

RESOLUTION NO. 1083-17

A RESOLUTION AUTHORIZING THE
INTERGOVERNMENTAL AGREEMENT FOR THE
PROVISION OF FIRE PROTECTION SERVICES
BETWEEN THE CITY OF COLORADO SPRINGS AND THE
WOODMEN VALLEY FIRE PROTECTION DISTRICT

WHEREAS, the City Council finds that intergovernmental agreements between the City and other governmental agencies and fire protection districts outside the City limits for mutual aid in emergency medical services, fire suppression services, hazardous materials mitigation services, rescue services, fire prevention services and other Colorado Springs Fire Department emergency services are in the best interests for the health, safety, and welfare of the residents of the City; and

WHEREAS, C.R.S. § 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting governmental units; and

WHEREAS, the City agrees to provide fire protection services to the Woodmen Valley Fire Protection District ("District"); and

WHEREAS, the District Board approved the Intergovernmental Agreement on August 7, 2017 and executed the Intergovernmental Agreement on August 15, 2017.

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

Section 1. The City Council now adopts this resolution approving the Intergovernmental Agreement between the City and the District attached hereto as Exhibit "A."

Section 2. The City Council further authorizes the Mayor and the Fire Chief to execute the Intergovernmental Agreement on behalf of the City.

Dated at Colorado Springs, Colorado, this 10th day of October, 2017.



Council President

ATTEST:

Sarah B. Johnson, City Clerk


INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF FIRE SERVICES BETWEEN
THE CITY OF COLORADO SPRINGS,
AND
THE WOODMEN VALLEY FIRE PROTECTION DISTRICT

This Intergovernmental Agreement ("Agreement"), dated for reference this 7th day of August, 2017, is made by and between the City of Colorado Springs, a Colorado home rule city and municipal corporation (herein the "City") and the Woodmen Valley Fire Protection District, a quasi-municipal corporation and political subdivision of the State of Colorado (herein "District"). In this Agreement, the City and the District may be referred to jointly as "Parties" and separately as "Party."

The Parties hereby agree as follows:

Paragraph 1. Purpose. The purpose of this Agreement is to set the terms for the provision of fire and emergency medical services (EMS) in the District by the City.

Paragraph 2. Authority. The Parties enter into this Agreement pursuant to Section 18 of Article XIV of the Colorado Constitution; Section 6 of Article XX of the Colorado Constitution; Colorado Revised Statutes ("CRS") § 32-1-1001; CRS § 32-1-1002; CRS § 29-1-203.

Paragraph 3. Term. The term of this Agreement shall be from January 1, 2018, through December 31, 2027, unless sooner terminated under the provisions of this Agreement. However, the Parties may extend this Agreement beyond December 31, 2027, by mutual written agreement.

Paragraph 4. Territory. The territory covered by this Agreement shall be all of the property located within the boundaries of the District as shown on Exhibit A, which is attached hereto and made a part of this Agreement.

Paragraph 5. Response. Commencing on January 1, 2018, the City agrees to provide fire, rescue, hazardous materials, and emergency medical services (EMS) response through its Fire Department to the property within the District as shown on Exhibit A in compliance with the standard operating procedures of the Colorado Springs Fire Department ("CSFD"). Responses by the CSFD shall be from CSFD fire stations, with the apparatus and personnel of the CSFD, which in its sole discretion, deems appropriate for the response. Responses to the District will be handled automatically and on the same basis as responses to incidents in the City and as if the District were a part of the City and residents shall receive service, and charges, on the same basis as residents of the City. Nothing in this Agreement is intended to create any priority of response within the District by CSFD. Ambulance services will be provided to the District by the City's contracted ambulance service provider. The City shall also provide normal and customary data to the District as determined by the CSFD Fire Chief and the District Fire Chief or their designees.

Paragraph 6. Payments:

a) **District Total Gross Revenues Defined.** For purposes of this Agreement, the District's Total Gross Revenues for any given year means and includes, without limitation, all gross tax revenue, gross ownership tax revenues, fees or other funds whatsoever, received from any source or person, and before any debt payments, lease payments, deductions or adjustments for collection fees, fines, judgments or any other reduction, or adjustment whatsoever, but shall not include gifts to the District or interest received on District accounts. The revenue received by the District from the sale of any District assets shall belong to the District and shall not be counted as part of the District Total Gross Revenues.

b) **Payments to the City.** Commencing calendar year 2018, by December 31st of the calendar year, the District shall pay to the City the sum of eighty percent of the District's calendar year Total Gross Revenues from all sources whatsoever, or the sum of eighty thousand dollars and no cents (\$80,000.00), whichever amount is greater, as payment for services provided by the City under this Agreement during any part of that calendar year, however, in no event shall the payment due for any calendar year exceed the sum of one hundred thousand dollars and no cents (\$100,000.00). In the event this Agreement should terminate during a calendar year, then the payments due as stated above shall be pro-rated to the effective termination date.

Paragraph 7. Termination. Either Party may terminate its participation in this Agreement for convenience upon Two hundred forty (240) calendar days prior written notice without compensation to the District. Any notice of termination for convenience shall state the effective date of termination. The City may terminate its participation in this Agreement by February 15 after the December 31 due date as per paragraph 6b, and without notice or compensation to the District, upon failure of the District to make the payment pursuant to paragraph 6(b) of this Agreement and such required payment remains outstanding as of February 15th.

Paragraph 8. No Duty at Law. This Agreement shall not be construed to create a duty as a matter of law or contract for the provision of fire, rescue and EMS services, the Parties recognizing and intending to exercise rights for mutual convenience which they may exercise independently, nor shall this Agreement be construed as creating a benefit or enforceable right for any person. Except as otherwise stated in its terms, this Agreement shall not be construed to create a duty as a matter of law or contract for any of the Parties to assume any liability for injury, property damage, or any other damage that may occur by any action or non-action taken, or service provided to the public or any person, as a result of this Agreement.

Paragraph 9. Annexation. Nothing in this Agreement shall be construed as any consent to, or step towards annexation of property into the City of Colorado Springs.

Paragraph 10. Amendments. The Parties agree that this Agreement may only be amended or

altered by written agreement signed by the Parties.

Paragraph 11. Notice. Any notice required by this Agreement shall be sent in writing by United States Mail, first class postage prepaid. Correspondence to each Party shall be addressed to the following persons:

For the District:

Board of Directors
Woodmen Valley Fire Protection District 1150 West Woodmen Road
Colorado Springs, Colorado 80919

For the City:

Fire Chief
Colorado Springs Fire Department 375 Printers Parkway
Colorado Springs, CO 80910

The addresses and persons above may be changed from time to time by written notice to the other Party, and any written notice of change shall be attached to this Agreement. Informal communications between the Parties for administration of this Agreement may take place by electronic mail.

Paragraph 12. Assignment. No Party shall assign or otherwise transfer this Agreement or any right or obligation hereunder without prior written consent of the other Party. The District shall not enter into any other contract or intergovernmental agreement for fire services, including but not limited to any mutual aid agreement, with any other person or entity without the prior written consent of the City.

Paragraph 13. Employee Compensation and Control. Except as otherwise stated in this Agreement, no Party to this Agreement shall be required to pay any compensation to the other Party or the other Party's personnel for any services rendered hereunder. Nothing in this Agreement shall be construed to place the personnel of any Party under the control or employment of another Party. Each Party remains responsible for all pay, entitlement, employment decisions, and worker's compensation liabilities, for its own personnel. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

Paragraph 14. Expenditures of Parties. Expenditures and Fees of Each Party Deemed Expenditures of That Party. The Parties to this Agreement agree that the purpose of this Agreement is to jointly accomplish pursuant to C.R.S. § 29-1-203 activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes

of the Colorado Constitution, Article X Section 20, and the Colorado Springs City Charter, that any fees contributed or paid, or otherwise provided by any Party to this Agreement to another Party to this Agreement are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.

Paragraph 15. Choice of Laws and Jurisdiction. 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 Colorado District Court for El Paso County, Colorado.

Paragraph 16. Appropriation and availability of funds – City. In accordance with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Agreement is expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this Agreement, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then the City may terminate this Agreement without compensation to the District.

Paragraph 17. Appropriation and availability of funds – District. In accordance with the Colorado Constitution, Article X, Section 20, performance of the District's obligations under this Agreement is expressly subject to appropriation of funds by the District's Board of Directors. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the District's obligations under this Agreement, or appropriated funds may not be expended due to Constitutional spending limitations, then the District may terminate this Intergovernmental Agreement without compensation to the City.

Paragraph 18. Disputes. The Parties will make every effort to work cooperatively and in good faith to provide appropriate services as outlined in this Agreement. Should disputes arise as to the performance of any obligations or services pursuant to this Agreement; the Parties agree, prior to pursuing other dispute resolution methods, to first attempt an informal resolution of the dispute pursuant to the following procedure:

a) Within thirty (30) days of the conclusion of any service provided pursuant to this Agreement, any party dissatisfied with the other party's performance of its obligations under this Agreement (the "Aggrieved Party") shall notify the other party in writing of the nature of the Aggrieved Party's dissatisfaction, outlining in detail the specific concerns of the Aggrieved Party and suggestions for resolution.

b) Any party receiving notice of dissatisfaction pursuant to the preceding paragraph shall contact the Aggrieved Party and arrange an in-person meeting to attempt to resolve the Aggrieved Party's dissatisfaction. Such meeting must be scheduled within thirty (30) days of receipt of the Aggrieved Party's notice of dissatisfaction.

c) The Parties agree to work in good faith to resolve all perceived disputes in order to best protect the jurisdictions served by the Parties and to ensure this Agreement is not terminated unless continuation of this Agreement is no longer practicable.

Paragraph 19. Local Concern. The Parties agree and acknowledge that the activities contained in this Agreement are matters of local concern only, and that the Parties have mutually joined together for the performance of the matters of local concern, and that nothing in this Agreement shall be construed as making any of the local concerns covered herein matters of mixed concern or statewide concern.

Paragraph 20. Entire Agreement. This Agreement, 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.

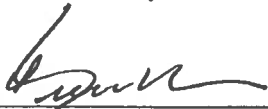
Paragraph 22. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity under or pursuant to this Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

Paragraph 23. Headings. The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Paragraph 24. The Parties to this Agreement are not partners or joint venturers as a result of this Agreement.

Paragraph 25. Waiver. The provision of services under this Agreement is for the benefit of the District. Accordingly, the District does hereby waive, remise, and release any claim, right, or cause of action which the District may have, or which may accrue to the District in the future, against the other arising in whole or in part from this Agreement, including but not limited to any action in Contract or other legal theory whatsoever.

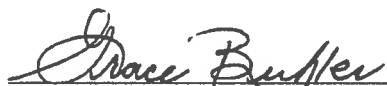
For Woodmen Valley Fire Protection District:



Kevin M. Bush
Chairman of the Board

Dated: 2/15/17

ATTEST:



Board Secretary

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



Special Counsel to the District

For the City of Colorado Springs:

John W. Suthers
Mayor

Dated: _____

Ted Collas
Fire Chief

Dated: _____

Approved as to Form

Senior Attorney
City of Colorado Springs

