

RESOLUTION NO. 18 - 25

A RESOLUTION ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW BASED THEREON AND DETERMINING THE ELIGIBILITY FOR ANNEXATION OF PROPERTY KNOWN AS ROCK CREEK MESA ADDITION NO. 1 ANNEXATION HEREINAFTER MORE SPECIFICALLY DESCRIBED IN EXHIBIT "A"

WHEREAS, in accord with Section 31-12-101, *et seq.*, C.R.S., known as the Municipal Annexation Act of 1965, as amended (the "Annexation Act"), the City Clerk of the City of Colorado Springs received a petition for annexation and an annexation plat for certain territory known as the Rock Creek Mesa Addition No. 1 Annexation, more specifically described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, said petition was signed by persons comprising one hundred percent (100%) of the landowners of the Property to be annexed and owning one hundred percent (100%) of the Property, excluding public streets and alleys, in compliance with the provisions of Article II, Section 30 of the Colorado Constitution, and Section 31-12-107(1) of the Annexation Act; and

WHEREAS, on December 10, 2024, the City Council, acting by resolution, found the petition for annexation to be in substantial compliance with Section 31-12-107(1) C.R.S of the Annexation Act and Section 30 of Article II of the Colorado Constitution, set a hearing to consider the annexation of the Property to the City of Colorado Springs on January 28, 2025, in Council Chambers, City Hall, 107 North Nevada Avenue, Colorado Springs, Colorado, and directed the City Clerk to give notice of said hearing in the manner prescribed in Section 31-12-108 of the Annexation Act; and

WHEREAS, in support of the annexation the following affidavits were filed with City Council: the City Clerk's affidavit (the "Clerk's Affidavit"), an affidavit of Roland Sevigny, Planning Supervisor for the City of Colorado Springs (the "Planner's Affidavit"), and an affidavit from Stewart Mapes, a registered professional land surveyor (the "Surveyor's Affidavit").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council finds:

(a) that the City Council of the City of Colorado Springs has conducted a hearing to consider the annexation of the Property, described in Exhibit "A" and commonly

known as the Rock Creek Mesa Addition No. 1 Annexation, on January 28, 2025, at City of Colorado Springs, in Council Chambers, City Hall, 107 North Nevada Avenue, Colorado Springs, Colorado, in accord with the Annexation Act;

(b) that at said hearing, City Council considered the annexation petition and annexation plat, testimony presented, the Clerk's Affidavit, the Planner's Affidavit, the Surveyor's Affidavit, the record of the City Planning Commission's decision recommending annexation, all other relevant information presented;

(c) that the City Clerk has provided notice as directed and said notice complies with the requirements of Section 31-12-108 of the Annexation Act;

(d) that the Annexation Impact Report identified in Section 31-12-108.5 of the Annexation Act was filed with the Clerk to the Board of County Commissioners and the El Paso County Development Services Department as the Property proposed to be annexed is comprised of more than ten (10) acres;

(e) that the Property proposed to be annexed is unincorporated;

(f) that the legal description of the Property on Exhibit "A" is the same as the area described in the annexation petition and the annexation plat;

(g) that at least one-sixth (1/6th) of the boundary of the perimeter of the Property proposed to be annexed is contiguous with the existing boundary of the City of Colorado Springs;

(h) that a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality as provided for in Section 31-12-104(b) of the Annexation Act;

(i) no land held in identical ownership within the Property proposed to be annexed has been divided into separate parts or parcels by the boundaries of such annexation without the written consent of the landowner except as such tracts or parcels are separated by a dedicated street, road or other public way;

(j) no land held in identical ownership within the area proposed to be annexed, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising five (5) acres or more (which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the next year preceding the annexation), has been included within the boundary of the area proposed to be annexed without the written consent of the landowners;

(k) that no annexation of all or any part of the Property has been commenced by any other municipality;

(l) the proposed annexation will not result in the detachment of an area from any school district and attachment of the same area to another school district;

(m) in establishing the boundaries of the Property proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley is included within the Property proposed to be annexed;

(n) the applicable requirements of Section 31-12-105 of the Annexation Act have been satisfied;

(o) no petition for election has been received nor is an election otherwise required under the provisions of Section 31-12-107(2) of the Annexation Act;

(p) the annexation of the Property, commonly known as the Rock Creek Mesa Addition No. 1 Annexation and legally described in Exhibit "A" attached hereto, meets the requirements of and fully complies with Part 1 of Article 12 of Title 31 C.R.S., the Municipal Annexation Act of 1965 as amended, and Section 30 of Article II of the Colorado Constitution;

(q) the Property is eligible for annexation to the City of Colorado Springs.

Section 2. The annexation agreement between the owner of the Property and the City, attached hereto as Exhibit "B" and incorporated herein by reference (the "Annexation Agreement"), is hereby approved.

Section 3. The Mayor is hereby authorized to execute the Annexation Agreement.

Dated at Colorado Springs, Colorado this 28th day of January 2025.


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk



ROCK CREEK MESA ADDITION NO. 1

A PARCEL OF LAND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6TH P.M., IN THE COUNTY OF EL PASO, STATE OF COLORADO, CONTAINING A PORTION OF THE PARCELS OF LAND RECORDED UNDER RECEPTION NUMBER 224050744 WITHIN THE RECORDS OF EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO THE NORTH LINE OF SAID SOUTHWEST ONE-QUARTER, BEING MONUMENTED ON THE WEST END BY A 3-1/4 INCH BRASS CAP (BLM STANDARD) AND ON THE EAST END BY A 2-1/2 INCH ALUMINUM CAP STAMPED "RMLS 19625" AT THE CENTER CORNER OF SAID SECTION 30, WHICH IS ASSUMED TO BEAR NORTH 89°02'51" WEST, A DISTANCE OF 2,557.81 FEET.

COMMENCING AT SAID CENTER CORNER OF SECTION 30;
THENCE NORTH 89°02'51" WEST, A DISTANCE OF 191.29 FEET TO A POINT ON THE EXTERIOR BOUNDARY OF THAT PARCEL OF LAND RECORDED AT SAID RECEPTION NUMBER 222066811 AND TO **THE POINT OF BEGINNING**;
THENCE SOUTH 06°01'44" WEST, A DISTANCE OF 462.00 FEET;
THENCE NORTH 89°02'51" WEST, A DISTANCE OF 339.76 FEET;
THENCE NORTH 04°07'26" WEST, A DISTANCE OF 462.00 FEET TO A POINT ON THE EXTERIOR OF SAID PARCEL;
THENCE COINCIDENT WITH THE EXTERIOR OF SAID PARCEL SOUTH 89°02'51" EAST, A DISTANCE OF 421.52 FEET TO **THE POINT OF BEGINNING**.

THE ABOVE DESCRIPTION CONTAINS A CALCULATED AREA OF 175,165 SQUARE FEET OR (4.02123 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.



JERRY R. BESSIE, PLS 38576
PREPARED FOR AND ON BEHALF OF MATRIX DESIGN GROUP
2435 RESEARCH PARKWAY, SUITE 300
COLORADO SPRINGS, CO. 80920

**ROCK CREEK MESA ADDITION NO 1
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT "Agreement", dated this 16 day of January, 2025, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"); and Rock Creek Residential LLC; referred to as the "Owner" or "Property Owner." The City and Owner together may be referred to as the Parties, or separately as a Party.

I.
INTRODUCTION

The Owner owns all the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A ("Property" or "Owner's Property").

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Owner will be required to expend substantial funds for the installation of infrastructure needed to serve the Property and, therefore, desires to clarify Owner's obligations for installation of or payment for any off-site infrastructure or improvements and cost recoveries available to the Owner for services to the Property. Subject to the terms and conditions set forth in this Agreement, both the City and Owner wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the Parties, the City and Owner agree as follows.

II.
ANNEXATION

The Owner has petitioned the City for annexation of the Property as set forth in Exhibit A. The annexation will become effective upon final approval by the City Council and the recording of this annexation agreement, the annexation plat, the Rock Creek Mesa Addition No 1 special warranty deed and irrevocable consent to the appropriation, withdrawal, and use of groundwater as forth in Exhibit B and the annexation ordinance with the El Paso County Clerk and Recorder.

III.
LAND USE

The Rock Creek Mesa Additions No. 1-6 and Cheyenne Mountain State Park Addition No. 1 Land Use Plan for the Property has been proposed and submitted to the City for approval. Owner will comply with the approved Land Use Plan and any subsequent amendments to the Rock Creek Mesa Additions No. 1-6 and Cheyenne Mountain State Park Addition No. 1 Land Use Plan approved in accord with the Unified Development Code of the Code of the City of Colorado Springs 2001, as amended ("UDC").

IV.
ZONING

Zoning. The City agrees to recommend that the initial zone for the Owner's Property shall be R-Flex-Med/HS-O/WUI-O/ (R-Flex Medium with Hillside and Wildland Urban Interface Overlay) and R-Flex-Med/WUI-O (R-Flex Medium with Wildland Urban Interface Overlay) zone district upon annexation. While zoned R-Flex-Med/HS-O/WUI-O (R-Flex Medium with Hillside and Wildland Urban Interface Overlay) and R-Flex-Med/WUI-O (R-Flex Medium with Wildland Urban Interface Overlay) zone district, a development plan shall be required for any use. Owner acknowledges and understands that City Council determines the appropriate zone for the Property, and the City's recommended zone does not bind Planning Commission or City Council.

V.
PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development, the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by the Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in the UDC. Public facilities and improvements include but are not limited to: 1.) Utility facilities and extensions for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (For water, wastewater, gas and electric utility service, refer to Chapter 12 of the City Code and Section VI. "Utilities Services" and Section VII. "Water Rights" of this Agreement); 2.) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; 3.) Stormwater infrastructure to control and convey stormwater; 4.) Arterial roadway bridges; 5.) Parks; 6.) Schools; and 7.) Other facilities and improvements required by a specific land development proposal.

It is understood that all public facilities and improvements shall be subject to the UDC, unless specifically stated otherwise in this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. The City agrees to allow the use of special districts, including, but not limited to Rock Creek Metropolitan District, as a means of financing and constructing the public facilities and improvements. All districts shall be subject to the UDC and adhere to City design criteria, construction standards including assurances and guarantees, pursuant to City Code.

C. Streets, Bridges and Traffic Controls. The Owner agrees to construct, at the Owner's expense, those street, bridge and traffic improvements adjacent to or within the Property. These improvements shall also include mutually acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. UDC sections 7.4.304(F) (Cost Reimbursement by the City) and 7.4.305 (Arterial Roadway Bridges) are excluded as City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

1. On-Site or Adjacent Streets: Owner agrees to comply with timing and phasing of construction responsibilities outlined specifically on the Land Use Plan and any subsequent amendments.
 - a. Owner shall dedicate additional rights-of-way to provide for sixty-seven (67) feet wide for a minimum length of four hundred (400) feet along Pawnee Road located west of Colorado State Highway 115 as required to accommodate widening of roadway.
 - b. Owner shall construct, at the Owner's expense, eastbound left-turn lane with appurtenances

on Pawnee Road located just west of Colorado Highway 115.

- c. Owner, at Owner's expense, shall conduct an analysis of the roadways to determine the necessary roadway improvements as required by Colorado Department of Transportation (CDOT).
- d. Owner, at Owner's expense, shall be required to construct, reconstruct, and upgrade any existing public improvements serving the Property in accordance with the results of the analysis and the design criteria, construction standards, and UDC of the City, prior to City acceptance and maintenance.

2. Off-Site Streets and Bridges: N/A

3. Traffic Control Devices. Owner shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly applied criteria set forth by the City.

D. Drainage. Final Drainage Reports and Plans shall be prepared and submitted by the Owner to the City and approved by the Stormwater Enterprise Manager. A Preliminary Drainage Report must be approved prior to recording subdivision plats. Owner shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development, including but not limited to the payment of the miscellaneous drainage, arterial bridge and detention pond fees. The Owner shall comply with the 4 Step Process, as referenced in the Stormwater Enterprise Drainage Criteria Manual, and provide detention for all developed areas, to be owned and maintained by the Owner or a special district.

E. Parks: Any residential uses are subject to applicable land dedication requirements for neighborhood and community park land as required by the UDC 7.4.307: PARK LAND DEDICATIONS:.

F. Schools: Any residential uses are subject to school fees as required by the UDC.

G. Improvements Adjacent to Park and School Lands. Streets and other required public improvements adjacent to park and school lands dedicated within the Property will be built by the Owner without reimbursement by the City or the School District.

VI.

UTILITY SERVICES

A. Colorado Springs Utilities' (UTILITIES) Services: UTILITIES' water, non-potable water, wastewater, electric, streetlight, and natural gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to UTILITIES' facilities or utility systems on a "first-come, first-served" basis, provided that (among other things), the City and UTILITIES determine that the applicant meets all applicable requirements of the City's Code of Ordinances ("City Code"), UTILITIES Tariffs, Utilities Rules and Regulations ("URRs"), and Line Extension and Service Standards ("Standards") for each Utility-Service application. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication or conveyance of real and personal property, public rights-of-way, private rights-of-way, or easements that UTILITIES determines are required for the extension of any proposed Utility Service from UTILITIES' utility system facilities that currently exist or that may exist at the time of the proposed extension or connection.

Owner shall ensure that the connections and/or extensions of Utility Services to the Property are in accordance with this Agreement and with the requirements of City Code and UTILITIES' Tariffs, URRs, and Standards, and Pikes Peak Regional Building Department codes in effect at the time of Utility Service connection and/or extension. Owner acknowledges responsibility for the costs of any extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility

systems serving the Property and areas outside the Property as determined by UTILITIES.

Owner acknowledges that UTILITIES' connection requirements shall include Owner's payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owner is responsible for contacting UTILITIES' Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property in advance of development of the Property.

B. Dedications and Easements: Notwithstanding anything contained in Article XI of this Agreement to the contrary, Owner, at Owner's sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property (real and personal) and easements that UTILITIES determines are required for any utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system. UTILITIES shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owner shall provide UTILITIES all written, executed conveyances prior to or at the time of platting or prior to the development of the Property as determined by UTILITIES.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and UTILITIES Tariffs, URRs, and Standards, and shall be subject to UTILITIES' environmental review. Neither the City nor UTILITIES has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using UTILITIES' then-current Permanent Easement Agreement form without modification unless approved by UTILITIES.

If Owner, with prior written approval by UTILITIES, relocates, requires relocation, or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owner's sole cost and expense. If UTILITIES determines that Owner's relocation or alteration requires new or updated easements, then Owner shall convey those easements prior to relocating or altering the existing utility facilities using UTILITIES' then-current Permanent Easement Agreement form without modification unless approved by UTILITIES. UTILITIES will only relocate existing gas or electric facilities during time frames and in a manner that UTILITIES determines will minimize outages and loss of service.

C. Extension of Utility Facilities by UTILITIES:

1. Natural Gas and Electric Facilities: Subject to the provisions of this Article, City Code, and UTILITIES Tariffs, URRs, and Standards, UTILITIES will extend electric and gas service to the Property if UTILITIES, in its sole discretion, determines there will be no adverse effect to any Utility Service or utility easement. Owner shall cooperate with UTILITIES to ensure that any extension of gas or electric facilities to serve the Property will be in accordance with City Code and UTILITIES Tariffs, URRs, and Standards. UTILITIES, in its sole discretion, may require Owner to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities. If any portion of the Property is located outside UTILITIES' electric service territory prior to annexation, then upon annexation:
 - a. Owner shall be solely responsible for providing the just compensation for electric distribution facilities and service rights specified in C.R.S. §§ 40-9.5-204 plus all costs and fees, including but not limited to, attorneys' fees that UTILITIES incurs as a result of or associated with the acquisition of such electric service territory; and
 - b. Owner shall be solely responsible for all costs: (1) to remove any existing electric distribution facilities within the Property that were previously installed by the then-current electric service provider ("Existing Facilities"); and (2) to convert any overhead electric lines to underground service lines ("Conversion") as determined by UTILITIES.

- c. Within 30 days of Owner's receipt of an invoice for the following:
 1. Owner shall pay the former electric service provider, directly, for the just compensation specified in C.R.S. §§ 40-9.5-204 (1) (a) and 40-9.5-204 (1) (b).
 2. If the former electric service provider removes the Existing Facilities, then Owner shall pay the former electric service provider directly for the removal of any Existing Facilities.
 3. Further, Owner shall pay UTILITIES the just compensation specified in C.R.S. §§ 40-9.5-204 (1) (c) and 40-9.5-204 (1) (d) within 30 days of Owner's receipt of an invoice for such costs.
 4. Owner shall also pay for any Conversion required by UTILITIES as a result of such annexation concurrent with the execution of a contract between the Owner and UTILITIES that specifies the terms of Conversion.

2. Permanent Natural Gas Service

a. Greenhouse Gas Emissions

Given new and changing regulations regarding greenhouse gas (GHG) emissions, UTILITIES may require improvements above and beyond requirements in effect at the time of annexation, such as beneficial electrification, battery storage, solar, or other options, to meet regulatory requirements; provided, however, that UTILITIES agrees that all such UTILITIES' requirements shall be uniformly applied to all similarly situated UTILITIES' customers. Further, the Owner acknowledges that UTILITIES may refuse new connections to its natural gas service system if state or federal regulations dictate or if UTILITIES determines such action is necessary or desirable to meet state GHG emission reduction targets; provided, however, that UTILITIES agrees that any such refusal of new connections shall be uniformly applied to all similarly situated prospective UTILITIES' customers.

3. Water and Wastewater Facilities: In accordance with City Code, UTILITIES shall be responsible for the construction of centralized water and wastewater treatment facilities needed to serve the Property. In the event UTILITIES or other developers design and construct other water or wastewater system improvements UTILITIES reasonably determines are needed to ensure an integrated water or wastewater system is available to serve the Property, Owner shall be required to pay Owner's pro-rata share of cost recovery for the engineering, materials, and installation costs incurred by UTILITIES or the other developer in its design, construction, upgrade, or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances.
4. Water and Wastewater System Extensions by Owner: Owner must extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at Owner's sole cost and expense in accordance with City Code and UTILITIES' Tariffs, URRs, and Standards in effect at the time of each specific request for water or wastewater service. Consistent with City Code § 7.7.1102 (B), Owner shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to UTILITIES' approval of Owner's water and wastewater service requests. Notwithstanding the above requirements, UTILITIES may enter into cost-sharing agreements with Owner for water and wastewater system expansions based on a determination of benefit to UTILITIES, in UTILITIES' sole discretion. Additionally, UTILITIES shall establish a water and/or wastewater recovery agreement(s) on the Owner's behalf, if applicable, for all eligible Owner-installed water and/or wastewater infrastructure, facilities and/or appurtenances in accordance with City Code and UTILITIES' tariffs, URRs and Standards in effect at the time of the Owner's application to UTILITIES for

a cost recovery agreement(s).

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and UTILITIES in effect at the time of annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or UTILITIES to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these provisions apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of UTILITIES. City Code, UTILITIES' Tariffs, URRs and Standards shall govern the use of all Utilities Services.

F. Southeastern Colorado Water Conservancy District: Notice is hereby provided that upon annexation, and as a condition of receiving water service from UTILITIES, the Property must be included in the boundaries of the Southeastern Colorado Water Conservancy District ("District") pursuant to C.R.S. § 37-45-136 (3.6) as may be amended, and the rules and procedures of the District. Further, notice is hereby provided that, after inclusion of the Property into the boundaries of the District, the Property shall be subject to a property tax mill levy or other payment in lieu of taxes for the purposes of meeting the financial obligations of the District. Owner acknowledges that water service for the Property will not be made available by UTILITIES until the Property is formally included within the boundaries of the District. District inclusion requires consent by the Bureau of Reclamation ("Reclamation"). Owner shall be responsible for taking all actions necessary for inclusion of the Property into the boundaries of the District, including but not limited to, any action required to obtain Reclamation's consent to include the Property into the District.

VII. WATER RIGHTS

As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owner grants to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as "the Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owner concurrently with this Agreement and shall be made effective upon the date of the City Council's final approval of the annexation of the Property. The Deed conveying the Water Rights shall be executed by the Owner concurrently with this Agreement and shall be made effective upon the date of the City Council's final approval of the annexation of the Property. The Deed shall be recorded concurrent with the recording of the annexation agreement, annexation plat, and annexation ordinance at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water rights related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner.

Upon recording of the Deed, any wells or groundwater developed by Owners prior to recording will become subject to UTILITIES' applicable Tariffs, URRs, Standards, and rates as amended in the future. Owners' uses of groundwater shall be subject to approval by the City and UTILITIES, and shall be consistent with City Code, UTILITIES' Tariffs, URRs, Standards, and the City's resolutions and policies for the use of groundwater now in

effect or as amended in the future. No commingling of well and City water supply will be permitted. If Owners determine not to use any existing wells on the Property, Owners shall plug and abandon any such wells on the Property in compliance with the State of Colorado Division of Water Resources ("DWR") procedures and provide UTILITIES with a copy of such DWR abandonment approval prior to receiving utility service from UTILITIES.

VIII.
FIRE PROTECTION

The Owner understands and acknowledges that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the City's request agrees to apply to the Fire District for exclusion of the Property from the Fire District. The Owner understands and acknowledges that the Owner is responsible for seeking any exclusion from the Fire District and that the City has no obligation to seek exclusion of any portion of the Property from the Fire District.

IX.
FIRE PROTECTION FEE

The Owner shall be subject to the requirements of City Code § 7.5.532 regarding Citywide Development Impact Fees.

X.
POLICE SERVICE FEE

The Owner shall be subject to the requirements of City Code § 7.5.532 regarding Citywide Development Impact Fees.

XI.
PUBLIC LAND DEDICATION

Owner agrees that any land dedicated or deeded for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid, and shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Owner. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by the Owner prior to conveyance, unless otherwise waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

- A. All property deeded to the City shall be conveyed by General Warranty Deed.
- B. Owner shall convey the property to the City within 30 days of the City's written request.
- C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.
- D. All property taxes levied against the property shall be paid by the Owner through the date of conveyance to the City.

E. An environmental assessment of the property must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City.

XII.
SPECIAL PROVISIONS

Not applicable.

XIII.
ORDINANCE COMPLIANCE

Owner will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XIV.
ASSIGNS AND DEED OF TRUST HOLDERS

As used in this Agreement, the term "Owner" or "Property Owner" shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owner and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Owner unless specifically assigned to another person.

XV.
RECORDING

This Agreement and any subsequent amendments shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of the Owner and all other persons who may purchase land within the Property from the Owner or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to the Owner and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XVI.
AMENDMENTS

This Agreement may be amended by joint agreement between the City and any party, including their respective successors, transferees, or assigns, without the consent of any other non-City party or its successors, transferees, or assigns but only as applied to the property owned by the amending party at the time of the amendment. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect as to property owned by any non-amending party.

XVII.
HEADINGS

The headings for the different sections of this Agreement are for convenience and reference only and do not define or limit the scope or intent of any of the language of the Agreement and shall not be construed to affect in any manner the terms or the interpretation or construction of the Agreement.

XVIII.
DEFAULT AND REMEDIES

If either Owner or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

XIX.
GENERAL

Except as specifically provided in this Agreement, City agrees to treat Owner and the Property in a non-discriminatory manner relative to the rest of the City. The City agrees to provide the Property with all of the usual municipal services in accordance with this Agreement, and the ordinances and policies of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or authorized pursuant to the City Code. Any fee provided for in this Agreement shall be in addition to, and not in lieu of, any impact fee or development requirement required by or authorized pursuant to the City Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Owner and City shall continue to be bound by all terms and provisions of this Agreement.

XX.
SEVERABILITY

If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then such finding shall not affect either the remainder of the Agreement or the application of the provisions to other entities.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the date first written above.

CITY OF COLORADO SPRINGS

BY: Blessing A. Obalade
Blessing A. Obalade, Mayor

ATTEST:

BY: Sarah B. Johnson
Sarah B. Johnson, City Clerk



APPROVED AS TO FORM:

BY: CAH
Office of the City Attorney

OWNER : ROCK CREEK RESIDENTIAL LLC

By:

Name: DANNY MIENKA

Title: MANAGER
(Owner)

ACKNOWLEDGMENT

STATE OF Colorado)

) ss.

COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 16 day of January, 2025, by Danny Mientka, as manager for and on behalf of ROCK CREEK RESIDENTIAL LLC

Witness my hand and notarial seal.

My commission expires: June 20, 2026

SVENJA OLLAND-GRISWOLD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184025608
MY COMMISSION EXPIRES JUNE 20, 2026

S.C.
Notary Public

DEED OF TRUST HOLDER: DLP LENDING FUND LLC

By: [Signature]

Title: Christopher Roemer, Authorized Signatory

ACKNOWLEDGMENT

STATE OF Florida,)
COUNTY OF St. Johns) ss.

The foregoing instrument was acknowledged before me this 23rd day of January, 2025,
by Christopher Roemer as Authorized Signatory.

Witness my hand and notarial seal.
My commission expires: 09/30/2028

[Signature]
Notary Public

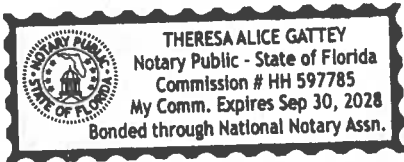


EXHIBIT A

LEGAL DESCRIPTION

ROCK CREEK MESA ADDITION NO. 1

A PARCEL OF LAND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6TH P.M., IN THE COUNTY OF EL PASO, STATE OF COLORADO, CONTAINING A PORTION OF THE PARCELS OF LAND RECORDED UNDER RECEPTION NUMBER 224050744 WITHIN THE RECORDS OF EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO THE NORTH LINE OF SAID SOUTHWEST ONE-QUARTER, BEING MONUMENTED ON THE WEST END BY A 3-1/4 INCH BRASS CAP (BLM STANDARD) AND ON THE EAST END BY A 2-1/2 INCH ALUMINUM CAP STAMPED "RMLS 19625" AT THE CENTER CORNER OF SAID SECTION 30, WHICH IS ASSUMED TO BEAR NORTH 89°02'51" WEST, A DISTANCE OF 2,557.81 FEET.

COMMENCING AT SAID CENTER CORNER OF SECTION 30;
THENCE NORTH 89°02'51" WEST, A DISTANCE OF 191.29 FEET TO A POINT ON THE EXTERIOR BOUNDARY OF THAT PARCEL OF LAND RECORDED AT SAID RECEPTION NUMBER 222066811 AND TO **THE POINT OF BEGINNING;**
THENCE SOUTH 06°01'44" WEST, A DISTANCE OF 462.00 FEET;
THENCE NORTH 89°02'51" WEST, A DISTANCE OF 339.76 FEET;
THENCE NORTH 04°07'26" WEST, A DISTANCE OF 462.00 FEET TO A POINT ON THE EXTERIOR OF SAID PARCEL;
THENCE COINCIDENT WITH THE EXTERIOR OF SAID PARCEL SOUTH 89°02'51" EAST, A DISTANCE OF 421.52 FEET TO **THE POINT OF BEGINNING.**

THE ABOVE DESCRIPTION CONTAINS A CALCULATED AREA OF 175,165 SQUARE FEET OR (4.02123 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER
ROCK CREEK MESA ADDITION NO 1

ROCK CREEK RESIDENTIAL LLC ("Grantor(s)", whose address is 90 South Cascade Avenue, Suite 1500, Colorado Springs, Colorado, in consideration of the benefits received pursuant to the ROCK CREEK MESA ADDITION NO 1 Annexation Agreement dated 1-16-2025 ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property collectively referred to as the "Water Rights," together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through, or under said Grantor(s).

Furthermore, pursuant to C.R.S. § 37-90-137(4) as it now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon the date of the City of Colorado Springs-City Council's final approval of the Annexation Agreement.

Executed this 27th day of JANUARY, 2025

GRANTOR(s):

By:

Name: Danny Mientka

Its: MWAVEE

STATE OF Colorado)

) ss.

COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 21 day of January, 2025,
by Danny Mientka, manager, Grantor.

Witness my hand and official seal.

My Commission Expires: June 20, 2026

SVENJA OLLAND-GRISWOLD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184025608
MY COMMISSION EXPIRES JUNE 20, 2026

(SEAL)

S. Spind
Notary Public

Accepted by the City of Colorado Springs:

By: Kellie Billingsley this 27th day of January, 2025
Real Estate Services Manager

By: Todd Stout this 27th day of January, 2025
Colorado Springs Utilities Customer Utility Connections Manager

Approved as to Form:

By: Renée
City Attorney's Office

Date: Jan 27, 2025

Exhibit A

LEGAL DESCRIPTION

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater
executed by ROCK CREEK RESIDENTIAL LLC, Grantor(s) on 1-16-2025

ROCK CREEK MESA ADDITION NO. 1

A PARCEL OF LAND IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6TH P.M., IN THE COUNTY OF EL PASO, STATE OF COLORADO, CONTAINING A PORTION OF THE PARCELS OF LAND RECORDED UNDER RECEPTION NUMBER 224050744 WITHIN THE RECORDS OF EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO THE NORTH LINE OF SAID SOUTHWEST ONE-QUARTER, BEING MONUMENTED ON THE WEST END BY A 3-1/4 INCH BRASS CAP (BLM STANDARD) AND ON THE EAST END BY A 2-1/2 INCH ALUMINUM CAP STAMPED "RMLS 19625" AT THE CENTER CORNER OF SAID SECTION 30, WHICH IS ASSUMED TO BEAR NORTH 89°02'51" WEST, A DISTANCE OF 2,557.81 FEET.

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THENCE NORTH 89°02'51" WEST, A DISTANCE OF 339.76 FEET;
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THE ABOVE DESCRIPTION CONTAINS A CALCULATED AREA OF 175,165 SQUARE FEET OR (4.02123 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.