

**ROCK CREEK MESA ADDITION NO. 5
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT (the "Agreement"), dated this ____ day of _____, 2024, is between THE CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation (the "City"), and ROCK CREEK RESIDENTIAL LLC, a limited liability company (the "Owner"). The Owner or the City may be referred to individually as a "Party" or together as the "Parties".

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 described in **Exhibit A** attached hereto. The annexation will become effective upon final approval by the City Council and upon the recording with the El Paso County Clerk and Recorder (the "Records") of each of the following: (1) this Agreement; (2) the annexation plat; (3) the Rock Creek Mesa Addition No. 5 special warranty deed, and irrevocable consent to the appropriation, withdrawal, and use of groundwater and (4) the annexation ordinance.

This agreement is intended to be a subsequent annexation agreement as part of the overall Rock Creek Mesa Annexation to include as a whole the Rock Creek Mesa Additions No. 1 through No. 6 Annexation. The provisions contained in the Rock Creek Mesa Addition No. 1 Annexation Agreement shall apply to the Property described herein and any of the property described in the Rock Creek Mesa Annexation Agreement. All provisions of the Rock Creek Mesa Addition No. 1 Annexation Agreement will extend to the Property as part of the overall annexation and included in the Agreement.

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. Metropolitan Districts. Metropolitan Districts shall be governed by Article V of the Rock Creek Mesa Addition No. 1 Annexation Agreement as if fully set forth in this agreement.

B. Streets, Bridges, and Traffic Control. Streets, Bridges, and Traffic Control shall be governed by Article V of the Rock Creek Mesa Addition No. 1 Annexation Agreement as if fully set forth in this agreement.

C. Drainage. Drainage shall be governed by Article V of the Rock Creek Mesa Addition No. 1 Annexation Agreement as if fully set forth in this agreement.

D. Parks. The Owner shall comply with City Code and Parkland Dedication Ordinance.

E. Schools. The Owner shall comply with any applicable City Code section, as amended, with respect to school dedications.

G. Improvements Adjacent to Park and School Lands. Streets and other required public improvements, including utilities, adjacent to park lands dedicated within the Property will be built by the Owner, subject to City Code requirements.

H. City Service Center. The City Service Center shall be governed by Article V of the Rock Creek Mesa Addition No. 1 Annexation Agreement as if fully set forth in this agreement.

VI.
UTILITY SERVICES

Utilities shall be provided as set forth in the Rock Creek Mesa Addition No. 1 Annexation Agreement.

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, the 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 shall be recorded concurrent with the recording of this Agreement, the annexation plat, and the 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 the Owner and all successors in title, the 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, the 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 the Owner's Property without additional consent from the 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

Public land dedication shall be governed by Article XI of the Rock Creek Mesa Addition No. 1 Annexation Agreement [as if fully set forth in this agreement.](#)

XII.
SPECIAL PROVISIONS

Intentionally left blank - 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" 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. Mobolade, Mayor

ATTEST:

BY: _____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY: _____
Office of the City Attorney

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____.

Witness my hand and notarial seal.

My commission expires: _____

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

ROCK CREEK MESA ADDITION NO. 5

A PARCEL OF LAND IN THE SOUTH 1/2 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 PAWNEE ROAD RIGHT-OF-WAY RECORDED UNDER ROCK CREEK MESA SUBDIVISION ADDITION NO. 2 IN PLAT BOOK A-2 PAGE 30, AND A PORTION OF THAT PARCEL OF LAND RECORDED UNDER RECEPTION NUMBER 224050744, BOTH IN 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 S56°23'43"W A DISTANCE OF 1,898.77 TO A POINT ON THE SAID EXTERIOR THAT PARCEL OF LAND, BEING MONUMENTED BY A RED PLASTIC CAP STAMPED "PLS 38160", ALSO BEING THE **POINT OF BEGINNING**;

THENCE COINCIDENT WITH SAID WESTERN ROAD RIGHT-OF-WAY LINE OF COMMANCHE ROAD SOUTH 00°42'43" EAST, A DISTANCE OF 521.79 FEET;

THENCE CONTINUE SOUTH 00°42'43" EAST, A DISTANCE OF 61.94 FEET TO A POINT ON THE EXTERIOR OF SAID PARCEL;

THENCE COINCIDENT WITH THE EXTERIOR OF SAID PARCEL THE FOLLOWING SEVEN (7) COURSES:

1. SOUTH 00°45'24" EAST, A DISTANCE OF 142.36 FEET;
2. SOUTH 00°45'24" EAST, A DISTANCE OF 27.00 FEET;
3. SOUTH 88°33'19" WEST, A DISTANCE OF 409.44 FEET;
4. NORTH 00°43'42" WEST, A DISTANCE OF 27.00 FEET;
5. CONTINUE NORTH 00°43'42" WEST AND COINCIDENT WITH SAID LINE, A DISTANCE OF 90.69 FEET;
6. NORTH 06°34'58" EAST, A DISTANCE OF 59.95 FEET;
7. NORTH 24°20'49" EAST, A DISTANCE OF 86.76 FEET;

THENCE NORTH 00°00'00" EAST, A DISTANCE OF 665.86 FEET TO A POINT ON THE EXTERIOR OF SAID PARCEL;

THENCE COINCIDENT WITH THE EXTERIOR OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:

1. SOUTH 89°52'55" EAST, A DISTANCE OF 250.80 FEET;
2. SOUTH 00°13'37" EAST, A DISTANCE OF 159.60 FEET;
3. NORTH 89°17'29" EAST, A DISTANCE OF 107.26 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIPTION CONTAINS A CALCULATED AREA OF 323,735 SQUARE FEET OR (7.43192 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.

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

By: _____ this _____ day of _____, 20____.
Colorado Springs Utilities Customer Utility Connections Manager

Approved as to Form:

By: _____ Date: _____
City Attorney's Office

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 _____.

ROCK CREEK MESA ADDITION NO. 5

A PARCEL OF LAND IN THE SOUTH 1/2 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 PAWNEE ROAD RIGHT-OF-WAY RECORDED UNDER ROCK CREEK MESA SUBDIVISION ADDITION NO. 2 IN PLAT BOOK A-2 PAGE 30, AND A PORTION OF THAT PARCEL OF LAND RECORDED UNDER RECEPTION NUMBER 224050744, BOTH IN 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 S56°23'43"W A DISTANCE OF 1,898.77 TO A POINT ON THE SAID EXTERIOR THAT PARCEL OF LAND, BEING MONUMENTED BY A RED PLASTIC CAP STAMPED "PLS 38160", ALSO BEING THE **POINT OF BEGINNING**;

THENCE COINCIDENT WITH SAID WESTERN ROAD RIGHT-OF-WAY LINE OF COMMANCHE ROAD SOUTH 00°42'43" EAST, A DISTANCE OF 521.79 FEET;

THENCE CONTINUE SOUTH 00°42'43" EAST, A DISTANCE OF 61.94 FEET TO A POINT ON THE EXTERIOR OF SAID PARCEL;

THENCE COINCIDENT WITH THE EXTERIOR OF SAID PARCEL THE FOLLOWING SEVEN (7) COURSES:

1. SOUTH 00°45'24" EAST, A DISTANCE OF 142.36 FEET;
2. SOUTH 00°45'24" EAST, A DISTANCE OF 27.00 FEET;
3. SOUTH 88°33'19" WEST, A DISTANCE OF 409.44 FEET;
4. NORTH 00°43'42" WEST, A DISTANCE OF 27.00 FEET;
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THENCE NORTH 00°00'00" EAST, A DISTANCE OF 665.86 FEET TO A POINT ON THE EXTERIOR OF SAID PARCEL;

THENCE COINCIDENT WITH THE EXTERIOR OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:

1. SOUTH 89°52'55" EAST, A DISTANCE OF 250.80 FEET;
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