

INTERGOVERNMENTAL AGREEMENT FOR PUBLIC ROADS AND HIGHWAYS IN THE PUEBLO WEST METROPOLITAN DISTRICT

THIS AGREEMENT is made and entered into this 27th day of August, 2002, by and between the **PUEBLO WEST METROPOLITAN DISTRICT** (hereinafter referred to as "District") and **PUEBLO COUNTY, COLORADO** (hereinafter sometimes referred to as "County").

RECITALS

District is a Metropolitan District organized and existing pursuant to the provisions of **C.R.S., Section 32-1-101, and et. seq.**; one of the primary purposes for which the District was formed was to provide for all aspects of street improvement services;

Pursuant to **C.R.S., Sections 30-11-107 and 43-2-208**, the County also has the lawful authority and jurisdiction to perform such duties respecting roads as may be required by law, including the maintenance and repair of certain deeded and dedicated public highways and roads within unincorporated Pueblo County;

The District and the County are political subdivisions, as defined under **C.R.S., Section 29-1201, and et. seq.**, which expressly authorizes and encourages political subdivisions to cooperate and contract with one another to provide any function, service or facility lawfully authorized to the cooperating or contracting political subdivisions;

The County and the District previously entered into an Agreement to provide for the maintenance, repair and reconstruction of certain deeded and dedicated public highways and roads located within the District; the County and the District have found and determined that a new agreement concerning all aspects of road improvements located within the Pueblo West Metropolitan District is needed and, therefore, desire to enter into a new, written agreement concerning public roads and highways; the construction, maintenance, re-construction and servicing of such roads.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing, and of the mutual promises, covenants, terms and conditions contained herein, the parties agree as follows:

1. NATURE OF AGREEMENT.

It is the intent of the parties that this be an Intergovernmental Agreement. Further, it is agreed by both parties that this Agreement, is made pursuant to, and specifically authorized and governed by the provisions of C. R...S., Sections 32-1-101, and ET. Seq. specifically, the subject and substantive provisions of this Agreement concern the design, construction, maintenance, re-construction and servicing of public roadways, the governance of which is lawfully authorized to

parties, to wit: **C.R.S., 32-1-103(10)(g)** authorizes to metropolitan districts the governance of street improvements, and, **C.R.S. 32-1-1001(1)(h)** specifically provides that the Board of a Metropolitan District has the power to manage, control and supervise all construction, installation, operation and maintenance of special district improvements and, further, pursuant to C.R.S. 32-1-1001(1)(n) grants to special district boards such powers as are necessary or incidental to or implied from the express powers granted in the statute. C.R.S., **Sections 30-11-107 and 43-2-208** specifically grant to a county the lawful authority and jurisdiction to perform all duties respecting roads as may be required by law including design, construction, maintenance and re-construction and servicing of roads within the unincorporated county. The parties, by this Agreement, desire to facilitate the elimination of the overlapping of regulations and services regarding roads within the Pueblo West Metropolitan District. It is the agreement of both parties that no delegation of County powers to the District is needed as the District is also lawfully authorized to provide street improvements and related services. It is, therefore, the principal purpose of this Agreement to define the terms and conditions upon which Pueblo County will refrain from exercising its powers over the roads covered by this Agreement and upon which it will pass through monies it receives for roads from the State HUTF to the District is the further intent of this Agreement that the District shall have full authority over, and full legal responsibility for (without waiving any defenses or immunity, including Governmental Immunity for any claims of third parties against the District) all matters relating to all roads within the District including maintenance of existing roads and design and construction of any newly created roadways and the County shall refrain from exercising its powers over the roads within the boundaries of the District except as set forth in paragraph VI herein.

II. APPROVED PUBLIC HIGHWAYS.

The roads which are the subject of this Agreement shall be referred to as "Approved Public Highways". The term "Approved Public Highways" shall refer to those roads described in Exhibit "A", which is attached hereto and incorporated herein by this reference, which are located within the District, and which meet the requisite standards for payment from the Highway Users Tax Fund, ("HUTF"), established by Colorado law. The parties understand and agree that such approved public highways have previously been dedicated to the public use and accepted as public highways, and, also for maintenance purposes in accordance with Colorado law. The parties further understand and agree that the obligations of each hereto are conditioned upon the lawful dedication to public use of all roads which are the subject of this Agreement and, further, upon the acceptance of such roads for maintenance purposes by the County and/or the District. During the term of this Agreement, the District may petition the County to accept the dedication of additional public highways located within the District as public highways and, also, for maintenance purposes. If such additional highways have been constructed and completed to the standards applicable for roads within the District, as such standards exist at the time of the filing of the Petition, the County shall by resolution of the Board of County Commissioners, accept such additional dedicated public highways as public highways and for maintenance purposes. After acceptance by the Board such additional dedicated public highways shall become approved public highways as the same are defined above and shall become incorporated

Into Exhibit A by the execution of an amendment to this Agreement. To be effective for purposes of this Agreement, any such dedication must be accomplished in accordance with the provisions of **C.R.S. 43-2-201** and any payments for such road required by this Agreement are subject to the same being eligible for State HUTF funds.

III. OBLIGATIONS OF DISTRICT.

As consideration for the performance of the County hereunder, District agrees to undertake and perform the following obligations in accordance with the authority granted to it by law and by its Approved Service Plan during the term of this Agreement:

- A. Maintenance.** District shall be responsible for, and shall expend all funds received from County pursuant to this Agreement only on, the maintenance, as that term is more specifically defined herein, of the Approved Public Highways located within the District. Said funds shall be expended for no other purposes. For purposes of this Agreement, "maintenance" is defined as the continual upkeep and preservation of a quality state of repair and efficiency which shall include, but not be limited to, snow and ice removal, sanding, graveling, grading, paving, patching, ditch cleaning, weed mowing, drainage appurtenance design, installation and repair, traffic control device placement, engineering, design and construction, re-construction, sweeping, crack sealing, dust control and stabilization. Maintenance does not include any duty to upgrade, modernizes, modify or improve the design or construction of any of the approved public highways or other roads presently existing within the District. Maintenance shall also include the application for, processing of, and grant or denial of access permits and revocable permits for use of public right-of-way and excavation permits in conjunction with right-of-way (roads) development and maintenance as governed by the **Pueblo West Roadway Design and Construction Standards** as adopted by the District on December 28, 1999 and as may be amended in the future by the District.
- B. Maintenance Priorities.** Both the County and the District understand and agree that the HUTF funds paid over to the District pursuant to paragraph IV. herein will be added to funds the District makes available to be used for road maintenance. The County agrees that the District shall have the authority to set priorities, based upon the limited funds available, for the use of funds for maintenance of roads within the District with the only limitation that all HUTF funds received by the District pursuant to this Agreement shall be used for maintenance only on approved public highways set forth on Exhibit A attached hereto.
- c. Compliance with Law and Standards.** In performing its obligations hereunder, the District shall comply with all applicable Federal and State laws, rules, regulations and specifications applicable to the roadways covered by this Agreement. In addition, the District shall in performing its obligations hereunder, and subject to the provisions of subsection (D) of this Section, comply with the provisions of the Pueblo West Roadway

Design and Construction Standards as are referenced herein. County expressly acknowledges that in the application of such Pueblo West Roadway Design and Construction Standards, the District shall have the power to approve, in its discretion, variations from the Pueblo West Roadway Design and Construction Standards as is specifically identified in said Standards.

D. Roads in Commercial, Industrial and School Zones. In performing its obligations hereunder on roads in commercial and industrial zone districts and in school zones, including the process of reviewing the requests for Access Permits, District agrees, that when the District determines that road improvements are necessary, the design and construction of those road improvements shall be approved by a licensed professional engineer. All said road improvements shall conform to the standards that apply to such roads as are set forth in the Pueblo West Roadway Design and Construction Standards.

E. Required State Reports. The parties acknowledge and agree that County must submit certain reports to the State of Colorado, Department of Transportation, on an annual basis. In order to assist the County in preparing and submitting such reports, District shall, on an annual basis during the term of this Agreement, submit such reports to County as County is required to file with the State of Colorado by the date requested by County. Such reports shall be related to the maintenance of the Approved Public Highways set forth in Exhibit "A" and the expenditure of **HUTF** monies, paid to the District by the County. Such reports shall include, but not be limited to, the following:

1. Annual Statement of Revenues and Expenditures (**C.R.S. 43-2-120(1)**); and
2. Highway Performance Monitoring System Report (**C.R.S. 43-2-120(1)**); and
3. Mileage Certification Report (**C.R.S. 43-2-120(5)**); and
4. Condition of Streets, Roads and Highways Report (**C.R.S. 43-2-120(5)(b)**).

Special forms as are required in order to complete the aforementioned reports shall be supplied to the District by the County in a timely manner.

v. OBLIGATIONS OF COUNTY.

As consideration for the performance of the District hereunder, the County agrees to undertake the following obligations during the term of this Agreement:

A. Payment. County shall pay to the District one hundred percent (100% of those HUTF monies received by the County pursuant to **C.R.S. 43-4-207** for accepted highways, or portions thereof, which are within the District which are in compliance with HUTF eligibility standards, and which are approved Public Highways as defined herein. Such

payment shall be made on a monthly basis on the first regularly scheduled pay date subsequent to the receipt of an HUTF payment by the County from the State of Colorado. Such monthly payment shall be calculated as follows:

1. In August of each year, the County shall determine the total number of miles of open and maintained public highways located in Pueblo County, Colorado, for which the County receives HUTF monies. The County shall also determine the total number of open and maintained public highways located Within the District, for which the County receives HUTF monies, which highways shall be set forth in Exhibit "A" and any subsequent modifications or amendments thereto. Utilizing those numbers, the County shall then determine what percentage of the total miles of such highways located in Pueblo County is attributable to those roads located within the District. This percentage figure shall then be used to calculate the amount of payments due the District.
2. Applying the aforementioned percentage to the HUTF monies received from the State of Colorado on a monthly basis, the County shall determine and pay over to the District the amount of each monthly payment. County shall make twelve (12) monthly payments to the District using the aforementioned percentage commencing in February of each year and ending in January of the subsequent year.

The parties understand and agree that the intent of this paragraph is to provide the District with HUTF monies received by the County for the maintenance, as that term is defined herein, of those approved Public Highways set forth on Exhibit "A". The parties further understand and agree that the County may, with reasonable notice to the District, delete highways or portions thereof from Exhibit "A" only in the event that County does not receive HUTF monies therefor.

- B. **Existing Escrow Funds.** The County shall pay over to the District all funds presently held in escrow by the County pursuant to an approved Subdivision Improvements Agreement or other agreement for payment of improvements to roads within the District which funds were deposited in escrow by property owners at the time of approval of a final plat or Subdivision Improvements Agreement and/or at the time of issuance of an Access Permit to the property owners. The District shall be bound by all such agreements as was the County but shall be able to negotiate with property owners for modification of such agreements pursuant to the District's authority hereunder. However, in the event of a proposed change of any such agreement, be it a Subdivision Improvements Agreement and/or otherwise, which was a condition of a land use approval granted by the County then such change must be reviewed and approved by the Board of County Commissioners with appropriate changes to any land use approval where applicable before the same shall have any effect. The County shall not unreasonably withhold such approval.

V. ANNUAL REVIEW.

District agrees to fully cooperate with County in providing all information which the County deems necessary in order for the County to prepare an annual report on the status of the District's maintenance of the roadway system within its boundaries. County shall provide a copy of its written annual review to the District. The annual review shall be for the purposes of allowing the County to assess the performance of the District hereunder with lit view towards the continuing commitment of the parties to maintain the roadway system for the health and safety of the general public.

VI. TERM AND TERMINATION.

This Agreement shall commence on the day and date first set forth herein and shall continue thereafter until such time as the same is terminated as provided herein. District may terminate this Agreement at any time and for any reason by the giving of sixty (60) months prior written notice to the County. County may terminate this Agreement for cause where it, based upon a determination by a licensed Professional Engineer, believes public safety is being compromised by District maintenance of the roads. If County so decides to terminate for the reason stated, it shall give eighteen (18) months prior written notice to the District of its intent to terminate. District may correct any such deficiencies specified in the written notice and County agrees that if such corrections meet with its approval, that it will then withdraw its notice of termination and the parties shall continue to perform under the terms and conditions of this Agreement. The parties acknowledge that this Agreement may also terminate at such time as the area located within the District becomes an incorporated City pursuant to Colorado law or at such time as the District is legally permitted to receive HUTF funds directly from the State of Colorado. In either such event, District shall accept a conveyance from the County of all of its ownership interest in and to the roads then covered by the terms of this Agreement and, thereafter, District shall have the responsibilities attendant upon such ownership shall have such maintenance responsibilities as are prescribed by law.

VII. INDEMNIFICATION.

District hereby agrees to indemnify and hold harmless County, its officers, agents, and employees from any and all claims, actions, demands, suits, damages, expenses including attorneys fees and other costs of any nature whatsoever arising out of or related to, directly or indirectly, the performance by the District in providing maintenance, as that term is defined herein, for the roads covered by this Agreement. The obligation of the District hereunder to so indemnify the County shall extend, but not be limited to claims predicated upon allegations of a denial of substantive or procedural due process of law, a denial of equal protection of the law, and the like, in the management and administration of the roads as is accorded to District hereunder. Such indemnification shall also extend, but not be limited to, all claims for injuries to persons and/or property. Notwithstanding any other provision or term of this Agreement nothing herein shall be construed as a waiver or other

relinquishment of any nature by the County or the District of the protections of the Colorado Governmental Immunity Act. Subject to the obligations of each party hereunder, neither the County nor the District shall take any actions which shall act as a waiver to or create an exception to the governmental immunity protections afforded to both governmental entities by the Colorado Governmental Immunity Act.

Further, in performing under this Agreement, each party shall assume liability for the actions, including negligent actions of itself, its officers, agents and employees. Accordingly, each of the parties hereby agrees to further indemnify and hold harmless the other party, its officers, agents and employees from all claims, actions, demands, suits, damages and expenses, including attorney's fees, of whatever nature, directly or indirectly caused or arising out of the actions of the negligent party.

VIII. COMPLETE AGREEMENT.

This Agreement constitutes the complete agreement between the parties on the subject hereof and supersedes and replaces all prior oral and Written understandings and/or agreements of the parties including, but not limited to the Agreement for Public Highway Maintenance dated April 5, 1978 and December 29, 1992, and the Agreement for Public Highway Maintenance dated October 31, 1994 and any amendments thereto. There are no other oral or written representations or agreements concerning the subject matter hereof other than as are set forth in this Agreement.

IX. GOVERNING LAW.

This Agreement and any instrument or document executed pursuant hereto by the parties, and the rights and duties of the parties hereunder shall be construed, interpreted and enforced in accordance with the laws of the State of Colorado.

X. MODIFICATIONS.

This Agreement may not be modified or amended in any manner by either or both of the parties unless the same is set forth in a written agreement making reference to this Agreement and executed by both parties hereto. No waiver of any of this Agreement's provisions or conditions shall be binding unless made in writing and signed by the Chair of the Board of County Commissioners and the Chairman or President of the Pueblo West Metropolitan District.

XI. BINDING AGREEMENT.

When executed by the parties this Agreement shall constitute a binding agreement and shall be binding upon, and inure to the benefit of, the parties, and their respective legal representatives, successors and permitted assigns. Any delegation or assignment of this Agreement or of any of the obligations set forth herein by either party without the prior, written consent of the other party shall be void and of no force and effect.

1. **XII. WAIVER.**

No waiver of either party's obligations under this Agreement shall be deemed to have occurred or taken place unless such waiver has been made in writing and signed by each of the parties hereto. Failure to exercise any remedy which either party may have under this Agreement or any other acquiescence by one party in the other party's default, shall not constitute a waiver of any obligation of the defaulting party hereunder including the obligation as to which the defaulting party is in default.

XIII. NOTICES.

All notices required under this Agreement shall be sent, in writing, by certified or registered mail, return receipt requested, to the following addresses:

PUEBLO WEST METROPOLITAN DISTRICT
ATTN: DISTRICT MANAGER
109 E. Industrial Blvd.
Pueblo West, Co 81007

PUEBLO COUNTY, COLORADO:
PUEBLO COUNTY
ATTN: BOARD OF COUNTY COMMISSIONERS
215 W. 10th Street
Pueblo, CO 81003

XIV. DEFINITIONS.

Terms used herein shall be given their common meanings. The masculine includes the feminine and neuter. The singular includes the plural.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT THE DAY AND DATE FIRST ABOVE WRITTEN.

PUEBLO COUNTY, COLORADO

BY: _____
Chairman, Board of County Commissioners

ATTEST:

By: _____
Clerk to the Board

PUEBLO WEST METROPOLITAN DISTRICT

BY: _____
Chairman

ATTEST:

BY: _____
Secretary

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