

RESOLUTION NO. 102-16

A RESOLUTION ADOPTING FINAL FORM OF INTERGOVERNMENTAL AGREEMENT FOR THE EXCLUSION OF CERTAIN PROPERTY FROM THE DONALD WESCOTT FIRE PROTECTION DISTRICT

WHEREAS, the City Council finds that it is in the City's interest to cooperate with neighboring jurisdictions to provide for continuous fire protection and emergency first response services; and

WHEREAS, certain annexed areas of the City have been served by the Donald Wescott Fire Protection District ("Wescott FPD"); and

WHEREAS, the City and Wescott FPD have contemplated that upon the construction and staffing of City Fire Station 22, the City would undertake exclusion from Wescott FPD of areas to be served by City Fire Station 22; and

WHEREAS, City Fire Station 22 has been constructed and will be fully staffed and operational in 2016; and

WHEREAS, Wescott FPD has cooperated with the City in suggesting a two-year, two-phase exclusion process that will provide for an orderly transition of primary responsibility for fire protection and emergency first response services and will promote the continued viability and operation of Wescott FPD; and

WHEREAS, the Intergovernmental Agreement (the "IGA") attached hereto as Exhibit "A" and made a part hereof, together with IGA exhibits that detail the forms of petitions and joint agreements and plans for exclusion, as required by law, set forth the terms and conditions of a mutually agreeable plan to undertake exclusion of property from Wescott FPD;

WHEREAS, pursuant to Resolution 16-9 of the Board of Directors of Wescott FPD, the district has approved the IGA.

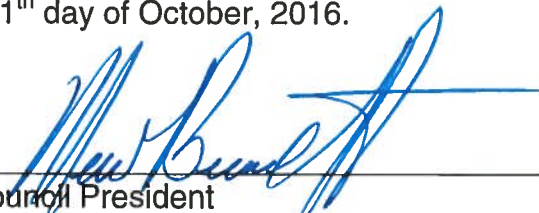
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council now adopts this resolution approving the IGA attached hereto as Exhibit "A."

Section 2. The City Council further authorizes the Mayor to execute the IGA and further authorizes the Mayor and city staff to take such actions and to execute such


instruments and documents as necessary for the filing of court petitions for exclusion of property from Wescott FPD, according to the terms and conditions of the IGA.

Dated at Colorado Springs, Colorado this 11th day of October, 2016.



Council President

ATTEST:



Sarah B. Johnson, City Clerk




EXHIBIT A – OVERLAP AREA

DATE FILED: October 28, 2016 11:59 AM
FILING ID: 5B40D3C63CA45
CASE NUMBER: 1981CV330

Donald Wescott FPD Overlap Detail

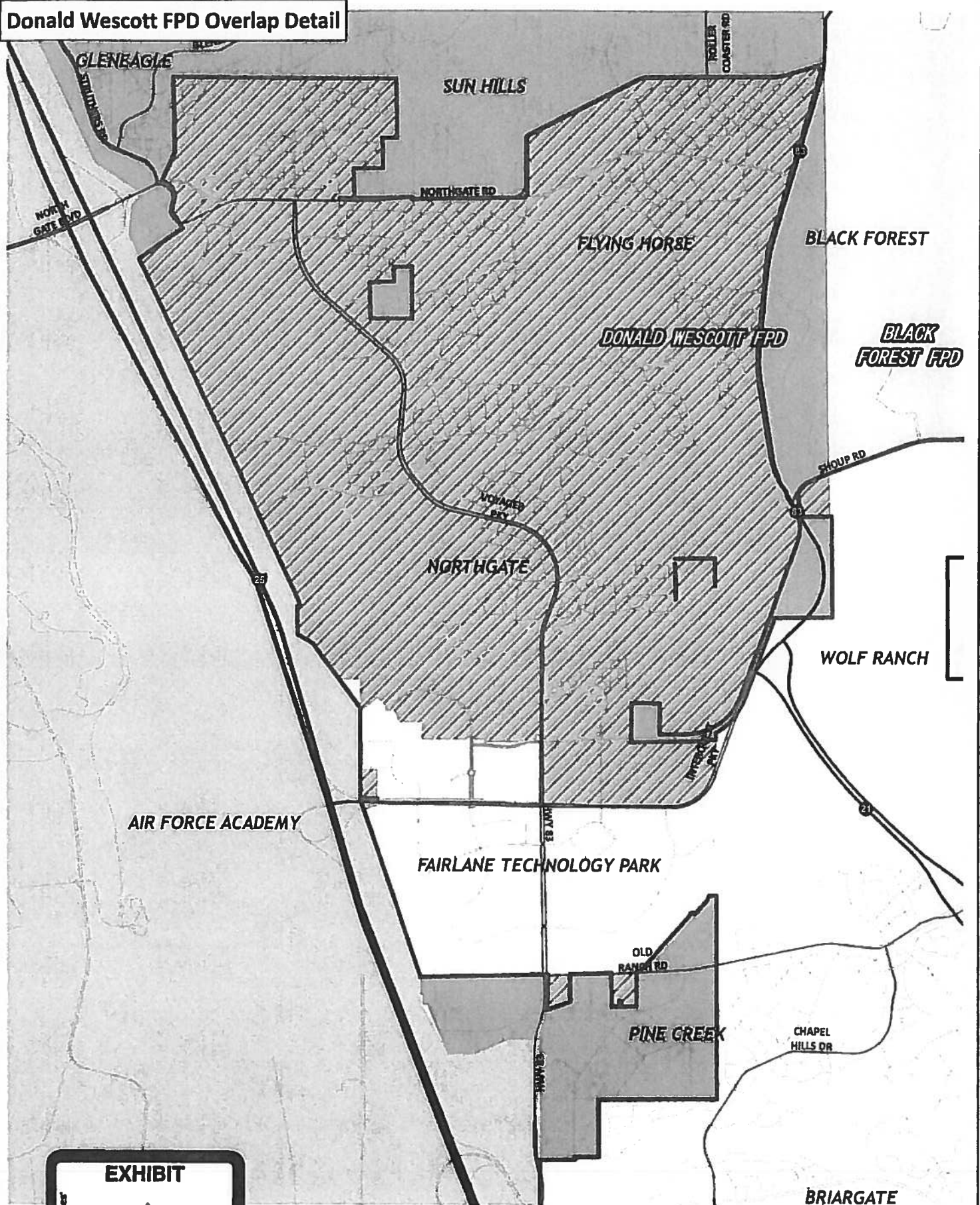


EXHIBIT
 A

EXHIBIT B – CITY/WESCOTT FPD INTERGOVERNMENTAL AGREEMENT

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 11th day of October 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

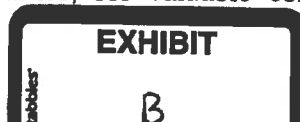
WHEREAS, the Parties enter into this Agreement under the authority of C.R.S. 29-1-203; and

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 Gen, Board President

Board of Donald Wescott Fire Protection District

ATTEST:

By:  _____

Harland Baker, Board Secretary

· APPROVED AS TO FORM:

By:  _____

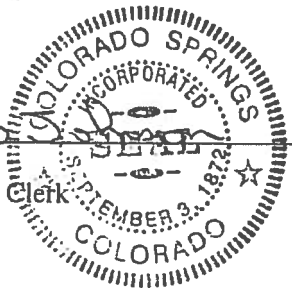
Dino A. Ross, Esq., Legal Counsel to the District

CITY OF COLORADO SPRINGS, COLORADO

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

ATTEST:

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



APPROVED AS TO FORM:

By: David A. Andrews
David A. Andrews, Legislative Counsel

EXHIBIT C – PHASE ONE MAP



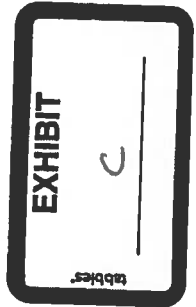
Northern: Phase Two
 Properties- **49.78%**
 Tax- **49.64%**

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

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

Area 1104/1118 –
 unannexed county
 areas

Phase Two Exclusion	Phase One Exclusion
1513	1104
1514	1118
1515	1192
1573	1574
1574	1633
8100	8111
8101	8113
8103	8115
8104	8116
8108	8117
8109	8119
8120	8123
8121	8124
8125	8125
8126	8126
8127	8127
8134	8134
8135	8135



FDZ	FDZ	% 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		0.00%
South											
1103		0.02%	0.00%	1	\$0.00	0.00%	\$0.00	0.00%	\$0.00	444	11.51%
1118		0.05%	0.02%	2	\$221.13	0.02%	\$135.17	0.02%	\$356.30	47	1.22%
1574		4.84%	2.13%	196	\$25,680.06	2.13%	\$15,697.85	2.13%	\$41,377.91	12	0.31%
1633		2.05%	1.76%	83	\$21,171.15	1.76%	\$12,941.62	1.76%	\$34,112.77	14	0.36%
8111		3.58%	8.70%	145	\$104,794.76	8.70%	\$64,059.54	8.70%	\$168,854.30	247	6.41%
8113		4.67%	3.96%	189	\$47,728.03	3.96%	\$29,175.46	3.96%	\$76,903.49	42	1.09%
8114		6.12%	4.83%	248	\$58,259.81	4.83%	\$35,613.39	4.83%	\$93,873.20	182	4.72%
8115		0.27%	9.56%	11	\$115,191.16	9.56%	\$70,414.71	9.56%	\$185,605.87	53	1.37%
8116		0.02%	0.00%	1	\$0.42	0.00%	\$0.26	0.00%	\$0.68		0.00%
8117		9.98%	6.73%	404	\$81,079.60	6.73%	\$49,562.80	6.73%	\$130,642.40	125	3.24%
8118		0.22%	0.01%	9	\$138.67	0.01%	\$84.77	0.01%	\$223.44		0.00%
8119		0.17%	0.01%	7	\$116.76	0.01%	\$71.37	0.01%	\$188.13		0.00%
8125		8.10%	6.31%	328	\$76,073.34	6.31%	\$46,502.55	6.31%	\$122,575.89	1436	37.24%
8126		1.23%	0.06%	50	\$675.01	0.06%	\$412.62	0.06%	\$1,087.63		0.00%
8127		5.04%	4.63%	204	\$55,783.07	4.63%	\$34,099.39	4.63%	\$89,882.46	177	4.59%
8134		0.02%	0.00%	1	\$0.00	0.00%	\$0.00	0.00%	\$0.00		0.00%
8135		0.02%	0.00%	1	\$0.42	0.00%	\$0.26	0.00%	\$0.68	165	4.28%
South Total		46.42%	48.70%	1880	\$586,913.39	48.70%	\$358,771.77	48.70%	\$945,685.16	2944	76.35%
North											
1513		5.14%	4.04%	208	\$48,677.86	4.04%	\$29,756.08	4.04%	\$78,433.94	174	4.51%
1514		4.86%	4.38%	197	\$52,815.21	4.38%	\$32,285.18	4.38%	\$85,100.39	48	1.24%
1515		2.30%	1.73%	93	\$20,889.19	1.73%	\$12,769.26	1.73%	\$33,658.45	49	1.27%
1571		4.81%	5.01%	195	\$60,378.92	5.01%	\$36,908.77	5.01%	\$97,287.69	42	1.09%
1572		4.64%	3.79%	188	\$45,637.06	3.79%	\$27,897.28	3.79%	\$73,534.34	51	1.32%
8100		1.75%	1.84%	71	\$22,219.68	1.84%	\$13,582.57	1.84%	\$35,802.25	47	1.22%
8101		8.30%	5.38%	336	\$64,858.78	5.38%	\$39,647.25	5.38%	\$104,506.03	102	2.65%
8102		2.20%	2.37%	89	\$28,506.80	2.37%	\$17,425.80	2.37%	\$45,932.60	20	0.52%
8103		0.30%	0.02%	12	\$299.53	0.02%	\$183.10	0.02%	\$482.63	1	0.03%
8104		3.48%	2.76%	141	\$33,258.68	2.76%	\$20,330.56	2.76%	\$53,589.24	44	1.14%
8105		4.00%	2.85%	162	\$34,344.59	2.85%	\$20,994.36	2.85%	\$55,338.95	24	0.62%
8106		6.72%	9.48%	272	\$114,248.61	9.48%	\$69,838.54	9.48%	\$184,087.15	102	2.65%
8107		0.30%	1.65%	12	\$19,885.74	1.65%	\$12,155.87	1.65%	\$32,041.61	107	2.77%
8108		0.15%	2.86%	6	\$34,461.00	2.86%	\$21,065.52	2.86%	\$55,526.52		0.00%
8109		0.15%	0.11%	6	\$1,358.21	0.11%	\$830.25	0.11%	\$2,188.46	97	2.52%
8112		0.69%	1.36%	28	\$16,414.23	1.36%	\$10,033.78	1.36%	\$26,448.01	4	0.10%
North Total		49.78%	49.64%	2016	\$598,254.09	49.64%	\$365,704.18	49.64%	\$963,958.27	912	23.65%
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 D – AGREEMENT AND JOINT PLAN FOR EXCLUSION OF CERTAIN
PROPERTY FROM THE DONALD WESCOTT FIRE PROTECTION DISTRICT OF EL
PASO COUNTY, COLORAOD [PHASE ONE]**

**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.

DONE this 11th day of October, 2016.

DISTRICT:

Donald Wescott Fire Protection District

By: _____
Its: President of the Board of Directors

ATTEST:

Secretary

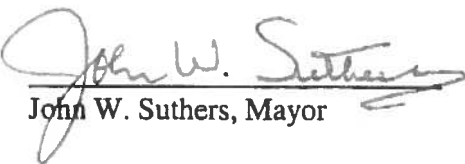
APPROVED AS TO FORM:



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

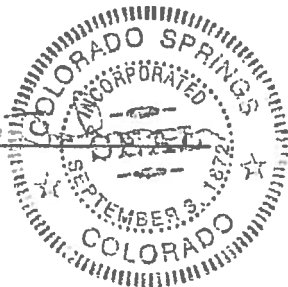
CITY:

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

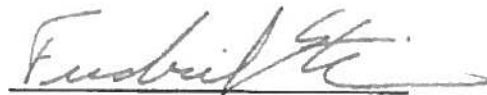
By: 
John W. Suthers, Mayor

ATTEST:


City Clerk



APPROVED AS TO FORM:

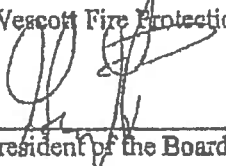


Frederick Stein, Senior Attorney
Office of the City Attorney

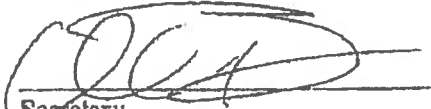
DONE this _____ day of _____, 2016.

DISTRICT:

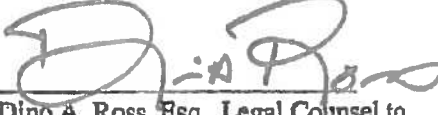
Donald Westcott Fire Protection District

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