

**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 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 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.

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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

[PLACEHOLDER]

EXHIBIT B – PHASE TWO MAP

[PLACEHOLDER]

EXHIBIT C – CITY / WESCOTT IGA

[PLACEHOLDER]