

**CONSOLIDATION AGREEMENT
BY AND BETWEEN
EAST CREEK METROPOLITAN DISTRICT NO. 1
AND
EAST CREEK METROPOLITAN DISTRICT NO. 2**

This CONSOLIDATION AGREEMENT (“**Agreement**”) is made and entered into effective as of this 18th day of September, 2023 (the “**Effective Date**”), by and between **EAST CREEK METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado, (“**District No. 1**”), and **EAST CREEK METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado, (“**District No. 2**”, together with District No. 1, the “**Districts**”).

RECITALS

A. District No. 1 was organized pursuant to Section 32-1-101, et seq., C.R.S., for the purpose of constructing, operating and maintaining certain public facilities and improvements in accordance with its approved service plan.

B. District No. 2 was organized pursuant to Section 32-1-101, et seq., C.R.S., for the purpose of constructing, operating and maintaining certain public facilities and improvements in accordance with its service plan.

C. The Districts believe that they are so situated that they may be operated more effectively and economically as a consolidated district.

D. The Districts believe that the public health, safety, prosperity, and general welfare of their inhabitants will be better served by their consolidation.

E. It is the intent of both Districts that, after consolidation, the single consolidated district will continue all of the services and fulfill the obligations of District No. 1 and District No. 2 without material change.

F. The Districts desire to formulate a plan for consolidation, which shall include provisions regarding: (a) the approval of any financial obligation; (b) the application of differential mill levies; (c) the area to be included within the consolidated district; and (d) the continuation of services, and the funding therefore.

G. The Districts desire to work cooperatively to take all actions necessary to cause a consolidation order of the court to be issued in accordance with Section 32-1-603(4), C.R.S., (“**Consolidation Order**”) (the later of the date of the entry of such order or the “**Consolidation Effective Date**” set forth in the Consolidation Order, shall be referred to herein as the “**Consolidation Date**”).

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreements hereinafter set forth, the sufficiency of which are hereby acknowledged, the Districts do hereby agree as follows:

COVENANTS AND AGREEMENTS

The Recitals set forth above are hereby incorporated into the covenants and agreements set forth below.

1. Name. The name of the consolidated district shall be the East Creek Consolidated Metropolitan District (the “**Consolidated District**”).

2. Board of Directors. After the consolidation election the members of the board of the Districts at the time of such election shall constitute the board of the Consolidated District (the “**Consolidated Board**”). The Districts agree that the Consolidated District shall not have an advisory board as is described in Section 32-1-604, C.R.S.

3. Powers of the Consolidated District. The Consolidated District shall have all of the rights, powers, and authorities which are granted by statute and by their respective service plan to each of District No. 1 and District No. 2. It is the intent of the Districts that the Consolidated District will continue all services provided by District No. 1 and District No. 2 prior to the consolidation, without material change.

4. Consolidated District Boundaries. The area to be included within the boundaries of the Consolidated District shall be the total area of District No. 1 and District No. 2 as of the Consolidation Date. The Consolidated District will lie entirely within the boundaries of the City of Aurora, Arapahoe County, Colorado. A map of the area that will be the Consolidated District boundaries is attached hereto as Exhibit A, and incorporated herein by this reference. Inclusions and Exclusions from the Consolidated District after the Consolidation Date will be governed by provisions of Sections 32-1-401 et seq., C.R.S. and Sections 32-1-501 et seq., C.R.S., respectively.

5. Consolidated District Service Plan. The Districts hereby recognize that the Consolidated District does not need approval of a service plan in accordance with the provisions of Part 2 of Article 1 of Title 32. The Districts hereby agree that the service plan for District No. 1 and District No. 2 shall be read together to constitute the service plan of the Consolidated District. To the extent any discrepancies may exist between the service plan and Statement, the one with the more enabling or permissive language shall govern.

6. Indebtedness.

(a) On April 16, 2019, District No. 1 issued \$4,010,000 General Obligation (Limited Tax Convertible to Unlimited Tax) Bonds, Series 2019A and \$584,000 Subordinate General Obligation Limited Tax Bonds, Series 2019B (the “**2019 Bonds**”).

(b) On April 16, 2019, the Districts entered into a Capital Pledge Agreement (the “**Capital Pledge Agreement**”), whereby District No. 2 is obligated to levy on all taxable property within District No. 2 the amount of the Mandatory Capital Levy (as defined in the Capital Pledge Agreement) until termination of the Capital Pledge Agreement on December 16, 2058. The Mandatory Capital Levy is different than the mill levy required to be imposed by District No. 1 for repayment of the 2019 Bonds.

(c) On April 13, 2023, District No. 1 entered into a Loan Agreement with Zions Bancorporation, N.A., d/b/a/ Vectra Bank Colorado in the amount of \$4,600,000 for the purpose of refunding the 2019 Bonds (the “**Refunding Loan**”). The mill levy to be imposed by District No. 1 pursuant to the Refunding Loan is different from the Mandatory Capital Levy to be imposed by District No. 2.

(d) Any future bonded indebtedness of the Consolidated District shall be determined by the Consolidated Board and, to the extent voter approval is required, by the eligible electors of the Consolidated District.

7. Mill Levy.

(a) Mill Levy. District No. 1 provides services to residents not received by the taxpayers and property owners within District No. 2. Accordingly, District No. 1 imposes a different mill levy for general operating expenses than District No. 2. District No. 1 and District No. 2 may continue to have different mill levies based on the ratio of difference in effect as of the date of the Consolidation Date and the mill levy certified by the Consolidated Board against the real property located in the area currently within District No. 1 and District No. 2 shall maintain the differential ratio in effect on the Consolidation Date.

(b) Rates, Tolls Fees and Charges. In addition to the mill levy assessments described above, District No. 1 imposes fees to defray the cost of services that are being received by the residents and taxpayers within District No. 1, which are not being received by the taxpayers, inhabitants and property owners within District No. 2. The Consolidated Board will continue to have the statutory right to assess and impose such fees, rates, tolls, penalties, and charges, as it sees fit and as are permitted by statute, to cover the cost of, inter alia, the services received by the area that comprises District No. 1 as of the Consolidation Date and that no such fees shall be imposed upon the area that comprises District No. 2 as of the Consolidation Date.

8. Taxes and Debt Authority. The Districts acknowledge that the Consolidated District’s authority to assess taxes and incur debt must be authorized at an election to be held on November 7, 2023. The November 7, 2023 election shall also include requests for approval of a) a deBrucing measure, b) authority of the Consolidation District to have metropolitan district powers, c) the elimination of term limits, and d) the Consolidation of the Districts pursuant to this Consolidation Agreement as the statutorily required plan for consolidation. Such ballot questions shall be in substantially the same form as those that are set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

9. Agreements.

(a) Intergovernmental Agreements Between Districts. The Districts agree that as of the Consolidation Date all intergovernmental agreements by and between the Districts shall be superseded, terminated, and shall no longer be of any force or effect other than the Capital Pledge Agreement.

(b) Assignment of Agreements. Pursuant to Section 32-1-602(2)(f), C.R.S., upon approval by a majority of the eligible electors voting in the election regarding consolidation of District No. 1 and District No. 2, the Consolidated District shall be the successor to both

District No. 1 and District No. 2. As such, under Section 32-1-607(2), C.R.S., upon entry of the court's ex parte order under Section 32-1-603(4), C.R.S., the Consolidated District shall immediately become the responsible party for all obligations of District No. 2 and District No. 1. The Consolidated District shall appropriately document the change of ownership and contractual obligations herein referenced and shall notify the respective interested parties of the succession of the Consolidated District.

10. Assets of the Districts. As above, pursuant to Section 32-1-607(2), C.R.S., the Consolidated District shall immediately become the owner of and entitled to receive, hold, sue for, and collect all moneys, funds, taxes, levies, assessments, fees, and charges and all property and assets of any kind or nature owned, leased, or claimed by or due to District No. 1 and District No. 2. Therefore, all of District No. 1 and District No. 2's rights and assets including, but not limited to, existing operational reserves, emergency reserves, cash assets, capital reserves, real property, water rights, personal property and appurtenances shall immediately become the property of the Consolidated District. The Consolidated District shall appropriately document the change in ownership and contractual obligations herein referenced and shall notify the respective interested parties of the succession of the Consolidated District.

11. Continued Existence of the Districts. The order of consolidation obtained from the Arapahoe County District Court shall expressly state that the Districts shall continue to exist as corporate entities until December 31, 2023 for the purpose of carrying out such tasks and matters that are to occur pursuant to this Agreement, including without limitation the adoption of the Districts' 2024 budgets as described below. Should any matters arise after December 6, 2023 that require "winding up" actions or efforts on the part of either District the Consolidated District is hereby authorized and obligated to take such actions, make such efforts and execute such documents as may be necessary and reasonable to accomplish the same.

12. 2024 Budget. No later than December 15, 2023, the Districts and the Consolidated District will adopt a 2024 budget for each of the Districts and the Consolidated District. The Districts' 2024 budgets shall consist of the certification of mill levies as described herein or as may be determined by the Districts' Boards, and the appropriation of the resulting revenues for their payment to the Consolidated District to be used for the payment of the Consolidated District's 2024 costs of operation, maintenance and administration. The order concerning consolidation will direct the County to divert those revenues to the Consolidated Districts.

13. Miscellaneous Liabilities of the Districts. All liabilities of the Districts which have not otherwise been provided for in this Agreement shall be assumed by the Consolidated District, provided, however, that all redundancies in services shall be eliminated.

14. Costs of Consolidation. As of the Effective Date, the costs of consolidating the Districts into the Consolidated District including, but not limited to, attorneys' fees, filing fees and court costs, shall be borne by District No. 2.

15. Miscellaneous Provisions.

(a) Termination. This Agreement may only be terminated by mutual written agreement of both Districts, provided, however, that the Districts hereby agree that this Agreement shall automatically terminate in the event that a majority of the electors voting in the elections within District No. 1 and District No. 2 concerning the consolidation in accordance with Section 32-1-602(2)(f), C.R.S. do not approve the consolidation.

(b) Assignment. Neither District No. 1 nor District No. 2 may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other District.

(c) Time is of the Essence. The Districts acknowledge that time is of the essence in the performance of this Agreement.

(d) No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither District No. 1 nor District No. 2 shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the Districts pursuant to this Agreement shall be deemed actions as an independent contractor of the other.

(e) No Third-District Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Districts. It is the express intention of the Districts that any person other than District No. 1 and District No. 2 shall be deemed to be only an incidental beneficiary under this Agreement.

(f) Governmental Immunity. Nothing in this Agreement or in any actions taken by the Districts pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

(g) Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either District hereto, by the other District shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the District to whom it is addressed or in lieu of such personal services, when received in the United States' mail, first-class postage prepaid addressed to:

To District No. 1: East Creek Metropolitan District No. 1
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, CO 80228
Attention: Peggy Ripko
Phone: 303-897-0835
Email: pripko@sdmsi.com

With a copy to: McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: legalnotices@specialdistrictlaw.com

To District No. 2: East Creek Metropolitan District No. 2
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, CO 80228
Attention: Peggy Ripko
Phone: 303-897-0835
Email: pripko@sdmsi.com

With a copy to: McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: legalnotices@specialdistrictlaw.com

Either District may change its address for the purpose of this Section by giving written notice of such change to the other District in the manner provided in this Section.

(h) Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

(i) Controlling Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any dispute hereunder shall lie in the Arapahoe County District Court.

(j) No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

(k) Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Districts.

(l) Entire Contract. This Agreement constitutes the entire agreement between the Districts and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

(m) Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Districts.

(n) Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and in such event the Districts shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Districts in entering into this Agreement.

(o) Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Signature page follows]


SIGNATURE PAGE TO CONSOLIDATION AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Consolidation Agreement as of the day and year first set forth above.

EAST CREEK METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: Gregory Wright
Greg Wright, President


Attest:

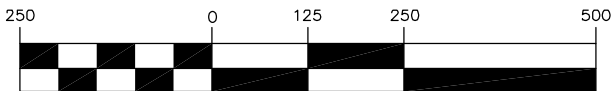

Secretary

EAST CREEK METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado

By: Chelsey Green
Chelsey Green, President

Attest:


Secretary



(IN FEET)
1 inch = 250 ft.

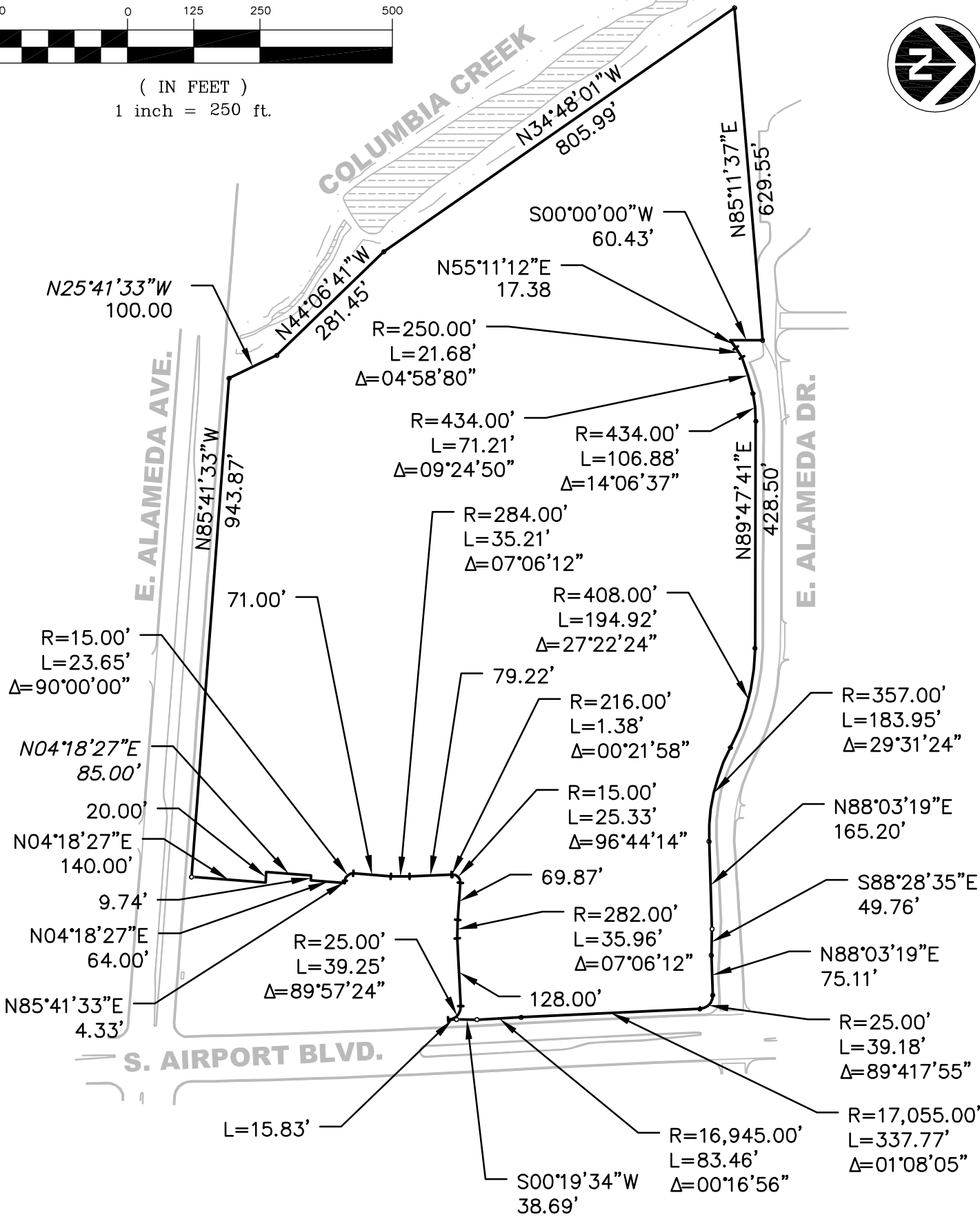


COLUMBIA CREEK

E. ALAMEDA AVE.

E. ALAMEDA DR.

S. AIRPORT BLVD.



Project Number:
129010

Date:
01-05-2018

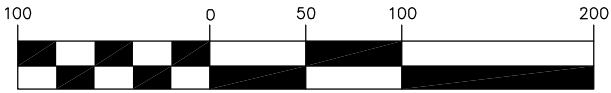
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Sheet Number:
01 of 02

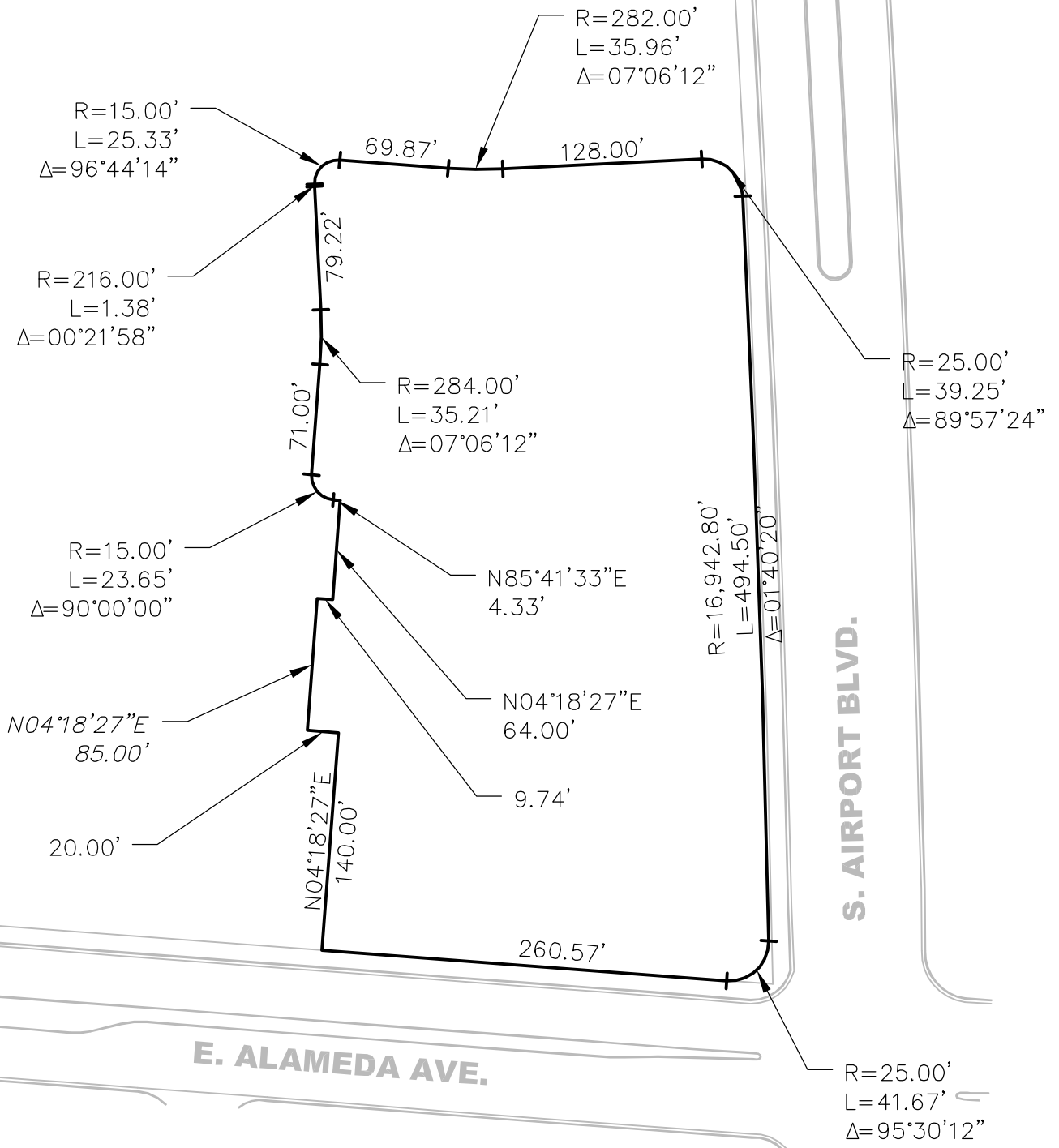
EAST CREEK
DISTRICT # 1 BOUNDARY EXHIBIT

LOCATED IN THE NE $\frac{1}{4}$ OF SECTION 17, TOWNSHIP 4 SOUTH,
RANGE 66 WEST OF THE 6TH P.M. CITY OF AURORA, COUNTY
OF ARAPAHOE, STATE OF COLORADO

J:\129010\PLAN SETS\EAST-CREEK-RES-BOUNDARY-EXHBT.DWG.1/8/2018 1:44 PM STEPHEN EHRMANN



(IN FEET)
1 inch = 100 ft.



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Project Number:	129010
Date:	01-05-2018
Scale:	1"=100'
Sheet Number:	02 of 02

EAST CREEK
DISTRICT #2 BOUNDARY EXHIBIT
LOCATED IN THE NE $\frac{1}{4}$ OF SECTION 17, TOWNSHIP 4 SOUTH,
RANGE 66 WEST OF THE 6TH P.M. CITY OF AURORA, COUNTY
OF ARAPAHOE, STATE OF COLORADO

VICINITY MAP (N.T.S.)

