

ARDIS W. SCHMITT  
EL PASO COUNTY CLERK & RECORDER

DODDER

**AGREEMENT PROVIDING FOR WATER SERVICE TO LAND  
LOCATED OUTSIDE THE CITY LIMITS OF THE  
CITY OF COLORADO SPRINGS  
AND  
ANNEXATION AGREEMENT  
(WOODMEN VALLEY)**

45'

**WHEREAS**, the undersigned property owner, hereinafter "Owner," is the owner of the real property in El Paso County, Colorado, described in Exhibit "A" hereto attached and made a part hereof (hereinafter the "Property"); and

**WHEREAS**, the Owner owns or desires to obtain water service from the City of Colorado Springs, hereinafter called "the City"; and

**WHEREAS**, the City has considered the Owner's application for water and has determined that the Property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests of the City to annex said premises at this time; and

**WHEREAS**, the City is under no obligation to furnish but is agreeable to furnishing water service upon the terms and conditions hereinafter set forth as the City has determined that to provide this service under the terms of this Agreement constitutes a community benefit.

**NOW, THEREFORE**, in consideration of the premises and in further consideration of the benefits which will accrue to the City and the Owner, the City and the Owner have entered into this Agreement providing for water service to land located outside the City limits of the City of Colorado Springs and Annexation Agreement (hereinafter "the Agreement") under the following terms and conditions:

1. Consent to Annexation. The Agreement shall constitute the unqualified and irrevocable consent of the Owner to annex the Property to the City, and the City shall not be required to seek legal action to compel specific performance of this Agreement to annex, but may proceed by ordinance to annex all or any part of said Property in the same manner as if the Owner had petitioned therefor or as otherwise permitted by law at such time as the City in its sole discretion shall see fit whenever the Property shall become eligible for annexation and pursuant to the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S. (hereinafter "the Annexation Act") and Section 30 of Article 2 of the Colorado Constitution or any amendments thereof or subsequent annexation legislation then in effect in the State of Colorado. Upon request of the City Council of the City, the Owner further agrees to execute a petition for annexation, execute annexation plats, and execute any other documents that the City determines are necessary to annex the Owner's Property to the City. The Owner agrees that the provisions of this Agreement are applicable to the Property as described in Exhibit A or any portion thereof. It is further agreed that the Owner will not annex the Property or any portion thereof, or incorporate the same with any other municipality or special service district without the prior written consent of the City.

2. Provision of Water Services. It is specifically understood that the water services to be furnished by the City are for only single family residential uses and shall be in conformity with the regulations of the City in furnishing water outside its corporate limits as modified by this Agreement and except as expressly provided herein, will be in conformity with all resolutions, codes, ordinances, regulations and policies of the City applicable thereto. The City will provide water service taps to the Owner or the Owner's successor in interest for the same water development charges as applicable to the provision of such services within the corporate limits of the City. Charges for water actually used will be at the City's standard rates for water service provided outside the City limits, subject to the provisions of Article 16 below.

3. Other Property Uses. If the Owner or the Owner's successor in interest desire to put the Property to other than single family residential uses, a request therefor shall be made to the City Council of the City, and such request, if granted at all, shall be upon such terms and conditions as may be imposed by the Council. If the use of the Property for which the request for the changed water use is made involves the subdivision of the Property or development of the Property for multi-family residential, commercial or industrial purposes, the conditions for granting such request, if granted, shall include full compliance with the Code, Ordinances, Resolutions, Regulations and Policies of the City.

4. Application For Water Tap. The Owner, or Owner's successor in interest, may apply to the City for one single-family equivalent water tap for the Property at any time after the date of this Agreement. Subject to the provisions of paragraph 2 above, the charges for such tap will be at the City's prevailing rates at the time it receives the application. It is acknowledged that the right to this tap will be tied to the Property, and may not be transferred to or otherwise utilized on any other lands.

5. Extension of Service Onto the Property. The Owner will extend water service to the Property in accordance with the ordinances and regulations in effect at the time of the specific water request. The first-come served policy will govern availability of supply.

6. Wells and Existing Water Rights. Subject to the provisions herein, the Owner grants and conveys in perpetuity to the City the sole and exclusive right to use any and all ground water underlying or appurtenant to and used upon the Property. The Owner irrevocably consents in perpetuity, on behalf of itself and any and all successors in title, pursuant to Section 37-90-137(4) of the Colorado Revised Statutes, as now existing or later amended, to the withdrawal and use by the City of all ground water underlying said lands, and agrees to execute any additional or supplemental consents thereto or instruments of conveyance thereof that may be required to vest in the City said right to appropriate, withdraw and use any and all said ground water. Furthermore, the Owner agrees to convey to the City on or before the effective date of this Agreement, by a satisfactory irrevocable consent and/or a satisfactory instrument of conveyance, the right to withdraw for beneficial use any and all ground water underlying or appurtenant to and used upon the Property. Notwithstanding any of the above, Owner and their successors in interest shall have the sole and exclusive right to use water from any wells existing on the Property on the date hereof (including any future replacement or relocated wells consistent with

existing well permits) for domestic and non-potable purposes. However, upon the Property tapping into the City water system, the Property Owner will physically separate the well water system from the City water system so that no commingling of well and City water supply can occur. The City will have the right to inspect and approve the separation of the well water system as a condition to allowing the Owner to tap into the City system.

7. Compliance With City Codes. With respect to any new construction or land development commenced after the date the Property is annexed, Owner will comply with all Codes, Resolutions, and Regulations and Policies of the City including but not limited to the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, Utility Extension policies, and Comprehensive Land Development Plan as now existing or subsequently amended, except to the extent that such compliance is specifically altered or waived by this Agreement. Notwithstanding anything to the contrary herein, Owners will not be required to pay any park, school, drainage or bridge fees, nor comply with any of the City's subdivision code so long as the Property is not subdivided. Additionally, because of the topography and long service lines to many properties, the City will approve Owner installing booster pumps or other devices to increase water pressure to customary levels for single family residential uses. The installation and maintenance of such pumps or other devices will be Owner's responsibility.

8. Provisions To Preserve Character of Valley. The City recognizes that the Property is part of the lands initially included within the boundaries of the Woodmen Valley Local Improvement District (the "Woodmen Land"). The Woodmen Land is an area which consists of large lots and a semi-rural environment. To maintain this environment, the City agrees:

a) That if the City annexes the Property, the City will establish a large-lot zoning classification requiring a minimum lot size of five acres and single-family residential uses (except that properties currently of a smaller size will be grandfathered), and will include the Property in such zoning classification. The City will also be required to obtain the consent (whether in writing or by vote) of 51% of all Owners whose Property is within the Woodmen Land before it can reduce this minimum lot size or change this permitted use for any property located within the boundary of the Woodmen Land.

b) The City will not, without a majority vote of Owners of properties within the Woodmen Land, undertake any upgrading of existing street, drainage, or other public infrastructure within the Woodmen Land if such activity would, in any manner, result in assessments against, or charges to, either the Owner or the Property, except for general *ad valorem* taxes uniformly applicable to all real property within the City.

9. The District. Owner hereby irrevocably consents to the inclusion of the Property within the Woodmen Valley Local Improvement District (the "District"), a local Improvement

District established pursuant to Part 5 of Article 25 of Title 31, CRS, and to the City of Colorado Springs (the "City"). Subject to Section 10, below, Owner also hereby waives any requirement for an election to authorize bonded indebtedness of the District and hereby authorizes and consents to the District issuing bonded indebtedness not to exceed \$2,525,000 to finance the design and construction of the City water system for Woodmen Valley, as well as all expenses associated with installation of such system, formation of the District and issuance of the above bonded indebtedness. Owner hereby acknowledges and agrees that the City has fully complied with all laws, regulations and other requirements with respect to formation of the District and issuance of the above bonds. The provisions of this paragraph 9 shall be binding on any successor in interest in the Property as fully as if such successor had executed this Agreement.

10. Election. Owner acknowledges the District is being formed, and its bonded indebtedness is being issued, for purposes of installing a water system as part of the City's utility system, and with the prior written consent of 100% of the properties being included within its boundaries. Consequently, Owner acknowledges and agrees that no election is required for the formation of the District, or the issuance of the bonded indebtedness contemplated herein. However, in order to clarify that revenue of the District will not be included as general revenues of the City under the Colorado Constitution, Article X, Section 20, or under Section 7-90 of the Charter of the City of Colorado Springs, Colorado, Owner acknowledges the City will hold an election of members of the District in November, 1994 to ratify and confirm the District's bonded indebtedness. Owner will vote in favor of this indebtedness at such election.

11. Easements. Owner will, without compensation and upon request by the City, grant the City such easements as are reasonably required for construction, installation and operation of the City's water system, provided such easements are located so as to not unreasonably interfere with the use and enjoyment of Owner's Property. The City will be responsible for restoring the easement area to as near its pre-existing state as reasonably practicable after the installation work is completed. The city must identify and deliver to Owner any such proposed easements on Owner's Property by no later than 60 days after the date of the execution of this Agreement.

12. Assessments. The City will establish uniform assessments for all Properties within the District sufficient to fully amortize its bonded indebtedness in equal annual payments over a 15-year period. Owner acknowledges the bonded indebtedness of the District is being authorized and issued to finance and facilitate expansion of the City's water service to Woodmen Valley, and as such revenues received by the District from assessments or otherwise will be deemed revenues of City Utilities for expansion of its enterprise activities, and will not be deemed to be general revenues of the City.

13. Excluded Properties. All properties within the unincorporated area of Woodmen Valley which have not been included in the District on the date of its formation ("Excluded Properties") will be subject to the provisions of this Paragraph 13. If an Excluded Property requests the City supply City water to such Property, the City will, as a condition to supplying City water, require that the Excluded Property pay an additional tap fee to the District for each single-family residential equivalent tap equal to the "pro-rata share" of the District's cost of the

water system, as certified by the City to the District upon completion of the water system. The "pro-rata share" will be established by taking the total cost of the water system and dividing it by the number of properties initially within the District (including those Properties that elect to pre-pay their share of District debt, as provided in paragraph 14 below). The amount of this pro-rata share will then be increased by a simple interest factor of 8% per annum from the date of the District's sale of its bonds until the date the Excluded Property's pro-rata share is paid to the District. The Excluded Property's pro-rata share as computed above shall be collected by the City and paid to the District. After establishing a reserve for reasonably anticipated operating expenses, the District will then periodically disburse at such times as the District determines the balance of such funds to the then owners of the Properties initially within the District on a pro-rata basis. Upon the District's bonds being paid, the City may either elect to continue keeping the District in place for purposes of collecting future payments from Excluded Properties, or dissolve the District, in which case City Utilities will be responsible for collecting future payments from Excluded Properties and making the pro-rata distributions to Property Owners as provided above.

14. Right to Pre-Pay. When the City determines the amount of bonded indebtedness necessary to fund the District's activities, it will give Owners of all Properties within the District written notice of the total amount, and the per lot amount. The Owners will then have the option of pre-paying to the District their Property's per lot amount in cash. This payment must be received by the District no later than 30 days after the date of the City's notice described above. If an Owner pre-pays their Property's per lot amount as provided above, their Property will thereafter be exempt from any assessments to retire bonded indebtedness of the District.

15. Settlement of Claims. By executing this Agreement, Owners, for themselves and their successors in interest, hereby fully release and discharge the City from any and all claims Owners may have against the City arising from any actions of the City through the date hereof relating to any impairment of Owner's existing wells and water rights, including, but not limited to, any such claims described in a Notice of Intent to File Suit delivered to the City on February 13, 1989.

16. More Favorable Agreements. If the City enters into any other annexation agreements or water service agreements with owners of other unannexed lands within the Woodmen Valley area of El Paso County, on terms more favorable than those in this Agreement, the City will, on the effective date of such other agreement, make the more favorable terms available to Owners.

17. Covenants Run With Land. The covenants and agreements hereinabove set forth shall run with the land hereinabove described and affected by this Agreement and shall extend to and be binding upon the heirs, assigns, legal representatives and successors of the Owner, and the Owner for himself and his heirs, assigns, legal representatives and successors in interest, expressly accepts and approves the aforesaid covenants and agreements. This Agreement shall be recorded with the El Paso County Clerk and Recorder.

18. Faihire To Comply. As further consideration for the City providing water, if all or part of the Property is eligibie for annexation and if for any reason the Owner or his snccessor in interest to the reai Property does not or cannot abide hy the terms and eonditions of this Agreement, then the services provided by the City under this Agreement may be terminated by and at the sole option of the City.

19. Future Poiicies. Except as otherwise expressly provided herein, nothing in this Agreement shall abridge or shall he construed as a limitation on the authority of the City to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply to the Property.

20. City Policies. Except as otherwise expressly provided herein, the Owner will comply with all ordinances, codes, resolutions, and policies of the City as such now exist or are amended or adopted in the future as such are applicable to the Property under the terms of this Agreement or otherwise applicable to the Property after the annexation of the Property to the City.

21. No Third-Party Rights. Extension of water service under the terms of this Agreement is for the sole henefit of the Property Owner and shall not he construed to create rights in a third-party beneficiary or constitute the determination by the City Council of any policy pertaining to extension of water service to others similarly situated.

22. Subseuquent Owners. Wherein as used herein, the term "Owner" shall also mean any of the heirs, executors, personal representatives, successors, transferees or assigns of the Owner. The subsequent owner of the Property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original owner of the Property.

23. Amendments. This Agreement may be amended by the Owner and the City, provided that the provisions of paragraphs 2, 6, 8, 9, 12 and 13 may not he amended without the consent of a majority of the Owners of the Woodmen Lands. Any amendment shall be recorded in the records of El Paso County and shall run with the land and shall be binding upon all persons or entities now or hereinafter having interest in the Property subject to the amendment unless otherwise specified in the amendment.

24. Specific Enforcement. The parties to this Agreement agree that for breach of any covenant, term or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy, and the City may have specific performance for the enforcement of any covenant, term, or condition of this Agreement.

25. Severability. If any part of this Agreement is declared void by a court of competent jurisdiction, it is agreed between the parties that such void provision shall not affect the remainder of this Agreement, which remainder shall remain in full force and effect.



STATE OF COLORADO )  
COUNTY OF EL PASO ) ss.

*[Handwritten signatures]*

The foregoing instrument was acknowledged before me this 27 day of July 1994, by \_\_\_\_\_ and \_\_\_\_\_

Witness my hand and official seal.

My commission expires: My Commission Expires Feb. 2, 1993  
El Paso County, CO



*[Handwritten signature of Notary Public]*

Notary Public

Address: ENT FEDERAL CREDIT UNION  
805 NORTH MURRAY BLVD.  
P.O. BOX 15819  
COLORADO SPRINGS, CO 80935



WILLIAM DODDER

719 591 4328

P. 81

DODDER, Richard and Susan

Richard & Susan Dodder

1250 W. Woodmen Road

Colorado Springs, CO 80919

Tax Schedule # 73020-00-022

Legal Description:

That portion of the Southwest Quarter of Section 1 and of the Southeast Quarter or Section 2, all in Township 13 South, Range 67 West of the 6th P.M., described as follows: Commencing at the intersection of the West line of said Section 1 with the Northerly Right of Way line of the County Road known as the Woodmen Road; run thence Northwesterly on said Northerly Right of Way line 293.1 feet to the Point of Beginning of the tract to be described hereby, thence angle right 97 degrees 25 minutes 40 seconds Northeasterly 321.1 feet; thence angle right 8 degrees 36 minutes 03 seconds Northeasterly 490.21 feet; thence angle left 71 degrees 38 minutes 44 seconds Northwesterly 97 feet; thence angle left 108 degrees 05 minutes 20 seconds Southwesterly 879.66 feet to a point on the Northerly Right of Way line of said Woodmen Road; thence angle left 106 degrees 17 Minutes 39 Seconds Southeasterly on said Northerly Right of Way line 150 feet to the Point of Beginning, El Paso County, Colorado.

EXHIBIT A