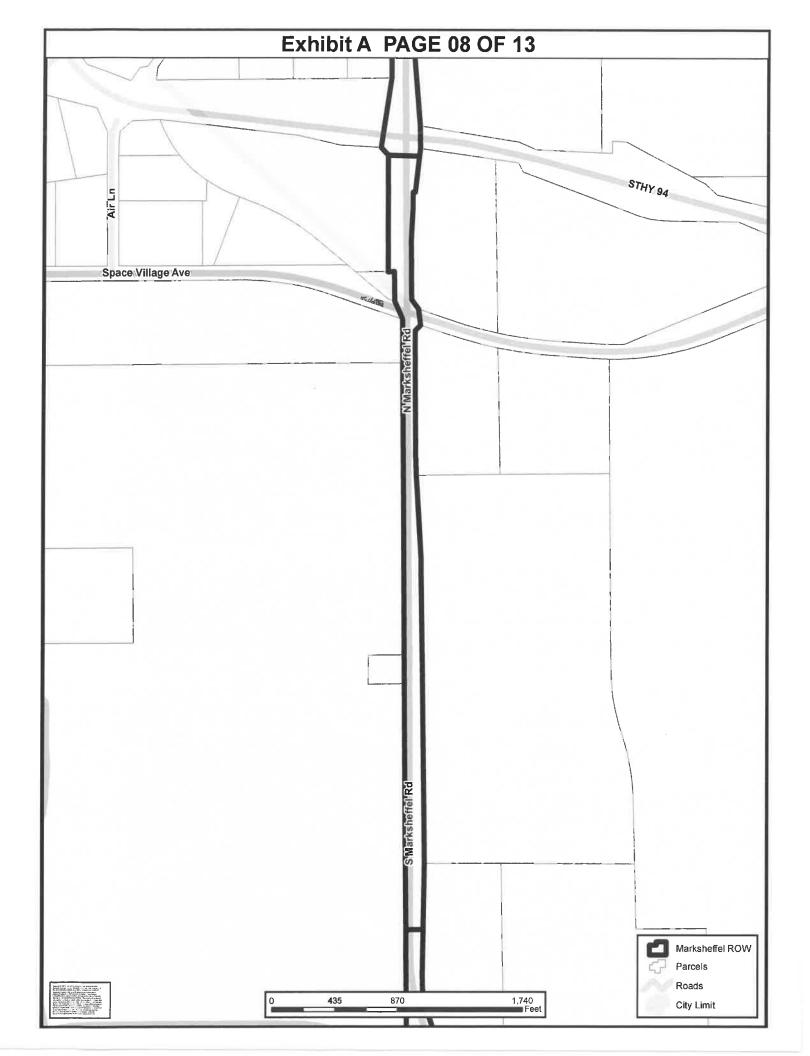


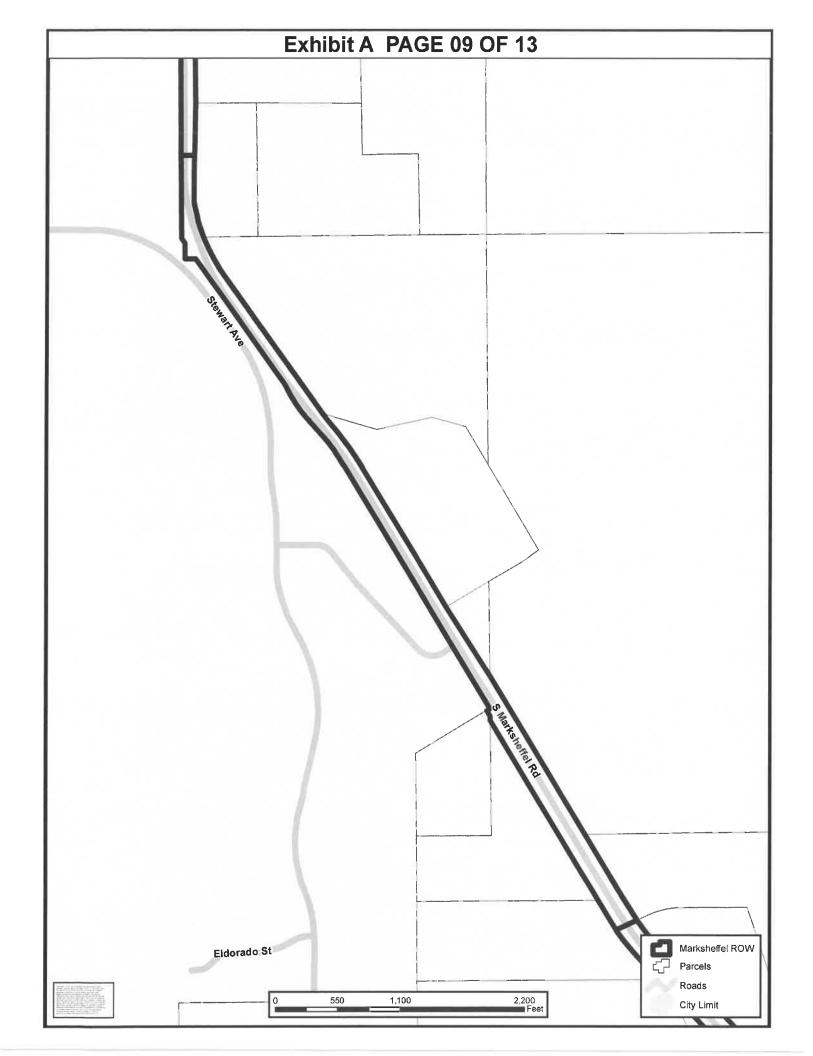


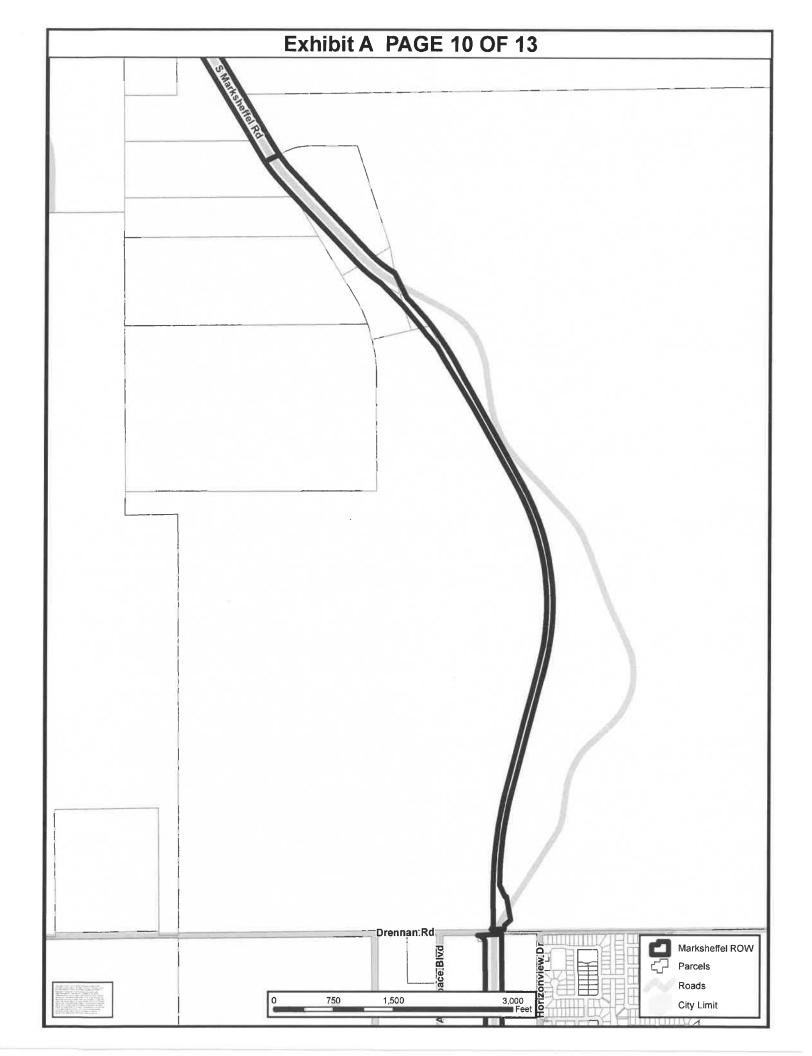


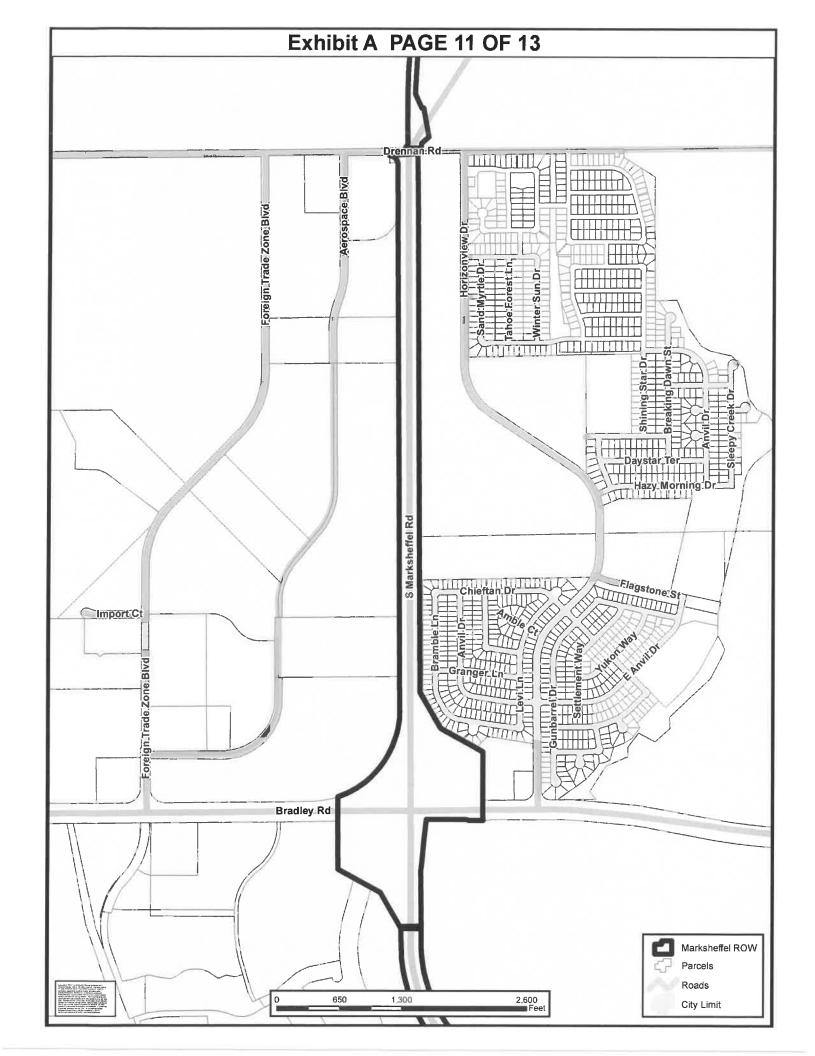


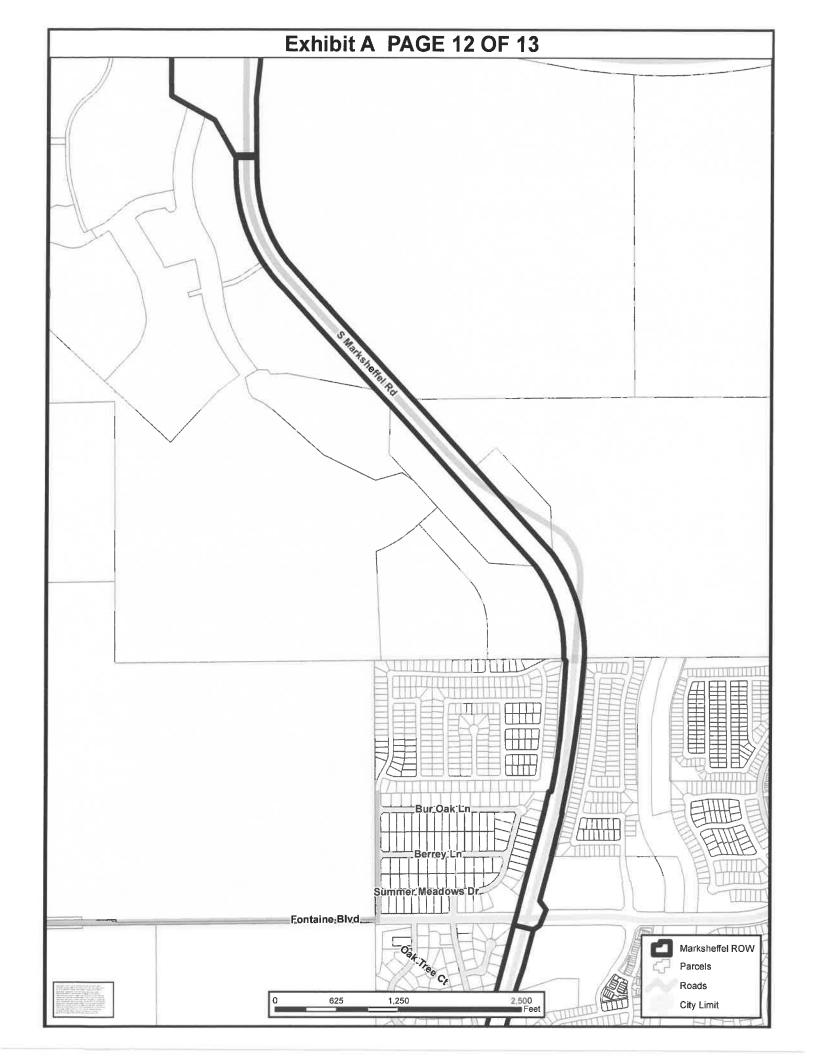












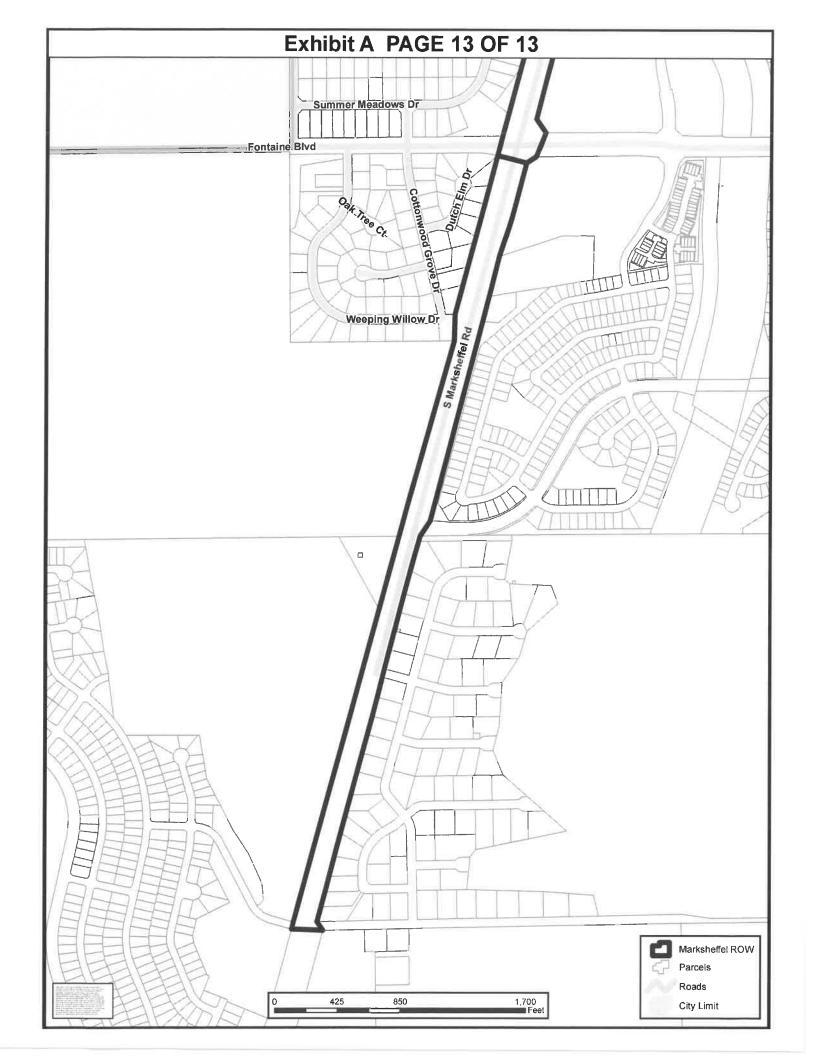


EXHIBIT B

Conveyance By Deed to El Paso County	Conveyance Document
Deed	Book 752 at page 305
Deed	Book 752 at page 337
Deed	Book 2779 at page 566
Deed	Book 2896 at page 757
Deed	Book 2896 at page 762
Deed	Book 2896 at page 766
Deed	Book 2896 at page 771
Deed	Book 2907 at page 679
Warranty Deed	Book 3430 at page 670
Warranty Deed	Book 3430 at page 673
Deed	Book 5056 at page 288
Deed	Book 5074 at page 209
Deed	Book 5118 at page 952
Warranty Deed	Reception No. 99090476
Warranty Deed	Reception No. 99108983
General Warranty Deed	Reception No. 203227785
Special Warranty Deed	Reception No. 205015091
Warranty Deed	Reception No. 205023100
Special Warranty Deed	Reception No. 205205951
Special Warranty Deed	Reception No. 205205953
Warranty Deed	Reception No. 209071394
Warranty Deed	Reception No. 209071396
Warranty Deed	Reception No. 209112383
Warranty Deed	Reception No. 210024915
Special Warranty Deed	Reception No. 210054574
Warranty Deed	Reception No. 210072737
Quitclaim Deed	Reception No. 210075668
Quitclaim Deed	Reception No. 210075669
Special Warranty Deed	Reception No. 210083231
Special Warranty Deed	Reception No. 210083232
Warranty Deed	Reception No. 210092953
Warranty Deed	Reception No. 210093003
Warranty Deed	Reception No. 210093038
Warranty Deed	Reception No. 210093624
Warranty Deed	Reception No. 210095656
Special Warranty Deed	Reception No. 211096238

Conveyance by Deed and Annexed to City of Colorado Springs	Document
Deed	Book 2896 at page 755
Deed	Book 2896 at page 756
Deed	Book 2896 at page 758
Deed	Book 2896 at page 759
Deed	Book 2896 at page 760
Deed	Book 2896 at page 763
Deed	Book 2896 at page 764
Deed	Book 2896 at page 765
Deed	Book 2896 at page 767
Deed	Book 2896 at page 767
Deed	Book 2896 at page 768
Deed	Book 2896 at page 770
Deed	Book 2907 at page 678
Deed	Book 2907 at page 680
Deed	Book 2907 at page 681
Deed	Book 2913 at page 854
Deed	Book 5242 at page 047
Quitclaim Deed	Reception No. 99164882
Warranty Deed	Reception No. 209077955
Warranty Deed	Reception No. 209123580
Warranty Deed	Reception No. 209123595
Warranty Deed	Reception No. 209135994
Warranty Deed	Reception No. 210004057
Warranty Deed	Reception No. 210011875
Warranty Deed	Reception No. 210011881
Warranty Deed	Reception No. 210030746
Warranty Deed	Reception No. 210030755
Warranty Deed	Reception No. 210051876
Warranty Deed	Reception No. 210106331
Warranty Deed	Reception No. 210107562

Plat Dedication:	Document
Toy Ranches Estates	Plat Book 22 at page 48
Marksheffel Industrial Park	Plat Book Z-3 at page 125
Chateau at Antelope Ridge Filing No. 1	Reception No. 99185575
Pronghorn Meadows Subdivision Filing No. 1	Reception No. 202165571
Marksheffel Business Center Filing No. 1	Reception No. 203232449
Pronghorn Meadows Subdivision Filing No. 2	Reception No. 205003921
Claremont Ranch Filing No. 7	Reception No. 205071100
Claremont Ranch Filing No. 8	Reception No. 205165703
Claremont Business Park Filing No. 1A	Reception No. 206712398
Claremont Ranch Filing No. 8A	Reception No. 207712644
The Property to El Paso County as set forth in Agreement Recorded at F	Reception No. 210131838
Marksheffel Right of Way of Unknown Origin	
Unknown parcel adjacent to TSN 5405000054	
Unknown parcel located at 2750 Marksheffel Road Tax Schedule No. 5332002017	
Unknown parcel located at 7723 North Carefree Circle Tax Schedule No. 5329400014	
Unknown parcel Tax Schedule No. 5300000634	
Unknown S/E1/4 Section 8, Township 13 South, Range 65 West	
Drainage Easements	Document
Permanent Drainage Easement	Reception No. 99164882
Tract A, Chateau at Antelope Ridge Filing No. 1	Reception No. 99185575
Non-Exclusive Permanent Drainage Easement	Reception No. 210106334
Non-Exclusive Permanent Drainage Easement	Reception No. 210107565
Non-Exclusive Permanent Drainage Easement	Reception No. 210107566
Deeds to El Paso County South of City of Colorado Springs Boundary	
Easement to El Paso County	
Non-exclusive Permanent Easement	Reception No. 216094890
Special Warranty Deed (only for that portion of Marksheffel Road lying north of Peaceful Valley located in Section 22, Township 15 South, Range 65 West, 6 th PM, herein conveyed to the City of	
Colorado Springs)	Reception No. 215087836
Special Warranty Deed	Reception No. 216026879
Special Warranty Deed	Reception No. 218089484
Special Warranty Deed	Reception No. 218089485
Special Warranty Deed	Reception No. 218089511
Special Warranty Deed	Reception No. 215095490
Special Warranty Deed	Reception No. 218066954
Special Warranty Deed	Reception No. 218066955
Special Warranty Deed	Reception No. 214116021
Special Warranty Deed	Reception No. 214116022
Special Warranty Deed	Reception No. 214119767

Quitclaim Deed El Paso County, Colorado

Special Warranty Deed	Reception No. 214119768
Special Warranty Deed	Reception No. 214119796
Special Warranty Deed	Reception No. 207107320