

<p>DISTRICT COURT, EL PASO COUNTY, STATE OF COLORADO 270 South Tejon P.O. Box 2980 Colorado Springs, CO 80903 (719) 452-5000</p>	
<p><b>Petitioners:</b> CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation; and, DONALD WESCOTT FIRE PROTECTION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado</p> <p>v.</p> <p><b>Respondents:</b> THE TAXPAYING ELECTORS OF THE AFFECTED AREA WITHIN DONALD WESCOTT FIRE PROTECTION DISTRICT, as a class</p>	
<p>Wynette Massey, City Attorney - #26743 Frederick P. Stein, Senior City Attorney - #34481 P.O. Box 1575, Mail Code 510 30 South Nevada Avenue, Suite 501 Colorado Springs, CO 80901 Telephone: (719) 385-5909 Fax number: (719) 385-5535 COUNSEL FOR THE CITY OF COLORADO SPRINGS</p> <p>Dino A. Ross, #20965 IRELAND STAPLETON PRYOR &amp; PASCOE, P.C. 717 17<sup>TH</sup> Street, Suite 2800 Denver, Colorado 80202 Telephone: (303) 623-2700 Fax No.: (303) 623-2062 E-mail: dross@irelandstapleton.com COUNSEL FOR DONALD WESCOTT FIRE PROTECTION DISTRICT</p>	<p>Case Number:</p> <p>Division:</p>
<p align="center"><b>PETITION AND PLAN FOR EXCLUDING CERTAIN REAL PROPERTY FROM DONALD WESCOTT FIRE PROTECTION DISTRICT</b></p>	

The Petitioners, the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Donald Wescott Fire Protection District, a quasi-municipal corporation and political subdivision of the State of Colorado ("Wescott FPD"), submit the following Petition and Plan to exclude certain real property from Wescott FPD pursuant to C.R.S. § 32-1-502(1)(a).

## **I. PARTIES, JURISDICTION, AND VENUE**

1. Co-Petitioner City is a home rule city and municipal corporation duly organized and existing under and by virtue of its ordinances and the Constitution and statutes of the State of Colorado. The City Council ("City Council") is the governing body of the City.

2. Co-Petitioner Wescott FPD is a quasi-municipal corporation and political subdivision of the State of Colorado organized and existing under and by virtue of C.R.S. § 32-1-101, *et seq.* ("Special District Act"), as amended. The Wescott FPD Board of Directors ("Board") is the governing body of Wescott FPD, and exercises its powers under the provisions of the Special District Act.

3. The taxpaying electors of the area sought to be excluded from Wescott FPD by this Petition and Plan are those persons defined by C.R.S. § 32-1-103(23), as amended, with respect to such area, and are made party respondents hereto as a class, as provided by C.R.S. § 32-1-502(1)(a), as amended.

4. The Court has jurisdiction over all claims for relief asserted and venue is proper pursuant to C.R.S. § 32-1-303(1)(a).

### **FIRST CLAIM FOR RELIEF**

(Exclusion of Territory from Wescott FPD)

5. The Petitioners incorporate the allegations contained in paragraphs 1 through 4 of this Petition and Plan as if set forth fully herein.

6. The Petitioners both provide fire protection and related emergency services (collectively, "Emergency Services") to property that is within the boundaries of Wescott FPD and the corporate limits of the City, which area is described in the attached Exhibit A ("Overlap Area").

7. The Petitioners desire to exclude the Overlap Area from Wescott FPD and have entered into the Intergovernmental Agreement ("IGA") attached as Exhibit B, which defines the obligations of the City and Wescott FPD to implement the exclusion of the Overlap Area in two phases. Phase One of the exclusion process was completed, effective January 1, 2017.

8. Pursuant to the terms of the IGA, the Petitioners at this time desire to exclude from Wescott FPD a portion of the Overlap Area described in the attached Exhibit C ("Phase Two Property").

9. Section 32-1-502 C.R.S., in the Special District Act, provides for the exclusion of a special district's property that has been annexed to a municipality. This section of the Special District Act contemplates that a municipality and a special district will enter into an appropriate plan for exclusion of the area within the special district that has been annexed to a municipality. Subsection (C) of Section 32-1-502 (2) provides in part:

Said plan shall include, if applicable, provisions for the maintenance and continuity of facilities to be utilized by the territory both within and without the municipal boundaries and of services to the territory served or previously served by the special district.

10. In compliance with these statutory provisions, the Petitioners entered into an Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado (Phase Two), which is attached as Exhibit D ("Agreement"). The Agreement provides for the exclusion of the Phase Two Property from Wescott FPD.

11. The Petitioners each hereby consent to the exclusion of the Phase Two Property (Exhibit C), subject to the terms of the IGA (Exhibit B) and the Agreement (Exhibit D).

12. The City Council has agreed by Resolution, and hereby agrees, to provide the Emergency Services currently provided by Wescott FPD to the Phase Two Property immediately upon exclusion of the Phase Two Property from Wescott FPD. A copy of the City Council's Resolution is attached as Exhibit E.

13. Wescott FPD shall continue to provide Emergency Services to the Phase Two Property until the effective date of its exclusion from Wescott FPD. Upon exclusion, Wescott FPD will no longer be responsible for the provision of Emergency Services to the Phase Two Property, except to the extent agreed upon by the City and Wescott FPD in current or future Agreements for Mutual or Automatic Aid.

14. The quality of Emergency Services within the Phase Two Property, including the fire insurance costs for improvements, will not be adversely affected by the exclusion.

15. There are no Wescott FPD facilities in the Phase Two Property to be excluded from Wescott FPD.

16. Wescott FPD currently has no outstanding bonded indebtedness.

17. The Petitioners certify that each finds the provisions of the plan for exclusion set forth in this Petition and Plan, the IGA (Exhibit B) and the Agreement (Exhibit D) are fair and equitable.

18. The proposed Order of Exclusion to be entered by the Court shall adopt the provisions of the Agreement and the IGA, which have been approved by the Petitioners.

19. The proposed Order of Exclusion to be entered by the Court shall provide for the retention of jurisdiction by the Court as necessary to implement, interpret, or modify the Court's Order of Exclusion and shall provide for the retention by the Court of jurisdiction for the implementation, interpretation, or modification of the Agreement.

20. In accordance with C.R.S. § 32-1-502(1)(a), within ten days after filing this Petition and Plan, the Petitioners will notify the City Council and the Wescott FPD Board of these exclusion proceedings. The Petitioners also will notify the taxpaying electors of these exclusion proceedings by publication.

WHEREFORE, pursuant to C.R.S. § 32-1-502(1)(a), the Petitioners respectfully request that the Court issue an Order excluding the Phase Two Property (Exhibit B) from the jurisdiction of Wescott FPD.

A proposed Order is attached for the Court's convenience.

DATED this \_\_\_ day of October, 2016.

Respectfully Submitted,

WYNETTE MASSEY  
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By: */s/ Frederick P. Stein*

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