

INTERGOVERNMENTAL AGREEMENT CONCERNING  
WOODMEN ROAD

This Agreement is made and entered into effective this 1<sup>st</sup> day of February 2003 by and between the following parties:

1. The City of Colorado Springs ("City");
2. The County of El Paso ("County"); and,
3. Woodmen Road Metropolitan District ("WRMD").

RECITALS

A. This Agreement concerns that portion of Woodmen Road located in unincorporated El Paso County which now consists of two lanes and located between Powers Boulevard on the west and U.S. Highway 24 on the east ("Woodmen Road").

B. The County and WRMD desire to design, finance, and construct certain improvements to Woodmen Road (the "Improvements").

C. WRMD has been formed as a new metropolitan district pursuant to Title 32, Colorado Revised Statutes to be used as a vehicle for the construction and financing of the initial phase of the Improvements.

D. This Agreement is intended to set forth the parties' understanding of how the Improvements will be designed, financed, and constructed.

E. Proposed developments in the County have necessitated the formation of WRMD and the City does not have any liability for the Regional or Local Impact-including any liability for any debt issued by WRMD; however this is not intended to preclude future liability or responsibility that might occur as a result of future City annexations and City acquisition of portions of Woodmen Road.

F. The parties agree that the property tax and fee burden to be borne by the property owners is reasonable and fundamentally fair given the purpose of WRMD in the construction and financing of improvements.

NOW THEREFORE based upon the mutual considerations and promises contained herein, the parties agree as follows:

1. District Formation. WRMD Road has been legally formed as a Colorado special district and the decree forming the District has been recorded as required by law. At the election held in November 2001, the electors voted for the formation of the District, elected the initial 5 member Board of Directors, authorized debt and mill levies, approved an intergovernmental agreement

("IGA") and approved various financial issues to address the provisions of Article X, Section 20 of the Colorado Constitution.

2. Service Plan. As a condition of district formation, WRMD obtained approval from the Board of County Commissioners, El Paso County of its Service Plan which set forth the financial plan of the District, described the purposes of the District, and detailed various road improvements and their cost. As set forth in the Service Plan, the purposes of this District is for Street Improvements (including drainage and landscaping) and Safety Protection (traffic control devices). These purposes cannot be enlarged or expanded without amendment of the Service Plan and consent of the City.

The parties recognize that the City imposes certain requirements upon District service plans in addition to the statutory requirements. WRMD agrees that it will give advance notice to the City of any proposed boundary changes and will supply the City with copies of all bond documentation including placement memorandum, preliminary and official statements, bond resolutions and bond trust agreements.

3. Improvements. The Improvements contemplated are the construction of up to 2 paved surface lanes in each direction together with turning lanes and acceleration/deceleration lanes together with right of way acquisition as needed up to 210 feet (or as necessary to accommodate an ultimate planned 6-lane expressway cross section), earthwork, demolition, signalization, drainage structures for the road itself and offsite, medians and related construction. In addition, the Improvements between Powers Boulevard and Black Forest Road will meet the City's urban functional classification and design standards. The Improvements are estimated to cost approximately \$30,000,000.00 without debt service. This estimate of costs also does not include construction management, legal, accounting, district formation costs, and other professional services such as market and financial studies (the "Soft Costs").

It is anticipated that the costs of the initial phase will be approximately \$20,000,000 including bond issuance and underwriting costs. WRMD would contribute approximately \$13,000,000 after payment of the Soft Costs.

The design for the Improvements shall be coordinated with the City and the City of Colorado Spring Department of Utilities. Relocation of City utilities, if necessary, shall be done at the expense of the District. The design of that portion of Woodmen Road lying east of a point that is 1000 feet to the east of the Powers Boulevard centerline will be designed by El Paso County in conjunction with WRMD; however, this shall not preclude the Colorado Department of Transportation from adding improvements in this area as part of the construction of the interchange at Powers Boulevard and Woodmen Road.

In addition thereto, the parties recognize that a portion of the property in WRMD is a commercial shopping center site located at the southwest corner of Powers Boulevard and Woodmen Road known as Greenbriar I and Powerwood. The parties acknowledge that in order to finance the Woodmen Road Improvements, Greenbriar I and Powerwood must initially be developed with two access points on Woodmen Road consisting of a full turn intersection at Tutt

Boulevard and a Right-In/Right-Out between Tutt Boulevard and the Powers/Woodmen Interchange.

All parties recognize and are committed to the joint Environmental Assessment ("EA") which is presently in process for the entire Woodmen corridor including both the segment subject to this Agreement and the City segment between Interstate 25 and Powers Boulevard. It is the intent of the parties that no Improvements deemed to be capacity enhancements shall be constructed prior to the completion of the EA process. If, upon completion of the EA, there are any improvements contemplated beyond the selected alternative identified in the EA, these Improvements wither will not be constructed or will be completed without the use of any federal funding. In the event the EA does not proceed forward, or there is a significant and unanticipated delay, the parties may agree to move forward with certain of the identified Improvements subject to the understanding that there may be significant federal funding impacts.

The parties further understand that a completed EA may refine or change the scope of the Improvements described above and could impact the overall costs.

4. Service Area. The "Service Area" is defined as those real properties that will have a direct impact upon Woodmen Road as traffic is produced from anticipated development. The Service Area consists of 12,000 acres and is described on the attached map. The Service Area has been determined through a review of the various traffic studies that have been completed and it is appropriate that the developing properties within the Service Area which will generate the traffic necessitating the Improvements should bear a portion of the cost of said Improvements due to this "Local Impact". In addition, the County should bear a portion of the Improvement Costs due to the "Regional Impact" as Woodmen Road will also serve City and County residents and properties that are not located in the Service Area.

5. Regional Impact. The Service Plan for this District contemplated a minimum County commitment of \$5,000,000.00 to this project from a combination of direct County funds and allocated Transportation Improvement Plan ("TIP") dollars. This contribution was characterized as the "Regional Impact". As of the date of this Agreement, a total of \$6,507,000.00 of public (non-District) funds has in fact been expended or is contracted toward this project. This includes right-of-way acquisition, design and engineering, environmental assessment services, construction and construction management contracts, and utility contracts. Additionally, the current TIP includes approximately \$6,500,000.00 in additional non-District funding for this project for the fiscal years 2004-2006. At this time the County has established this project as its highest priority for the years 2007-2009 and is proposing an additional approximately \$14,000,000.00 in non-District funding be allocated to this project.

The parties agree that the County's sums represent a reasonable contribution to the costs of the Regional Impact related to this project. In addition, the County agrees to use good faith efforts to annually obtain TIP grants from the State and Federal Government or budget its own funds in order to complete the Improvements and any later phases of the project.

As set forth in Recital E, the City is not responsible for the Regional Impact and nothing in this Agreement shall so imply; however, the City will cooperate with the EA process.

6. Local Impact. The Owners shall be responsible for and agree to fund and/or finance the cost of the Improvements to be paid by the Local Impact which is estimated to cost \$15,000,000.00 including fees, costs of bond issuance, underwriters discount, capitalized interest and all Soft Costs but excluding the interest carry for any debt. The parties agree that this amount represents a fair and reasonable allocation of costs for the Improvements to the properties in the Service Area that will impact Woodmen Road.

Those properties that are included in WRMD shall be required to pay property taxes with a mill levy of 10 mills 2001 equivalency, capped at 25 mills 2001 equivalency. In addition the properties shall be required to pay a platting fee of \$350.00 per single family residential unit and a building permit fee of \$500.00 per single family residential unit. Multi-family properties shall pay the same fees based on the single family equivalency taking into account traffic generation or trips, density, and land use. Commercial and industrial properties shall pay both a platting fee and building permit fee. It is the intention of the parties that property which is exempt from taxation but which would otherwise contribute to the traffic on Woodmen Road, should be required as a condition of platting, development, or annexation to pay the platting fee, building permit fee, and a fee in lieu of property taxes. It is further the intention of the parties that public property used for public purposes and owned by the City, the County, or the Colorado Springs Department of Public Utilities shall be exempt from all fees.

For non-residential properties, the platting fee shall be \$1400 per acre based upon developable acreage net of dedicated public rights-of-way.

The building permit fee would be based upon single family equivalency adjusted for traffic generations based on land use and type and could be as follows:

Single Family	\$500/Unit
Multi Family	\$350/Unit
Destination retail/hotel	\$1.25 per square foot
Convenience Commercial	\$5.00 per square foot
All Other Uses	\$1.00 per square foot

The District will determine the appropriate categories to use in determining the building permit fee using the ITE Trip Generation Manual as amended

Pursuant to the approved service plan, the Districts, on an annual basis, may adjust upwards the building permit fee and platting fee based upon increases in inflation and cost of living as determined by the consumer price index.

By including properties into WRMD the initial property owners have consented to said fees and taxes and have agreed that their properties shall be subject to the payment of the same.

Ten (10) mills 2002 equivalency means the mill levy as automatically adjusted upwards by the same proportion as any decrease by the State of Colorado of the ratio for assessment of commercial or residential property from the present ratios of 29% and 9.15%, respectively, in order to produce the same revenues as would have been produced had the valuation of property not been changed as a result of changes in Colorado law.

7. Owners Minimum Share. The Owner's Minimum Share shall be based upon the number of traffic trips generated on an average daily trip ("ADT") basis. The cost of an ADT shall be determined by dividing the Districts' cost of Improvements by the estimated number of ADT's produced in the Service Area. On or before December 31, 2002 an estimate of the total ADT's shall be made based upon current traffic studies done within the Service Area. At the time of completion of platting and the construction of improvements, based on the above methodology, the Owner's Minimum Share can be determined. From time to time, and in order to maintain equity, the Owner's Minimum Share may be adjusted as the cost of each ADT may be adjusted based upon current traffic studies. The cost of an ADT shall be determined by WRMD with input and recommendation from the other parties to this Agreement.

8. Bonds. It is anticipated that the cost of the Owners' Local Impact will be financed through the sale of limited tax general obligation bonds that will be funded by platting fees, building permit fees, and a mill levy of ten mills, capped at 25 mills 2001 equivalency. The bonds may be issued as fixed rate or variable rate or a combination of the two. The Owners agree to arrange for letters of credit, bond insurance, or other necessary credit enhancements.

9. Soft Costs. Soft Costs shall be paid from bond proceeds as approved by WRMD and allowed by law. To the extent any of the initial owners within WRMD fund any Soft Costs, they shall be entitled to reimbursement from bond proceeds together with interest at the same rate of interest paid on any Limited Tax Obligation Bonds.

10. Design and Warranty. All construction performed by the District, or through the District's Project Manager, shall be in conformity with the approved design and either the City of Colorado Springs or the County road standards. All completed work will be dedicated to the County or City pursuant to a two year warranty and shall not be subject to any reimbursement. Following completion of the Improvements, the County and or City shall maintain the same, including the cost of power and maintenance of signalization devices and the maintenance of all trails.

11. County Additional Obligations. The County shall require of any unincorporated property located within the Service Area, as a condition of platting or replatting (other than to adjust property lines in a manner which does not increase traffic impacts) that the property be required to contribute to the Local Impact costs and reimburse any funds received for right-of-way acquisition. This contribution may be accomplished by the inclusion of the subject property into the District or a cash payment in lieu thereof which shall be based upon the same calculation used to quantify the Owner's Minimum Share.

12. City Obligations. The City's obligation under this Agreement is to require as a condition of any City annexation where such annexation is by petition and annexation agreement and not an annexation election or a unilateral annexation of any property in the Service Area that said property be included into the District or make other arrangements to contribute to the impacts upon Woodmen Road as determined by the City. In addition, if the annexation of the property is pursuant to a petition for annexation and annexation agreement, the City will require the reimbursement of any funds received for right-of-way acquisition. The City agrees that if a property has already been included into the District, then in that event the City shall not impose additional financial requirements for Woodmen Road on the property as a condition of annexation unless the obligations of the District are less than the obligations required by the City in its development process or unless the City determines that additional financial contributions are necessary for the annexation of the property to the City pursuant to an annexation agreement. Nothing contained herein shall be interpreted to restrict, limit, or modify City requirements for annexation, platting, zoning or development of properties under the City's jurisdiction. It is understood that certain properties within the Service Area, as a condition of City annexation, may be required to either construct or guaranty additional road lanes, curb, gutter, medians, and other urban road design improvement.

Specifically, the parties recognize that in addition to Powerwood and Greenbrier I, there are other properties abutting Woodmen Road on the north and south and to the east of Powers Boulevard which properties are petitioning the City for annexation in order to be developed commercially. City development guidelines and ordinances require that these properties together with Powerwood and Greenbrier I (the "City Annexation Parcels") expand the adjacent improvements to include six lanes of roadway, raised medians, and curb and gutter ("Additional City Improvements"). These City Annexation Parcels are permitted to join WRMD in order to make use of WRMD in order to finance the Additional City Improvements; provided that a mechanism satisfactory to the City, is in place to insure and guaranty said Additional City Improvements in the event that they cannot be provided through WRMD and that any financial plan is acceptable to WRMD.

Satisfaction of any annexation obligation is not contingent upon the ability of WRMD to provide financing for the improvements and maintenance of City improvements; in such instances, the City may demand completion of improvements required by the annexation agreement or pursuant to its development process.

13. Additional Improvements. Additional Improvements, other than those contemplated in the Service Plan and in addition to the Additional City Improvements may be required. These "Additional Improvements" may consist of additional lanes, grade-separated crossings, raised medians, and curb and gutters. Unless otherwise provided for by the City in an annexation agreement, the City and County agree that those properties that contribute to the Local Impact (either by paying the Minimum Share or including their property into the District) shall be exempt from the paying of any costs of the Additional Improvements; provided however, that

Additional debt, over and above the initial debt may be issued subject to the following conditions:

1. Agreement of WRMD and the County

2. Significant increase in anticipated assessed valuation as a result of inclusions of additional properties

However, nothing contained in this Section 13 is intended to prohibit the City from requiring the Additional City Improvements as part of any annexation agreement.

Nothing in this Agreement is intended to supercede the Banning-Lewis Annexation Agreement but the parties do recognize that the Banning-Lewis Annexation Agreement does provide for the levy and collection of an impact fee for the benefit of Woodmen Road which impact fee is to be administered as provided for in the Banning-Lewis Annexation Agreement or any modification thereof, at the sole discretion of the City.

14. Miscellaneous.

a. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected and that in lieu of any such clause or provision there shall be added as a part thereof a substitute clause or provision as similar in terms and effect as to such illegal, invalid or unenforceable clause or provision as may be possible.

b. This Agreement represents the entire understanding of the parties and any amendment to this Agreement is invalid unless reduced to writing and signed by the parties.

c. This Agreement shall be binding upon successors and assigns.

d. This Agreement shall be terminated upon the completion of all construction authorized by WRMD and the payment of all obligations by WRMD (including bond payments) and either (i) the dissolution of WRMD, or (ii) the cessation of services by WRMD.

Made and entered into the year and date first above written.

(SIGNATURE AND VERIFICATION PAGES FOLLOW)

CITY OF COLORADO SPRINGS

BY: *Maxwell Makepeace*  
MAYOR

ATTEST:

*Kathryn M. Young*  
CITY CLERK

VERIFICATION

STATE OF COLORADO

COUNTY OF EL PASO

}  
}  
} ss:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of March, 2003,  
by *Maxwell Makepeace* as Mayor and *Kathryn M. Young*  
as City Clerk.

Witness my hand and official seal.

My commission expires: *April 6, 2006*.

[SEAL]

*Sharon K. Seaman*  
Notary Public



BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

BY: Clark R. Rive  
Chairman

ATTEST:

BY: Wayne Williams  
Deputy County Clerk

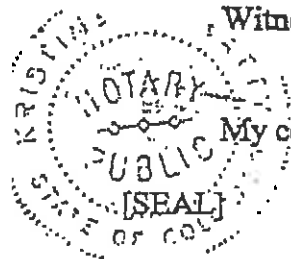
VERIFICATION

STATE OF COLORADO        }  
  }  
COUNTY OF EL PASO        }        ss:

The foregoing instrument was acknowledged before me this 13th day of February 2003, by Wayne Williams as Chairman of the Board of County Commissioners and by Eileen F. Wheeler as Deputy Clerk to the Board.

Witness my hand and official seal.

My commission expires: 8-8-2006



Kristine J. Reathy  
Notary Public

WOODMEN ROAD  
METROPOLITAN DISTRICT

BY: *[Signature]*  
PRESIDENT

ATTEST:

BY: *[Signature]*

VERIFICATION

STATE OF COLORADO

COUNTY OF EL PASO

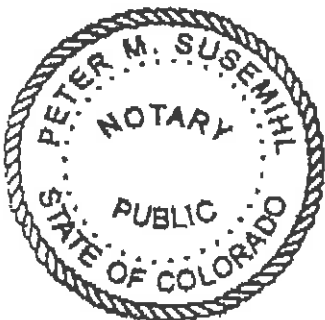
ss:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of November, 2003,  
by Joseph E. Woods as President of the Board and by Alisa Christian  
as Secretary to the Board of Woodmen Road Metropolitan District.

Witness my hand and official seal.

My commission expires: 11/24/05

[SEAL]



*[Signature]*  
Notary Public