

**RESOLUTION  
BOARD OF DIRECTORS OF  
DONALD WESCOTT FIRE PROTECTION DISTRICT**

**A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT FOR THE EXCLUSION OF CERTAIN PROPERTY FROM THE DONALD WESCOTT FIRE PROTECTION DISTRICT, AND APPROVING THE FILING OF PETITIONS FOR EXCLUSION OF SUCH PROPERTY WITH THE EL PASO COUNTY DISTRICT COURT IN ACCORDANCE THEREWITH**

**WHEREAS**, the Donald Wescott Fire Protection District ("*District*") is a political subdivision of the State of Colorado, organized pursuant to C.R.S. § 32-1-101, *et seq.* ("*Special District Act*"), to provide fire protection and other emergency services (collectively, "*Emergency Services*") to the citizens and property within its jurisdiction;

**WHEREAS**, the City of Colorado Springs ("*City*") is a home-rule city and municipal corporation organized under Article XX, Section 6 of the Colorado Constitution, which provides, among other services, Emergency Services to the citizens and property within its corporate boundaries;

**WHEREAS**, the District's jurisdictional boundaries encompass approximately 22 square miles, all of which is within El Paso County, Colorado. Approximately half of the real property located within the District's jurisdictional boundaries has been annexed to the City ("*Annexed Property*");

**WHEREAS**, the City previously declared its intent to exclude (i.e., remove) the Annexed Property from the District's jurisdiction pursuant to C.R.S. § 32-1-502 and to provide Emergency Services to the Annexed Property directly;

**WHEREAS**, the District Board of Directors ("*Board*") has determined that it is in the best interests of the District, and the citizens and property it serves, to enter into an agreement with the City to provide for the orderly exclusion of the Annexed Property from the District in two phases so that continuity of Emergency Services is maintained;

**WHEREAS**, the Board and the City Council, through their respective legal counsel and Staff, have negotiated and prepared the attached Intergovernmental Agreement for the Exclusion of Certain Property from the Donald Wescott Fire Protection District ("*Exclusion IGA*"), pursuant to which:

- (a) The District and City (together, the "*Parties*") will exclude from the District a portion of the Annexed Property which is more particularly described on Exhibit 1 to the Exclusion IGA ("*Phase One Property*"). Exclusion of the Phase One Property will become effective January 1, 2017, and will be accomplished pursuant to the Petition for Exclusion and Agreement and Joint Plan for Exclusion of Certain Property from

the Donald Wescott Fire Protection District of El Paso County, Colorado [Phase One] attached to the Exclusion IGA as Exhibit 3;

- (b) The Parties subsequently will exclude from the District the balance of the Annexed Property which is more particularly described on Exhibit 2 to the Exclusion IGA ("*Phase Two Property*"). Exclusion of the Phase Two Property will become effective January 1, 2018, and will be accomplished pursuant to the Petition for Exclusion and Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado [Phase Two] attached to the Exclusion IGA as Exhibit 4; and,
- (c) The City will not, for a period of fifteen years from the date of the Exclusion IGA ("*Non-Exclusion Period*"), undertake exclusion of any additional annexed areas within the District aside from the Annexed Property, and furthermore, during the Non-Exclusion Period, if the City annexes a property within the District's boundaries on or after January 1, 2028, the City will not undertake exclusion of such property from the District until three years from the date of the property's annexation; provided, that the City's obligation to forego additional exclusions is conditioned upon the District maintaining a minimum response time of 8 minutes on 80% of emergency responses within all annexed areas; and,

**WHEREAS**, upon due and proper consideration, the Board has determined that the Exclusion IGA, together with its exhibits, will facilitate the well-organized exclusion of the Annexed Property from the District, as well as the continuation of Emergency Services in the District's jurisdiction both during and after the exclusion of the Annexed Property.

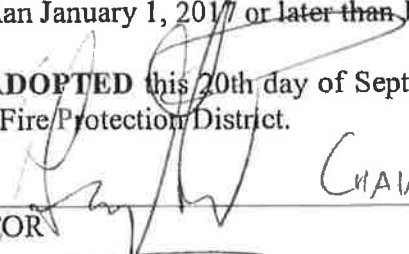
**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE DONALD WESCOTT FIRE PROTECTION DISTRICT:**

1. The Board hereby approves, and authorizes the Board President to sign, the Intergovernmental Agreement for the Exclusion of Certain Property from the Donald Wescott Fire Protection District.
2. The Board hereby approves, and authorizes the Board President to sign, the Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado [Phase One] in substantially the form attached to the Exclusion IGA as part of Exhibit 3.
3. The Board hereby approves, and authorizes its legal counsel to file with the El Paso County District Court, the Petition and Plan for Excluding Certain Real Property from Donald Wescott Fire Protection District related to the Phase One Property in substantially the form attached to the Exclusion IGA as part of Exhibit 3.
4. The Board hereby approves, and authorizes the Board President to sign, the Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire


Protection District of El Paso County, Colorado [Phase One] in substantially the form attached to the Exclusion IGA as part of Exhibit 4.

5. The Board hereby approves, and authorizes its legal counsel to file with the El Paso County District Court, the Petition and Plan for Excluding Certain Real Property from Donald Wescott Fire Protection District related to the Phase Two Property in substantially the form attached to the Exclusion IGA as part of Exhibit 4; provided that such filing shall not occur sooner than January 1, 2017 or later than July 31, 2017.


**ADOPTED** this 20th day of September, 2016, by the Board of Directors of the Donald Wescott Fire Protection District.

  
CHAIR.  
\_\_\_\_\_  
DIRECTOR

  
\_\_\_\_\_  
DIRECTOR

  
\_\_\_\_\_  
DIRECTOR

  
\_\_\_\_\_  
DIRECTOR

  
\_\_\_\_\_  
DIRECTOR

## **Intergovernmental Agreement for the Exclusion of Certain Property from the Donald Wescott Fire Protection District**

This Intergovernmental Agreement for the Exclusion of Certain Property from the Donald Wescott Fire Protection District (the "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2016 by and between the Donald Wescott Fire Protection District of El Paso County, Colorado ("Wescott FPD"), and the City of Colorado Springs, a home-rule city and Colorado municipal corporation ("Colorado Springs").

WHEREAS, Wescott FPD is a duly organized fire protection district under Title 32 of the Colorado Revised Statutes; and

WHEREAS, Colorado Springs is a home-rule city and municipal corporation organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, Wescott FPD and Colorado Springs are referred to collectively in this Agreement as "Parties" or individually as a "Party"; and

WHEREAS, the Parties provide fire protection and emergency response services within incorporated areas of Colorado Springs that overlap the boundaries of Wescott FPD; and

WHEREAS, the Parties desire to prepare for and to provide for the orderly exclusion of certain property from Wescott FPD in phases so that continuity of fire protection and emergency services is maintained; and

WHEREAS, the Parties enter into this Agreement under the authority of C.R.S. 29-1-203; and

WHEREAS, the Parties desire to exclude from Wescott FPD the property more particularly described in Exhibit 1 attached hereto and made a part hereof (the "Phase One Property") with such exclusion to become effective on January 1, 2017; and

WHEREAS, the Parties desire to exclude from Wescott FPD the property more particularly described in Exhibit 2 attached hereto and made a part hereof (the "Phase Two Property") with such exclusion to become effective on January 1, 2018; and

WHEREAS, the Parties desire to enter into this Agreement to memorialize their obligations and understandings with respect to the process of the above referenced exclusions of property.

NOW, THEREFORE, the Parties, for valuable consideration including the mutual promises and considerations set forth below, agree as follows:

1. On or before October 31, 2016, the Parties shall file a Petition for Exclusion and Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase One Property, to be effective January 1, 2017, as set forth in Exhibit 3.
2. On or before July 31, 2017, the Parties shall file a Petition for Exclusion and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase Two Property to be effective January 1, 2018, in substantially the same form as set forth in Exhibit 4.
3. In the event that the court does not order the exclusion of the Phase One Property or the Phase Two Property in accordance with the terms and conditions of the agreements and joint plans set forth herein, the Parties shall have no further obligation with respect this Agreement.
4. Wescott FPD agrees that if it undertakes new indebtedness prior to the effective date of the exclusion of the Phase Two Property, such indebtedness shall only apply to a duly created sub-district formed from areas not including the Phase Two Property.
5. Wescott FPD agrees, however, that its obligations under this Agreement shall not be contingent upon the creation of any sub-district.
6. Colorado Springs agrees that it shall not, for a period of fifteen (15) years from the date of this Agreement, undertake exclusion of any additional annexed areas within the Wescott FPD, aside from the planned Phase One Property and the Phase Two Property ("Non-Exclusion Period"). Colorado Springs further agrees that, during the Non-Exclusion Period, if Colorado Springs annexes a property within Wescott FPD's boundaries on or after January 1, 2028, Colorado Springs will not undertake exclusion of such property from Wescott FPD until three (3) years from the date the property is annexed to Colorado Springs. Provided, however, that Colorado Springs' obligation to forgo additional exclusions shall be conditioned upon Wescott FPD maintaining a minimum response time of 8 minutes on 80% of the emergency responses within all annexed areas ("Minimum Service Level"). If Wescott FPD fails to maintain the Minimum Service Level for any period of 180 consecutive calendar days, Colorado Springs' obligation to forgo additional exclusions shall terminate.
7. Except as modified by the above referenced joint plans for exclusions, or as otherwise agreed to by the Parties, this Agreement shall not affect any agreement for mutual or automatic aid.
8. If any terms, conditions, or provisions of this Agreement shall be held unconstitutional, illegal, or void, such finding shall not affect any other terms, conditions, or provisions of this Agreement.

By duly adopted resolutions of their respective governing bodies, the Parties have authorized this Agreement and the filing of a Petition for Exclusion and the Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase One Property, to be effective January 1, 2017, as set forth in Exhibit 3. Moreover, such resolutions have authorized the filing of a Petition for Exclusion and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase Two Property to be effective January 1, 2018, in substantially the same form as set forth in Exhibit 4.

IN WITNESS hereof the signatures of the authorized representatives to the Parties to this Agreement are set forth below.

**[signatures of Parties appearing on subsequent pages in counterpart]**

~~DONALD WESCOTT FIRE PROTECTION DISTRICT~~

By: \_\_\_\_\_

Greg Gent, Board President

Board of Donald Wescott Fire Protection District

ATTEST:

By: \_\_\_\_\_

Harland Baker, Board Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_

Dino A. Ross, Esq., Legal Counsel to the District

**CITY OF COLORADO SPRINGS, COLORADO**

By: \_\_\_\_\_

**John W. Suthers, Mayor**

**ATTEST:**

By: \_\_\_\_\_

**Sarah B. Johnson, City Clerk**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

**David A. Andrews, Legislative Counsel**



**Exhibit 1**

**Phase One – Property Exclusion Map**

Phase 1



Northern:  
 Properties- **49.78%**  
 Tax- **49.64%**

Southern:  
 Properties- **46.42%**  
 Tax- **48.70%**

Properties not  
 Plotted:  
 Properties- **3.80%**  
 Tax- **1.65%**

Area 1104/1118 -  
 unannexed county  
 areas

1512	1104
1513	1118
1514	1192
1515	1574
1516	1633
1517	8111
1518	8113
1519	8115
1520	8116
1521	8117
1522	8119
1523	8123
1524	8124
1525	8125
1526	8126
1527	8127
1528	8134
1529	8135

Phase 1

Phase 2

FDZZ	Unplotted	FDZZ	% of Properties	% of All Tax	# of Properties	Tot. Wescott Estimated Tax due in 2016	% Wescott Estimated Tax due in 2016	Tot. City Estimated Tax due in 2016	% City Estimated Tax due in 2016_2	Sum of Total Tax	Count of Incident ID	% Incident ID2
	0		3.80%	1.65%	154	\$19,923.54	1.65%	\$12,178.98	1.65%	\$32,102.52		0.00%
	Unplotted Total		3.80%	1.65%	154	\$19,923.54	1.65%	\$12,178.98	1.65%	\$32,102.52	444	11.51%
	South		0.02%	0.00%	1	\$0.00	0.00%	\$0.00	0.00%	\$0.00	47	1.22%
	1103		0.05%	0.02%	2	\$221.13	0.02%	\$135.17	0.02%	\$356.30	12	0.31%
	1118		4.84%	2.13%	196	\$25,680.06	2.13%	\$15,697.85	2.13%	\$41,377.91	14	0.36%
	1574		2.05%	1.76%	83	\$21,171.15	1.76%	\$12,941.62	1.76%	\$34,112.77	247	6.41%
	1633		3.58%	8.70%	145	\$104,794.76	8.70%	\$64,059.54	8.70%	\$168,854.30	42	1.09%
	8111		4.67%	3.96%	189	\$47,728.03	3.96%	\$29,175.46	3.96%	\$76,903.49	182	4.72%
	8113		6.12%	4.83%	248	\$58,259.81	4.83%	\$35,613.39	4.83%	\$93,873.20	53	1.37%
	8114		0.27%	9.56%	11	\$115,191.16	9.56%	\$70,414.71	9.56%	\$185,605.87	125	3.24%
	8115		0.02%	0.00%	1	\$0.42	0.00%	\$0.26	0.00%	\$0.68		0.00%
	8116		9.98%	6.73%	404	\$81,079.60	6.73%	\$49,562.80	6.73%	\$130,642.40		0.00%
	8117		0.22%	0.01%	9	\$138.67	0.01%	\$84.77	0.01%	\$223.44		0.00%
	8118		0.17%	0.01%	7	\$116.76	0.01%	\$71.37	0.01%	\$188.13	1436	37.24%
	8119		8.10%	6.31%	328	\$76,073.34	6.31%	\$46,502.55	6.31%	\$122,575.89	177	4.59%
	8125		1.23%	0.06%	50	\$675.01	0.06%	\$412.62	0.06%	\$1,087.63		0.00%
	8126		5.04%	4.63%	204	\$55,783.07	4.63%	\$34,099.39	4.63%	\$89,882.46	165	4.28%
	8127		0.02%	0.00%	1	\$0.00	0.00%	\$0.00	0.00%	\$0.00	2994	76.95%
	8134		0.02%	0.00%	1	\$0.42	0.00%	\$0.26	0.00%	\$0.68		0.00%
	8135		46.42%	48.70%	1680	\$386,913.39	48.70%	\$358,771.77	48.70%	\$745,685.16		0.00%
	South Total		5.14%	4.04%	208	\$48,677.86	4.04%	\$29,756.08	4.04%	\$78,433.94	174	4.51%
	North		4.86%	4.38%	197	\$52,815.21	4.38%	\$32,285.18	4.38%	\$85,100.39	48	1.24%
	1513		2.30%	1.73%	93	\$20,889.19	1.73%	\$12,769.26	1.73%	\$33,658.45	49	1.27%
	1514		4.81%	5.01%	195	\$60,378.92	5.01%	\$36,908.77	5.01%	\$97,287.69	42	1.09%
	1515		4.64%	3.79%	188	\$45,637.06	3.79%	\$27,897.28	3.79%	\$73,534.34	51	1.32%
	1571		1.75%	1.84%	71	\$22,219.68	1.84%	\$13,582.57	1.84%	\$35,802.25	47	1.22%
	8100		8.30%	5.38%	336	\$64,858.78	5.38%	\$39,647.25	5.38%	\$104,506.03	102	2.65%
	8101		2.20%	2.37%	89	\$28,506.80	2.37%	\$17,425.80	2.37%	\$45,932.60	20	0.52%
	8102		0.30%	0.02%	12	\$299.53	0.02%	\$183.10	0.02%	\$482.63	1	0.03%
	8103		3.48%	2.76%	141	\$33,258.68	2.76%	\$20,330.56	2.76%	\$53,589.24	44	1.14%
	8104		4.00%	2.85%	162	\$34,344.59	2.85%	\$20,994.36	2.85%	\$55,338.95	24	0.62%
	8105		6.72%	9.48%	272	\$114,248.61	9.48%	\$69,838.54	9.48%	\$184,087.15	102	2.65%
	8106		0.30%	1.65%	12	\$19,885.74	1.65%	\$12,155.87	1.65%	\$32,041.61	107	2.77%
	8107		0.15%	2.86%	6	\$34,461.00	2.86%	\$21,065.52	2.86%	\$55,526.52		0.00%
	8108		0.15%	0.11%	6	\$1,358.21	0.11%	\$830.25	0.11%	\$2,188.46	97	2.52%
	8109		0.69%	1.36%	28	\$16,414.23	1.36%	\$10,033.78	1.36%	\$26,448.01	4	0.10%
	8112		100.00%	100.00%	4050	\$1,205,091.02	100.00%	\$736,654.92	100.00%	\$1,941,745.94	3856	100.00%
	North Total		45.78%	49.64%	2016	\$598,254.09	49.64%	\$365,704.18	49.64%	\$963,958.27	912	23.68%
	Grand Total		100.00%	100.00%	4050	\$1,205,091.02	100.00%	\$736,654.92	100.00%	\$1,941,745.94	3856	100.00%

**Exhibit 2**

**Phase Two – Property Exclusion Map**

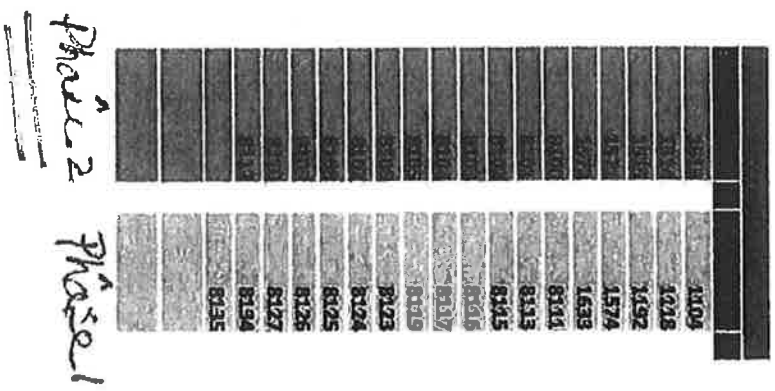
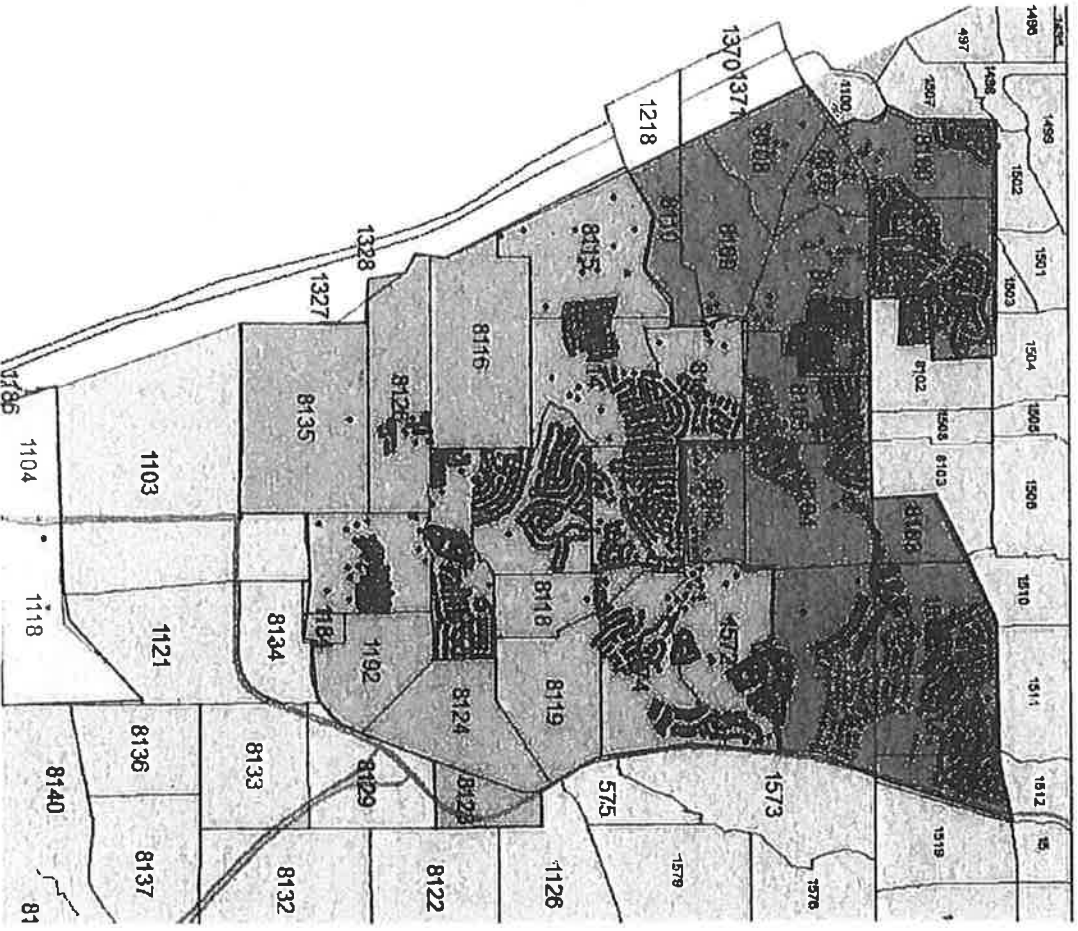
Phase 2

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 Properties- **46.42%**  
 Tax- **48.70%**

Properties not  
 Plotted:  
 Properties- **3.80%**  
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Area 1104/1118 -  
 unannexed county  
 areas



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1571		4.81%	5.01%	195	\$60,378.92	5.38%	\$39,647.25	5.38%	\$104,506.03	102	2.65%
1572		4.64%	3.79%	188	\$45,637.06	2.37%	\$17,425.80	2.37%	\$45,932.60	20	0.52%
8100		1.75%	1.84%	71	\$22,219.68	0.02%	\$183.10	0.02%	\$482.63	1	0.03%
8101		8.30%	5.38%	336	\$64,858.78	2.76%	\$33,258.68	2.76%	\$53,589.24	44	1.14%
8102		2.20%	2.37%	89	\$28,506.80	2.85%	\$20,994.36	2.85%	\$55,338.95	24	0.62%
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8108		0.15%	2.86%	6	\$34,461.00	0.00%	\$0.00	0.00%	\$0.00	1	0.00%
8109		0.15%	0.11%	6	\$1,358.21	0.00%	\$0.00	0.00%	\$0.00	1	0.00%
8112		0.69%	1.36%	28	\$16,414.23	0.00%	\$0.00	0.00%	\$0.00	1	0.00%
North Total		49.73%	49.93%	2016	\$590,292.09	49.93%	\$36,706.08	49.93%	\$98,586.67	912	23.85%
Grand Total		100.00%	100.00%	4050	\$1,205,091.02	100.00%	\$736,654.92	100.00%	\$1,941,745.94	3856	100.00%

**Exhibit 3**

**Form of Petition and Agreement and Joint Plan 2016**

DISTRICT COURT, EL PASO COUNTY,  
STATE OF COLORADO  
270 South Tejon  
P.O. Box 2980  
Colorado Springs, CO 80903  
(719) 452-5000

**Petitioners:**  
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

v.

**Respondents:**  
THE TAXPAYING ELECTORS OF THE AFFECTED  
AREA WITHIN DONALD WESCOTT FIRE  
PROTECTION DISTRICT, as a class

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  
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FIRE PROTECTION DISTRICT

Case Number:

Division:

**PETITION AND PLAN FOR EXCLUDING CERTAIN REAL PROPERTY  
FROM DONALD WESCOTT FIRE PROTECTION DISTRICT**



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.

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 One 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 One), which is attached as Exhibit D ("Agreement"). The Agreement provides for the exclusion of the Phase One Property from Wescott FPD.

11. The Petitioners each hereby consent to the exclusion of the Phase One 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 One Property immediately upon exclusion of the Phase One 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 One 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 One 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 One 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 One 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 One 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  
City Attorney - #26743

By: */s/ Frederick P. Stein*

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Frederick P. Stein, Senior Attorney - # 34481  
Colorado Springs City Attorney's Office  
P. O. Box 1575, 30 South Nevada Avenue  
Colorado Springs, Colorado 80901  
Attorneys for the City of Colorado Springs

IRELAND STAPLETON PRYOR & PASCOE, PC

By: */s/ Dino A. Ross*

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717 17<sup>th</sup> Street, Suite 2800  
Denver, CO 80202  
Attorney for Donald Wescott Fire Protection District

**AGREEMENT AND JOINT PLAN FOR EXCLUSION  
OF CERTAIN PROPERTY FROM  
THE DONALD WESCOTT FIRE PROTECTION DISTRICT  
OF EL PASO COUNTY, COLORADO**

**[PHASE ONE]**

This Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado (the "Agreement"), is entered into between the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City") and the Donald Wescott Fire Protection District (the "District"), pursuant to the provisions of Part 5 of Article 1 of Title 32, C.R.S., a provision of the Special District Act.

**I. RECITALS**

1. The District and the City both provide fire protection and related services to property that is within the boundary of the District and the corporate limits of the City (the "Overlap Area").
2. The property described in the attached Exhibit A is the Overlap Area which is located within the boundaries of the District and within the corporate limits of the City.
3. The City and the District at this time desire to exclude from the District a portion of the Overlap Area described in Exhibit B, (the "Phase One Property"). Exclusion of the remaining property within the Overlap Area will be subject to an Agreement and Joint Plan for Exclusion to be filed with the court in 2017 which is shown in Exhibit C, (the "Phase Two Property").
4. The City and the District have entered into an Intergovernmental Agreement ("IGA") described in Exhibit D. The IGA defines the obligations of the City and District to implement the exclusion of the Overlap Area in two phases.
5. 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.

6. In compliance with these statutory provisions, the District and the City desire to enter into this Agreement to provide for (i) exclusion of the Phase One Property from the District, (ii) the continued provision of fire protection services by the District to the Phase Two Property until it is excluded, and (iii) the continued provision of fire protection services by the District in the remaining area of the District not included in the Phase One Property.

In consideration of these Recitals, the City and the District agree as follows:

## II. AGREEMENT

7. Upon approval of this Agreement by the District through its Board of Directors and the City through City Council, the District and City agree to file within ten (10) days a petition for exclusion pursuant to C.R.S. § 32-1-502 with the District Court, El Paso County, Colorado for an order of the court excluding the Phase One Property from the District and approval by the of court of this Agreement. .
8. This Agreement is predicated upon an exclusion from the District of less than fifty percent (50%) of the territory within the District as it exists prior to such exclusion. Further, this Agreement is predicated upon the valuation for assessment of the Overlap Property excluded is less than the valuation for assessment of the area of the remaining territory in the District so that the City is not subject to the provisions of Section 32-1-502(7) C.R.S.
9. The intent of this Agreement is that the Phase One Property will be excluded from the District pursuant to Court order entered on or before December 31, 2016, and that the exclusion will be effective January 1, 2017.
10. The City and the District consent to the exclusion of the Phase One Property referenced in Exhibit B, subject to the terms of this Agreement and the IGA referenced in Exhibit D.
11. The City will be exclusively responsible for the provision of fire protection services and emergency response services in the Phase One Property upon its exclusion from the District.
12. The District shall continue to provide fire protection services and emergency response services to the Phase Two Property under the same general terms and conditions under which the District provides such services to the remaining area of the District. Upon exclusion, the District will no longer be responsible for the provision of fire protection

services and emergency response services in the Phase One Property except to the extent agreed upon in current or future Agreements for Mutual or Automatic Aid.

13. There are no District facilities in the Phase One Property to be excluded from the District.
14. The Phase Two Property shall be excluded from the District after the filing of a petition for exclusion by the District and City prior to July 31, 2017, in compliance with the terms of the IGA, and entry by the court of an appropriate order of exclusion and approval of this Agreement by the court.
15. The District affirms that it has currently has no outstanding bonded indebtedness.
16. The District will not undertake to burden any portion of the Overlap Area with bonded indebtedness.
17. In the event that the City is determined to be subject to the provisions of Section 32-1-502(7) C.R.S., this Agreement shall be null and void and the City shall be deemed to have withdrawn its consent to the exclusion proceeding.
18. The District and the City certify that each finds the provisions of this Agreement are fair and equitable.
19. The proposed Order of Exclusion to be entered by the court shall adopt the provisions of this Agreement and the IGA which have been approved by the District and the City.
20. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement of this Agreement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person or entity, including, but not limited to, the past, present and future owners and occupants of the Property or any portion of the Property, or any of their successors or assigns. It is the express intention of the City and the District that any person or entity, other than the Parties to this Agreement, receiving services or benefits hereunder shall be deemed to be incidental beneficiaries only.
21. In the event the court does not approve the petition under the terms and conditions of the Agreement and enter an order of exclusion as provided for in the Agreement, this Agreement shall be deemed void.
22. This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of

Colorado Springs, Colorado, a Colorado home rule city. Court venue and jurisdiction shall exclusively be in the District Court for El Paso County, Colorado.

23. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Agreement are expressly subject to appropriation of funds by the City Council and the availability of those funds under Constitutional and Charter limitations. In accord with the Colorado Constitution, Article X, Section 20, performance of the District's obligations under the Agreement is expressly subject to the appropriation of funds by the Board of Directors of the District and the availability of these funds under Constitutional limitations.

24. The following provisions shall be contained in any order for exclusion of property from the District:

The order shall provide for the retention of jurisdiction by the Court as necessary to implement, interpret, or modify the Court Order and shall provide for the retention by the Court of jurisdiction for the implementation, interpretation, or modification of this Agreement.


25. This Agreement shall not be deemed a waiver by the City of provisions available to the City under Article 1 of Title 32 C.R.S. or as otherwise provided by law to exclude the Overlap Property; nor shall this Agreement be deemed a waiver by the District to object to or contest any exclusion proceedings initiated by the City under the provisions available to the District under Article 1 of Title 32 C.R.S. or as otherwise provided by law.

**[Remainder of Page Intentionally Blank]**

DONE this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**DISTRICT:**

Donald Wescott Fire Protection District

By:   
Its: \_\_\_\_\_  
President of the Board of Directors

ATTEST:

  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Dino A. Ross, Esq., Legal Counsel to  
the District

**CITY:**

City of Colorado Springs, a home rule  
city and Colorado municipal corporation

By: \_\_\_\_\_  
John W. Suthers, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Frederick Stein, Senior Attorney  
Office of the City Attorney



EXHIBIT A – OVERLAP AREA

2464544.3

EXHIBIT B – PHASE ONE MAP

EXHIBIT C- PHASE TWO MAP

2464544.3

EXHIBIT D – CITY / WESCOTT FPD IGA

2464544.3

**Exhibit 4**

**Form of Petition and Agreement and Joint Plan 2017**



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  
City Attorney - #26743

By: */s/ Frederick P. Stein*

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Frederick P. Stein, Senior Attorney - # 34481  
Colorado Springs City Attorney's Office  
P. O. Box 1575, 30 South Nevada Avenue  
Colorado Springs, Colorado 80901  
Attorneys for the City of Colorado Springs

IRELAND STAPLETON PRYOR & PASCOE, PC

By: */s/ Dino A. Ross*

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717 17<sup>th</sup> Street, Suite 2800  
Denver, CO 80202  
Attorney for Donald Wescott Fire Protection District

**AGREEMENT AND JOINT PLAN FOR EXCLUSION  
OF CERTAIN PROPERTY FROM  
THE DONALD WESCOTT FIRE PROTECTION DISTRICT  
OF EL PASO COUNTY, COLORADO**

**[PHASE TWO]**

This Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado (the "Agreement"), is entered into between the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City") and the Donald Wescott Fire Protection District (the "District"), pursuant to the provisions of Part 5 of Article 1 of Title 32, C.R.S., a provision of the Special District Act.

**I. RECITALS**

1. The District and the City both provide fire protection and related services to property that is within the boundary of the District and the corporate limits of the City (the "Overlap Area").
2. The property described in the attached Exhibit A is the Overlap Area which is located within the boundaries of the District and within the corporate limits of the City.
3. The City and the District at this time desire to exclude from the District a portion of the Overlap Area described in Exhibit B (the "Phase Two Property").
4. The City and the District have entered into an Intergovernmental Agreement ("IGA") as set forth in Exhibit C. The IGA defines the obligations of the City and District to implement the exclusion of the Overlap Area in two phases. The exclusion of the phase one property from the Overlap Area occurred on January 1, 2017 after the entry of the court order attached as set forth in Exhibit D.
5. Section 32-1-502 C.R.S., in the Special District Act, provides for the exclusion of a special district 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.

6. In compliance with these statutory provisions, the District and the City desire to enter into this Agreement to provide for the exclusion of the Phase Two Property from the District.

In consideration of these Recitals, the City and the District agree as follows:

## II. AGREEMENT

7. Upon approval of this Agreement by the District through its Board of Directors and the City through City Council, the District and City agree to file between January 1, 2017 and July 31, 2017 a petition for exclusion pursuant to C.R.S. § 32-1-502 with the District Court, El Paso County, Colorado for an order of the court excluding the Phase Two Property from the District and approval by the of court of this Agreement.
8. This Agreement is predicated upon an exclusion from the District of less than fifty percent (50%) of the territory within the District as it exists prior to such exclusion. Further, this Agreement is predicated upon the valuation for assessment of the Overlap Property excluded is less than the valuation for assessment of the area of the remaining territory in the District so that the City is not subject to the provisions of Section 32-1-502(7) C.R.S.
9. The Phase Two Property shall be excluded from the District after the filing of a petition for exclusion by the District and City prior to July 31, 2017, in compliance with the terms of the IGA, and entry by the court of an appropriate order of exclusion and approval of this Agreement by the court.
10. The intent of this Agreement is that the Phase Two Property will be excluded from the District pursuant to Court order entered on or before December 31, 2017, and that the exclusion will be effective January 1, 2018.
11. The City and the District consent to the exclusion of the Phase Two Property referenced in Exhibit B, subject to the terms of this Agreement and the IGA referenced in Exhibit C.
12. The City will be exclusively responsible for the provision of fire protection services and emergency response services in the Phase Two Property upon its exclusion from the District.

13. Upon exclusion of the Phase Two Property, the District will no longer be responsible for the provision of fire protection services and emergency response services in the Phase Two Property except to the extent agreed upon in current or future Agreements for Mutual or Automatic Aid.
14. There are no District facilities in the Phase Two Property to be excluded from the District.
15. The District affirms that it has no bonded indebtedness within the Overlap Area..
16. In the event that the City is determined to be subject to the provisions of Section 32-1-502(7) C.R.S., this Agreement shall be null and void and the City shall be deemed to have withdrawn its consent to the exclusion proceeding.
17. The District and the City certify that each finds the provisions of this Agreement are fair and equitable.
18. The proposed Order of Exclusion to be entered by the court shall adopt the provisions of this Agreement and the IGA which have been approved by the District and the City.
19. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement of this Agreement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person or entity, including, but not limited to, the past, present and future owners and occupants of the Property or any portion of the Property, or any of their successors or assigns. It is the express intention of the City and the District that any person or entity, other than the Parties to this Agreement, receiving services or benefits hereunder shall be deemed to be incidental beneficiaries only.
20. In the event the court does not approve the petition under the terms and conditions of the Agreement and enter an order of exclusion as provided for in the Agreement, this Agreement shall be deemed void.
21. This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado home rule city. Court venue and jurisdiction shall exclusively be in the District Court for El Paso County, Colorado.
22. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Agreement are expressly subject to

appropriation of funds by the City Council and the availability of those funds under Constitutional and Charter limitations. In accord with the Colorado Constitution, Article X, Section 20, performance of the District's obligations under the Agreement is expressly subject to the appropriation of funds by the Board of Directors of the District and the availability of these funds under Constitutional limitations.

23. The following provisions shall be contained in any order for exclusion of property from the District:

The order shall provide for the retention of jurisdiction by the Court as necessary to implement, interpret, or modify the Court Order and shall provide for the retention by the Court of jurisdiction for the implementation, interpretation, or modification of this Agreement.

24. This Agreement shall not be deemed a waiver by the City of provisions available to the City under Article 1 of Title 32 C.R.S. or as otherwise provided by law to exclude the Overlap Property nor shall this Agreement be deemed a waiver by the District to object to or contest any exclusion proceedings initiated by the City under the provisions available to the District under Article 1 of Title 32 C.R.S. or as otherwise provided by law.

**[Remainder of Page Intentionally Blank]**

DONE this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**DISTRICT:**

Donald Wescott Fire Protection District

By: \_\_\_\_\_  
Its: President of the Board of Directors

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Dino A. Ross, Esq., Legal Counsel to  
the District

**CITY:**

City of Colorado Springs

By: \_\_\_\_\_  
John W. Suthers, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Frederick Stein, Senior Attorney  
Office of the City Attorney

EXHIBIT A – OVERLAP AREA

2464545.3

EXHIBIT B – PHASE TWO MAP



EXHIBIT C – CITY / WESCOTT FPD IGA