

RESOLUTION NO. 181-02

A RESOLUTION AUTHORIZING THE CITY OF COLORADO SPRINGS TO ENTER INTO AN AGREEMENT AND JOINT PLAN FOR EXCLUSION OF CERTAIN PROPERTY FROM THE DONALD WESCOTT FIRE PROTECTION DISTRICT OF EL PASO COUNTY, COLORADO

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

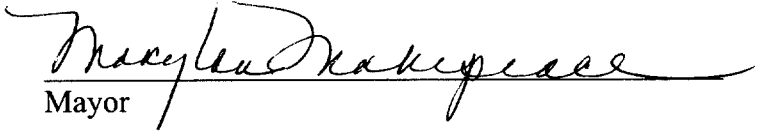
Section 1. That the City hereby accepts and approves the Contract and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado.

Section 2. That the Mayor is hereby authorized to execute the Contract and Joint Plan on behalf of the City, and the City Manager is authorized to execute any amendment to the Agreement necessary to fulfill Council's desire to exclude Wolf Ranch and La Plata Ranch from the District Boundaries.

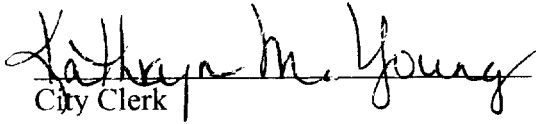
Section 3. That the Fire Chief is hereby authorized to execute and administer any necessary Automatic Response and Mutual Aid Agreement on behalf of the City, and is further authorized to executed any amendment to the Agreement necessary to fulfill Council's desire to provide for automatic and mutual aid between the City and the District .

Section 4. That the City Attorney is authorized to take, on behalf of the City, any act necessary to properly exclude these properties from the District boundaries as required by statute.

DATED at Colorado Springs, Colorado this 22nd day of October, 2002.

  
Mayor

ATTEST:

  
City Clerk

**CONTRACT AND JOINT PLAN FOR PROVISION OF FIRE SERVICES,  
DISPOSITION OF ASSETS, AND PHASED EXCLUSION OF CERTAIN  
PROPERTY FROM THE DONALD WESCOTT FIRE PROTECTION  
DISTRICT BETWEEN THE CITY OF COLORADO SPRINGS, A HOME  
RULE CITY, AND COLORADO MUNICIPAL CORPORATION AND THE  
DONALD WESCOTT FIRE PROTECTION DISTRICT OF EL PASO  
COUNTY, COLORADO**

This Contract and Joint Plan for the Provision of Fire Services Disposition of assets, and Phased Exclusion of Certain Property from the Donald Wescott Fire Protection District (the "Contract"), is entered into between the Donald Wescott Fire Protection District of El Paso County, Colorado (the "District") and the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"), pursuant to the provisions of Part 5 of Article 1 of Title 32, C.R.S., a provision of the Special District Act.

**RECITALS**

1. The boundaries of the District include certain areas which have been annexed into the corporate limits of the City of Colorado Springs over time.
2. In these areas both the District and the City provide fire protection services to these areas and the property owners presently pay taxes for protection services to both the District and the City.
3. The property annexed to the City includes property which is also located within the boundaries of the District.
4. The Special District Act, Section 32-1-502 C.R.S., provides a procedure for the exclusion of Special District property that has been annexed to a municipality. That 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.

5. The District and the City have previously entered into a Contract and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado dated December 7, 2001 and approved pursuant to court order dated December 21, 2001 which together excluded from the District certain residentially zoned areas that had been annexed to the City.
6. The District and the City acknowledge that a phased plan for the exclusion of the overlap area (hereafter the "Property") within the District that has been annexed by the City is appropriate to allow the District to continue to provide fire protection services to the overlap areas that remain within the boundaries of the District after this exclusion proceeding.
7. In compliance with the statutory provisions set forth in C.R.S. §32-1-502 (1)(c), the District and the City desire to enter into this Contract to provide for (i) the phased exclusion of the Property from the District, (ii) the continued provision of fire protection services by the City to the Property, and (iii) the continued provision of fire protection services by the District or pursuant to contract with the City in the remaining area of the District not included in the Property to be excluded from the District.

In consideration of these Recitals and the provisions of this Contract, the City and the District agree as follows:

## **AGREEMENT**

### I. Exclusion of Property

1. The Exclusion of Property from the District is divided into three (3) Phases. In Phase 1, the Property described in Exhibit 1 (all property within the boundaries of the City and the District located generally south of Burns Road that has not been previously excluded from the District) shall be excluded from the District. The Parties intend that such property be excluded from the District pursuant to court order on or before December 31, 2002, to be effective January 1, 2003.
2. In Phase 2, the Property described in Exhibit 2 (all property within the boundaries of the City and the District but not property that is solely located within the boundaries of the District) generally located north of Burns Road and south of Interquest Parkway shall be excluded from the District. The parties intend that such property be excluded from the District pursuant to court order after January 1, 2003 and on or before December 31, 2003, exclusion to be effective as of January 1, 2004.

3. The parties intend to exclude the remaining area of the District, the area generally north of Interquest Parkway that overlaps the City at such time as there is a fire station constructed and such station is fully staffed pursuant to the Amended and Restated Northgate Annexation Agreement recorded at reception No 098083667 of the records of the El Paso County Clerk and Recorder.
4. Upon approval of this Contract by the District through its Board of Directors and the City through its City Council, the District and City agree within ten business days to file a co-petition for Exclusion of the Property described in Exhibit 1 under Phase 1 of the exclusion proceedings.
5. The City and the District intend to timely file with the court after January 1, 2003 a co-petition for exclusion of the Phase 2 property in calendar year 2003. If the City and the District do not agree upon the filing of such Co-Petitions, each party reserves the right to file with the court its own petition to implement the provisions of this Contract and take such other action as it deems legally appropriate.

## II. Fire Service

1. The District and the City acknowledge and agree that the current City fire protection provided to the Properties, described in Exhibits 1 and 2 is equal to that provided throughout the City.
2. The City agrees that at the time of exclusion, the City shall continue to provide fire service to the Properties on the same basis as fire service is provided throughout the City.
3. Exclusion of the Properties, described in Exhibits 1, and 2, from the District will not adversely affect the quality of fire services provided to the Properties or adversely affect the fire insurance costs for improvements within the Properties.
4. The District agrees to continue to provide fire protection services from its fire station located at 6615 Vincent Drive, Colorado Springs, Colorado, until such time as the Property described in Exhibit 2 is excluded from the boundaries of the District. Upon the exclusion of this Property from the boundaries of the District, the District shall close its station located at 6615 Vincent Drive, Colorado Springs, Colorado.
5. The District agrees to continue to provide fire protection services to properties remaining within the District's boundaries from its other two fire stations located at 15000 Sunhills Drive and 15415 Gleneagle Drive, El Paso, County, Colorado.

### III. Disposition of Assets

The City and the District agree that no District assets shall be transferred or otherwise given to the City, and no City assets shall be transferred or otherwise given over to the District. The parties agree and acknowledge that no District assets or facilities are located within the Properties described in Exhibits 1 and 2, except for the fire station and equipment located at 6615 Vincent Drive, and that the District's assets, including its facilities, remain adequate to provide fire services to those areas of the District not included in the Properties described in Exhibits 1, and 2.

### IV. District Debt and Bonds

The District affirms that the District has no outstanding bonded indebtedness. The District does not seek to have either the City or the owners of the Property to be held responsible for any of the other indebtedness of the District after the exclusion of the Property.

### V. Other Terms and Conditions

1. This Contract is predicated upon the retention within the boundaries of the District of property sometimes known as the Montezuma Property and other properties as described in Exhibit 3. The Montezuma Property and the other properties are located within the boundaries of the District but outside of the municipal boundaries of the City. The City and the District acknowledge that upon exclusion of the Property described in Exhibit 2 from the District and the closure of the District's fire station at 6615 Vincent Drive, Colorado Springs, Colorado, the District's fire protection services in this area would be more appropriately provided by the City. The District agrees to separately contract with the City for the City to provide such fire protection services. Such contract shall provide for payment by the District to the City of revenue collected by the District pursuant to the District's assessment of the Property described in Exhibit 3 unless the City and the District agree on a different sum. These funds shall be paid to the City on a monthly basis. The City and the District shall enter into appropriate operational agreements detailing the procedures providing fire protection services by the City in this area. The City or the District may terminate all contracts or other agreements, and the City may terminate the provision of fire services in this area upon thirty day's notice to the other party, provided that notice of such termination based upon the El Paso County Assessor's Records shall be mailed to all Property owners in the area prior to such termination and notice of such termination shall be published in accordance to the provisions of the Special District Act in a newspaper of general circulation. The City and the District may enter into

any subsequent contract or agreement to modify terms and conditions under which fire protection services are provided thereby described in Exhibit 3 without court approval. In the event of termination by the City of such fire protection services, such termination shall not constitute removal of the property from the District.

2. This Agreement shall not be deemed to prohibit the District from subsequently seeking or considering exclusion of any or all of the property described in Exhibit 3 from the District as allowed under the provisions of the Special District Act, Article 1 of Title 32 C.R.S. However, upon the exclusion of any or all of such property, any obligation of the City to provide protection services within the excluded area shall terminate.
3. The District and the City certify that each finds the provisions of this Contract are fair and equitable.
4. The District and the City request that the proposed Order of Exclusion to be entered by the Court shall adopt the provisions of this Contract.
5. Any Court Order for exclusion of any of the Property from the District 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 Contract.
6. Assignment: Neither Party shall assign or otherwise transfer this Contract or any right or obligation hereunder without the prior written consent of the other, except that this Contract shall automatically be binding upon the governmental successors of the Parties.
7. Law: This Contract 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.
8. Appropriation and availability of funds. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Contract 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 this Contract 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.

9. Entire Contract: This Contract, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.
10. No Third Party Beneficiary: It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person or entity pursuant to such Contract. It is the express intention of the Parties hereto that any person or entity, other than the parties to this Contract, receiving services or benefits under this Contract shall be deemed to be incidental beneficiaries only.

#### VI. Contract Approval

This Contract shall be invalid unless approved by the City Council of the City by written Resolution in accord with Section 32-1-502(2)(a) C.R.S., and approved by the Board of Directors of the District by written Resolution.

#### VII. Effective Date

In accord with Section 32-1-502(6) C.R.S., this Contract shall be effective on and after the effective date of a Colorado District Court Order excluding the Properties from the District, that is, January 1, 2003.

#### VIII. Contract Void

1. This Contract is predicated upon the inapplicability of Section 32-1-502(7) C.R.S. In the event that the City is subject to the provisions of Section 32-1-502(7) C.R.S. this Contract shall be void and the City shall be deemed to have withdrawn its consent to the exclusion proceeding.
2. In the event a petition for an election is made under the provisions of Section 32-1-502(5) C.R.S., this Contract shall be void.



3. In the event the District's November 2002 ballot question regarding an increase in the mill levy for the remainder of the district fails, the District shall be deemed to have withdrawn its consent to the exclusion proceeding as it relates to Phase 2 and Phase

DONE this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

**DONALD WESCOTT FIRE  
PROTECTION DISTRICT:**

By: \_\_\_\_\_  
President of the Board of Directors

**CITY OF COLORADO SPRINGS**

By: \_\_\_\_\_  
Mary Lou Makepeace, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Office of the City Attorney

\_\_\_\_\_  
Attorney for Wescott Fire Protection District  
Peter J. Obernesser

**ATTEST:**

\_\_\_\_\_  
City Clerk