

ORDINANCE NO. 24 - 08

AN ORDINANCE EXERCISING CITY COUNCIL'S LEGISLATIVE
AUTHORITY REGARDING THE EXTENSION OF WATER
SERVICE AND OUTSIDE CITY WATER AND/OR WASTEWATER
SERVICE TO THE PARK VISTA SUBDIVISIONS

WHEREAS, Park Vista Estates, Park Vista Estates Addition, Park Vista Estates Filing 2, Gordon Subdivision, RNC Subdivision, A Subdivision of Block 24 Park Vista Estates Addition, and A Subdivision of Tracts F, N, O & part of M in the ReSubdivision of Block 24 Park Vista Estates Subdivision (the "Park Vista Subdivisions") are unincorporated areas of land entirely outside the City of Colorado Springs city limits; and

WHEREAS, owners of property within the Park Vista Subdivisions regularly request water service and/or wastewater service from Colorado Springs Utilities for their properties for single-family residential use; and

WHEREAS, City Code § 7.5.701(J) provides that in its legislative discretion City Council may authorize water or wastewater service outside the City without annexation; and

WHEREAS, in exercising its discretion to authorize service outside the City without annexation, City Council shall consider a number of factors contained in City Code § 7.5.701(J); and

WHEREAS, Colorado Springs Utilities' Tariff requires City Council approval prior to end-use water and/or wastewater service being provided outside the corporate limits of the City; and

WHEREAS, City Code § 12.4.305 provides that City Council may approve the extension of the water service boundary based on a recommendation of Utilities Board and substantiated and written record demonstrating one of several factors, including that extension of water service to the area will have a de minimis impact on the overall City's available water supply; and

WHEREAS, Colorado Springs Utilities has presented evidence to Council, in the form of a substantiated and written record, demonstrating that extension of water service to each single-family property in the Park Vista Subdivisions, will have a de minimis impact on the overall City's available water supply; and

WHEREAS, Colorado Springs Utilities has provided a template Agreement to Annex, attached hereto as Exhibit A, ("form of "Agreement to Annex") for providing water and/or wastewater service to residential properties within the Park Vista Subdivisions; and

WHEREAS, Utilities Board, based on the factors included in City Code section 12.4.305, has recommended extending the water service boundary to include the properties in the Park Vista Subdivisions; and

WHEREAS, based on consideration of the factors contained in City Code § 7.5.701(J), City Council exercises its legislative discretion to authorize the extension of water and/or wastewater service to individual residential properties within the Park Vista Subdivisions, which is outside the City, and authorizes the Chief Executive Officer of Colorado Springs Utilities to execute agreements to accomplish such extensions in the future, subject to the conditions set forth in this Ordinance.

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

Section 1. City Council has considered the factors contained in City Code § 7.5.701(J) regarding extending service to properties outside of the City without annexation and finds that it is desirable to extend water and/or wastewater service to properties in the Park Vista Subdivisions as the owners of such properties request service.

Section 2. City Council finds, based on a substantiated and written record and a recommendation by Utilities Board, that extension of the water service boundary to include each single-family property in the Park Vista Subdivisions will have a *de minimis* impact on the overall City's available water supply.

Section 3. City Council hereby exercises its legislative discretion and authorizes the Chief Executive Officer of Colorado Springs Utilities to execute extensions of water and/or wastewater service to individual properties within the Park Vista Subdivisions without annexation, subject to the satisfaction of the following conditions:

- A. The owner(s) of the subject property within the Park Vista Subdivisions has submitted a request to Colorado Springs Utilities for water service and/or wastewater service for single-family residential use only;
- B. The City's Planning Department has been given the opportunity to review and comment on the owner(s) request for water service and/or wastewater service;

- C. There is sufficient water capacity and pressure available to serve the subject property if water service is requested and/or that there is sufficient wastewater treatment capacity available to serve the subject property if wastewater service is requested; and
- D. The owner(s) of the subject property has executed an Agreement to Annex substantially in the form attached hereto as Exhibit A.

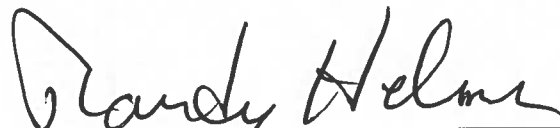
Section 4. The Chief Executive Officer of Colorado Springs Utilities will provide notice to City Council of extensions of service within the Park Vista Subdivisions pursuant to this ordinance on an annual basis.

Section 5. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 6. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 13th day of February 2024.

Finally passed: February 27, 2024


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk



EXHIBIT A
Form of
Agreement to Annex

**AGREEMENT PROVIDING
WATER SERVICE AND/OR WASTEWATER SERVICE TO LAND LOCATED
OUTSIDE THE CITY LIMITS
OF THE CITY OF COLORADO SPRINGS
AND
AGREEMENT TO ANNEX**

WHEREAS, INSERT PROPERTY OWNER(S) NAME(S), INCLUDE TYPE OF ENTITY FOR BUSINESSES (collectively "Owner") is/are the owner(s) of real property in El Paso County, Colorado, as shown on the location sketch map (to be done on 8 1/2 x 11 paper) and as described and set forth in the attached Exhibit "A" (the "Property"); and

Check the appropriate box(s) below:

WHEREAS, Owner intends to build upon the Property a building (or other structure(s)) used for single-family residential purposes at INSERT ADDRESS (INSERT TSN) Colorado Springs, CO and has requested water service, wastewater service, or water service and wastewater service ("Service") for the Property from the City of Colorado Springs, a home rule City and Colorado municipal corporation (the "City"); and

WHEREAS, a building (or other structure(s)) exists on the Property located at INSERT ADDRESS Colorado Springs, CO (INSERT TSN) that is used for single-family residential purposes and Owner has requested water service, wastewater service, or water service and wastewater service ("Service") for the Property from the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"); and

WHEREAS, the Property is subject to a deed of trust for which INSERT BANK NAME, INSERT BANK ADDRESS, is the beneficiary (the "Financial Institution") recorded at Reception No. INSERT NUMBER of the records of the El Paso County Clerk and Recorder; and

WHEREAS, the Property is located within an enclave, which enclave is surrounded by the corporate limits of the City and which enclave is or will be eligible for unilateral annexation by the City under the provisions of the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S., as amended (the "Annexation Act"), and Colo. Const. Art. II, § 30; and

WHEREAS, the City has considered Owner's request for Service, and has determined that the Property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests of the City to annex the Property at this time; and

WHEREAS, the City is under no obligation to furnish, but is agreeable to furnishing,

INSERT PROPERTY ADDRESS

Service upon the terms and conditions set forth below because the City has determined the extension of Service under the terms of this Agreement constitutes a community benefit.

NOW, THEREFORE, in consideration of the premises and in further consideration of the benefits which will accrue to the City and Owner, the City and Owner have entered into this Agreement Providing Water Service and/or Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex (the "Agreement") under the following terms and conditions:

1. This Agreement shall constitute the unqualified and irrevocable consent of Owner to annex the Property to the City and the City shall not be required to seek legal action to compel specific performance of this Agreement to Annex, but may proceed by ordinance to annex all or part of the Property as if Owner had petitioned for annexation, whenever the Property becomes eligible for annexation pursuant to the Annexation Act. Owner further agrees to execute a petition for annexation, prepare annexation plats, pay all required fees and execute any other documents the City determines are necessary to annex Owner's Property to the City. Owner agrees that the provisions of this Agreement are applicable to the Property described in Exhibit "A" or any portion of the Property. It is further agreed that Owner will not annex the Property or any portion, or incorporate the Property with any other municipality or special service district as described in Paragraph 10 without the prior written consent of the City.

2. It is specifically understood that the Service to be furnished by the City is for only the single-family residential use described in this Agreement and shall be in conformity with the regulations of the City in furnishing water and/or wastewater outside its corporate limits and in further conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner expressly agrees to be bound by and to comply with any and all City ordinances pertaining to water shortages, outdoor watering restrictions and water-efficient landscaping. Owner understands and agrees that the City imposes charges for water service and/or wastewater service provided outside of its corporate limits at a higher rate than applicable to the provision of such services within the corporate limits of the City. Upon annexation of the Property to the City, charges for water service and/or wastewater service subsequent to annexation shall be at the rates applicable to the provision of such services within the corporate limits of the City.

3. If Owner or Owner's successor in interest desires a different water service and/or wastewater service than granted the Property in this Agreement, or desires to put the Property to a use other than single-family residential, a change request shall be made to City Council. If granted, the request shall be upon terms and conditions as may be imposed by City Council. If the use of the Property for which the change request is made involves subdividing the Property or developing the Property for other residential, commercial or industrial purposes, the conditions for granting Owner's request shall

INSERT PROPERTY ADDRESS

include full compliance with the code, ordinances, rules, regulations and policies of the City.

4. If necessary, Owner will extend water and/or wastewater main lines or service lines to the Property, at Owner's expense, in accord with the City's codes, ordinances, rules, regulations and policies in effect at the time of the specific water service and/or wastewater service request. A first-come, first-served policy will govern availability of supply.

5. In the event Owner is not required to extend water service and/or wastewater service and lines and connect to the City's water and/or wastewater system at the time of entering into this Agreement, Owner shall connect to the City's water and/or wastewater system at Owner's expense at the time of request or when required under applicable codes, ordinances, rules, regulations and policies of the City in effect at the time of the request for Service. Water distribution and treatment capacity, along with wastewater collection and treatment capacity, is not guaranteed by this Agreement, but by Service availability at the time of request. The first-come, first-served policy will govern availability of supply.

Owner agrees to pay its pro rata share of applicable water and/or wastewater treatment plant facility costs through established Water and Wastewater System Development Charges. Owner will pay a pro rata share of any existing water and wastewater infrastructure or facility costs assessed through established recovery agreement charges when required by codes, ordinances, rules, regulations or policies of the City. Water distribution and/or wastewater collection facilities required to serve the Property must be designed and constructed at Owner's expense in accordance with applicable codes, ordinances, rules, regulations or policies of the City at the time of the request for Service.

Owner agrees to participate with other developments on a fair share pro rata basis in present and future off-site relief or other water and/or wastewater facilities.

6. 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 immediately after execution by the City. The Deed shall be recorded at the El Paso County Clerk and Recorder's office.

INSERT PROPERTY ADDRESS

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. Utilities may authorize Owner to continue to utilize wells located on the Property that are permitted or decreed for domestic purposes, until the Property is connected to the City's water system. Owner agrees that any wells permitted or decreed for domestic purposes only that are located on the Property at the time of connection to the City's water system will be plugged and abandoned in accord with state rules and regulations. The City may permit Owner to continue to use wells for irrigation or livestock purposes only in accord with the permit or decree when the permit or decree includes use of the well for irrigation or livestock purposes, provided that the City may withdraw this authorization upon notification to Owner by Colorado Springs Utilities. No commingling of well and City water supply will be permitted.

7. Owner shall also construct facilities, if determined necessary by the City Engineer, for the safe discharge of all subsurface water into a drainage conveyance facility. These facilities are not eligible for drainage basin credit or reimbursement.

8. Owner and the City acknowledge that if the Property is not located within the corporate limits of the City at the time of its development, Owner nevertheless agrees to comply with all codes, ordinances, rules, regulations and policies of the City including, but not limited to, the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, and Utility Extension Policies as now existing or subsequently amended, except to the extent that compliance would be unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or another governmental entity having jurisdiction. In the event compliance is unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or other governmental entity having jurisdiction over the Property, Owner shall post assurances to bring any improvements into compliance with City codes, ordinances, rules, regulations and policies upon annexation.

Compliance with City codes, ordinances, rules, regulations and policies pertaining to land development shall require, but shall not be limited to:

- a. Payment of all applicable Water and Wastewater Development Charges and fees.
- b. Payment of required park and/or school fees in lieu of dedication to

INSERT PROPERTY ADDRESS

- the City.
- c. Dedication, design and construction of required streets, sidewalks, curbs, gutters, drainage and utilities, to City standards, or to the standards of the entity having responsibility for maintenance, whichever standard is more strict, or post acceptable financial assurances.
 - d. Dedication of easements including, but not limited to, utility, drainage and other public improvements as required by the City Subdivision Code, or post acceptable financial assurances.
 - e. Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees.
 - f. Agreement to participate with other developments on a fair share pro rata basis in present and future drainage and/or off-site relief or other water facilities.

9. Owner agrees to pay fees, charges and take such other actions as set forth in Paragraph 8 at the time of annexation, when required under the provisions of the applicable City codes, ordinances, rules, regulations and policies or at any other time as requested by the City. Fees payable and requirements imposed under Paragraph 8 shall be those in effect at the time the fees are required to be paid or other action to be taken under the provisions of Paragraph 8 and not those fees in effect or requirements in effect at the time of execution of this Agreement. The City may require proof of payment or proper dedication of land prior to the connection of any water service and/or wastewater service under this Agreement. This Agreement shall not be interpreted to require the City to install any park or drainage facility at any specific location or within any period of time, nor as relieving Owner of any liability or obligation to third persons to provide or to refrain from providing drainage. The City shall incur no obligation to Owner by reason of any claims, suits, judgments, or other liability or obligation resulting from Owner providing or failing to provide drainage. Owner specifically agrees to indemnify and hold the City harmless from all such claims.

10. Owner understands that certain infrastructure and/or easements serving the Property may be required by the City to meet appropriate City standards at the time of utility service extension to the Property or at the time of annexation of the Property to the City, or at another subsequent time as the City determines is appropriate to be upgraded to meet City standards. Infrastructure may include public utilities and public works projects including, but not limited to, paving and improvements of streets, curb, gutters, drainage facilities, and water and/or wastewater systems necessary to serve the Property subject to this Agreement. Infrastructure may be designed, financed, constructed, and/or maintained by special districts or other entities. These entities may include, but are not limited to, special districts, general improvements districts, limited improvement districts, special improvement maintenance districts, metropolitan districts, and building authorities or another district by whatever name, whether established pursuant to or subsequent to the annexation of the Property to the City or established prior to the annexation of the

INSERT PROPERTY ADDRESS

Property to the City. This Agreement shall constitute Owner's unqualified and irrevocable consent to including the Property within any of the foregoing entities and assessing the Property a fair share of the cost of any improvements as determined by City Council or the governmental authority having jurisdiction. In addition to or in lieu of the construction of improvements by the foregoing entities, the City may at any time require Owner to execute an agreement obligating Owner and the Property to pay for some or all of the improvements and a fair share as the City in its sole discretion may determine is appropriate.

11. The covenants and agreements contained in this Agreement shall run with the land described and affected by this Agreement, and shall extend to and be binding upon the Owner's heirs, assigns, legal representatives and successors and Owner for himself and his heirs, assigns, legal representatives and successors in interest. This Agreement shall be recorded with the El Paso County Clerk and Recorder. The Financial Institution expressly accepts and approves these covenants and agreements.

12. As further consideration for the City providing Service, if all or part of the Property is eligible for annexation and if for any reason Owner or Owner's successor in interest does not or cannot abide by the terms and conditions of this Agreement, then the subject Service provided may be terminated by and at the sole option of the City.

13. Nothing in this Agreement shall abridge or shall be construed as a limitation on the City's authority to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply generally or to the Property specifically.

14. Owner will comply with all ordinances, codes, rules, regulations and policies of the City as now exist or may be amended or adopted in the future which are applicable to the Property under the terms of this Agreement, or are otherwise applicable to the Property after the annexation to the City.

15. Extension of water service and/or wastewater service under the terms of this Agreement is for the sole benefit of Owner and shall not be interpreted to create rights in a third party beneficiary or constitute City Council's determination of any policy pertaining to extension of water service and/or wastewater service to other similarly situated individuals or property.

16. As used in this Agreement, the term "Owner" shall also mean any of Owner's heirs, executors, personal representatives, successors, transferees or assigns and shall also include the Financial Institution, if the Financial Institution, its successors, transferees, or assigns becomes owner of the Property through foreclosure or otherwise. A subsequent owner of the Property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original Owner of the Property.

17. This Agreement may be amended by Owner and the City. This

INSERT PROPERTY ADDRESS

Agreement may be amended by Owner and the City with the concurrence of the Financial Institution. Should the Financial Institution no longer hold an interest in the Property and an affidavit to that effect is filed with the City and the El Paso County Clerk and Recorder, its concurrence with any amendment will not be required.

Any amendment shall be recorded in the records of El Paso County, shall run with the land and shall be binding upon all persons or entities now having or later acquiring an interest in the Property subject to the amendment unless otherwise specified in the amendment.

18. By executing this Agreement, the Financial Institution agrees that: (1) should it become Owner of the Property through foreclosure or otherwise, it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become Owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

19. The parties to this Agreement agree that for breach of any covenant, term or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy, and the City may compel specific performance of this Agreement.

20. If any part of this Agreement is declared void by a Court of competent jurisdiction, the parties agree that the void provision shall not affect the remaining terms and conditions of this Agreement, which shall continue in full force and effect.

INSERT PROPERTY ADDRESS

FINANCIAL INSTITUTION:

INSERT BANK NAME

By: _____

Name: _____

Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of and on behalf of **INSERT BANK NAME.**

My commission expires: _____.

Notary Public

INSERT PROPERTY ADDRESS

EXHIBIT A

INSERT LEGAL DESCRIPTION OF PROPERTY

INSERT PROPERTY ADDRESS

EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER
_____ Agreement to Annex

INSERT OWNER(S) NAME(S) ("Grantor(s)", whose address is _____, in consideration of the benefits received pursuant to the _____ Agreement Providing Water Service and/or Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex dated _____ ("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). The Water Rights include, but are not limited to, those described in Exhibit B hereto.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as 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 its execution.

Executed this _____ day of _____, 20__.

GRANTOR(s):

By: _____ By: _____

INSERT OWNER(S) NAME(S)

INSERT PROPERTY ADDRESS

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by **INSERT OWNER(S) NAME(S)**, Grantor(s).

My commission expires: _____.

Notary Public

Accepted by the City of Colorado Springs

By: _____ this _____ day of _____, 20____
Real Estate Services Manager

By: _____ this _____ day of _____, 20____
Customer Utilities Connections Manager

Approved as to Form:

By: _____ Date: _____
City Attorney's Office

INSERT PROPERTY ADDRESS

Exhibit A

LEGAL DESCRIPTION

to the
Special Warranty Deed and Irrevocable Consent to the Appropriation,
Withdrawal and Use of Groundwater executed by
INSERT OWNER(S) NAME(S), Grantor(s) on _____

(provide legal description, signed and stamped by Professional Licensed Surveyor)

INSERT PROPERTY ADDRESS

Exhibit B

to the
Special Warranty Deed and Irrevocable Consent to the Appropriation,
Withdrawal and Use of Groundwater Executed by
INSERT OWNER(S) NAME(S) Grantor(s) on _____.

Decreed Groundwater Rights

Case No.:

Court:

Source:

Amount:

Date of Decree:

Name of Owner:

Permitted Groundwater

Permit No.:

Date of Permit:

Source:

Amount:

Name of Owner:

Legal Description of Well or other Structure:

Surface Water Rights

Name of Water Right:

Case No.:

Court:

Source:

Amount:

Date of Decree:

Name of Owner:

INSERT PROPERTY ADDRESS

I HEREBY CERTIFY that the foregoing ordinance entitled “AN ORDINANCE EXERCISING CITY COUNCIL’S LEGISLATIVE AUTHORITY REGARDING THE EXTENSION OF WATER SERVICE AND OUTSIDE CITY WATER AND/OR WASTEWATER SERVICE TO THE PARK VISTA SUBDIVISIONS” was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on February 13, 2024; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 27th day of February 2024, and that the same was published by title and in summary, in accordance with Section 3-80 of Article III of the Charter, a newspaper published and in general circulation in the Gazette, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 27th day of February 2024.



Sarah B. Johnson, City Clerk

1st Publication Date: February 16, 2024

2nd Publication Date: March 1, 2024

Effective Date: March 6, 2024

Initial: SBJ

City Clerk

