

RESOLUTION NO. 139-18

A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT FOR FIRE PROTECTION SERVICES BETWEEN THE CITY OF COLORADO SPRINGS AND THE COLORADO CENTRE METROPOLITAN DISTRICT

WHEREAS, the City Council finds that it is in the City's interest, by and through the Colorado Springs Fire Department, to continue the provision of fire protection services with the Colorado Centre Metropolitan District; and

WHEREAS, the City is authorized pursuant to Section 29-1-203, C.R.S. and Article XX of the Colorado Constitution to cooperate and contract with other local government agencies to provide any function, service or facility lawfully authorized to each of the cooperating government units.

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

Section 1. The City Council hereby approves the Intergovernmental Agreement attached hereto as Exhibit "A."

Section 2. The City Council further authorizes the Mayor of the City of Colorado Springs to execute the Intergovernmental Agreement on behalf of the City.


Section 3. The City Clerk is directed to attest the Council President's signature on this Resolution and affix the seal of the City.


DATED at Colorado Springs, Colorado, this 27th day of November, 2018.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



The seal is circular with a double-line border. The outer ring contains the text "COLORADO SPRINGS" at the top and "COLORADO" at the bottom. The inner ring contains "INCORPORATED" at the top and "MAY 3, 1871" at the bottom. In the center, the word "SEAL" is written in a bold, serif font, with a five-pointed star to its right.

EXHIBIT "A"

(IGA)

**INTERGOVERNMENTAL AGREEMENT FOR FIRE PROTECTION SERVICES
CITY OF COLORADO SPRINGS AND
COLORADO CENTRE METROPOLITAN DISTRICT**

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, 2018, with an effective date of January 1, 2019, by and between the City of Colorado Springs, a Colorado home rule city and municipal corporation ("City") and the Colorado Centre Metropolitan District, a Colorado special district under Title 32 C.R.S. ("CCMD"). Both the City and CCMD shall be referred to collectively herein as the "Parties" or individually as a "Party".

RECITALS

WHEREAS, since 1992, the City has provided fire protection services to the CCMD service area pursuant to intergovernmental agreements, with the current agreement in effect dated January 5, 2005 ("2005 agreement"); and

WHEREAS, the 2005 agreement between the City and CCMD expires December 31, 2019; and

WHEREAS, the Parties have concluded it is in their mutual interest to continue cooperating on fire protection response matters after December 31, 2019; and

WHEREAS, for planning purposes the Parties have determined it is in their respective interests to negotiate and enter into a new agreement prior to expiration of the 2005 agreement; and

WHEREAS, pursuant to the 2005 agreement CCMD purchased a new "Pumper" fire engine known as "Unit 449" for the City's use; and

WHEREAS, CCMD is willing to purchase a new fire engine for the City as a part of CCMD receiving continued fire protection services from the City; and

WHEREAS, 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.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and undertakings described herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties hereby agree as follows:

- 1. Mutual Cooperation.** The City and CCMD agree to cooperate with each other to carry out the intent and terms of this Agreement, including any amendment to the Agreement that the Parties deem appropriate.

2. **2005 Agreement Terminated.** Immediately upon entering into this Agreement, the 2005 agreement between the Parties is hereby terminated.

3. **Term.** This Agreement shall remain in effect up to and through December 31, 2037 unless earlier terminated as provided for in paragraph 10 of this Agreement.

4. **City Fire Protection Services.** The City, acting through the Colorado Springs Fire Department ("CSFD"), shall provide fire protection, rescue, and emergency medical services to the CCMD area, as described in Exhibit A attached hereto, in accordance with the standard operating procedures of the CSFD. Ambulance services are specifically excluded from this Agreement. Responses by the CSFD shall be from the nearest available CSFD fire station with an apparatus that CSFD deems appropriate in its sole discretion. Responses to incidents within CCMD shall be handled automatically, but responses to incidents within the City shall take priority. In the event the City is unable to respond, it may request response assistance from other agencies pursuant to City mutual aid agreements. CCMD will continue to provide fire protection and emergency medical services to the extent that CCMD currently provide such services to the CCMD area.

5. **Extraordinary Costs or Services.** The City shall have the right to charge, and CCMD shall pay, for extraordinary costs or services incurred by the City pursuant to this Agreement that are beyond the services described in paragraph 4 above. Extraordinary costs or services include, but are not limited to: (a) Hazmat response and clean up; (b) fire inspection fees or other CSFD service costs, such costs to be charged at the same rate that applies for in-City residents; (c) any response or service which exceeds \$10,000 per response; and (d) use of water supplied by third parties as part of a response. Extraordinary costs and services shall specifically exclude any maintenance services provided by the CSFD as described in paragraph 8 below.

6. **New Engine Purchase; Disposition.** CCMD shall purchase and deliver to the City, for use by the CSFD, a new factory equipment fire engine. The CSFD shall accept delivery of the new fire engine on behalf of the City, and delivery shall occur in 2019 on a date mutually acceptable to the Parties. The CSFD may use the new engine in its sole discretion both within and outside of the CCMD service area; may place the CSFD name, markings and logos on the new engine; and may add equipment to the new engine, and such equipment shall remain the property of the City and the CSFD. Upon expiration of this Agreement, CCMD shall donate the new engine to the CSFD. If in the CSFD's sole opinion the new engine becomes obsolete or is no longer appropriate or suitable for use, the City acting through the CSFD shall offer the engine back to CCMD and may remove any equipment added by the CSFD. Subject to further agreement consistent with the terms of this Agreement, the Parties may replace the engine with another new engine or truck. In the event CCMD does not want the engine, the CSFD may dispose of it as determined by the CSFD in its sole discretion.

7. **Donation of Unit 449; Disposition.** CCMD hereby donates to the City Unit 449, aka the "Pumper" purchased by CCMD and loaned to the City for use by the CSFD pursuant to the 2005 agreement. The CSFD may use Unit 449 in a manner that best serves its needs, and the CSFD agrees to provide a reserve pumper to CCMD in the event the CCMD E3410 apparatus or its

replacement is unavailable to CCMD due to being out of service for maintenance as described in paragraph 8 below. The CSFD maintains a limited number of reserve apparatus, and will make the appropriate reserve vehicle available to CCMD if all reserve apparatus are not being utilized by the CSFD. If in the CSFD's sole opinion Unit 449 becomes obsolete or is no longer appropriate or suitable for use, the CSFD shall offer Unit 449 back to CCMD, and in the event CCMD does not want Unit 449 the CSFD may dispose of it as determined by the CSFD in its sole discretion.

8. CSFD Maintenance Services. During the term of this Agreement, the City through the CSFD agrees to provide maintenance services to CCMD for the CCMD E3410 and B3440 apparatuses, including any reserve apparatuses, pursuant to availability as described in paragraph 7 above. Such services shall include, but are not limited to, preventative maintenance, equipment replacement, equipment or vehicle repairs and pumper testing excluding hose and ladder testing. The CSFD shall charge CCMD the standard industry rate for any and all maintenance services the CSFD provides.

9. Indemnity. To the extent allowed by law and subject to the appropriation of funds for this purpose, CCMD shall indemnify the City for any judgment or settlement, including all associated costs and reasonable attorney's fees, incurred by the City as a result of litigation brought against the City or the CSFD for any fire, rescue or emergency medical service response by the CSFD within the CCMD service area. For purposes of this indemnity, CCMD shall add the City as an additional insured on CCMD's liability policy with coverage limits of \$350,000 per person and \$990,000 per single occurrence, or such other coverage maximum level as may be established under the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as the same may be amended.

10. Termination. Prior to December 31, 2037 and subject to other terms contained herein, this Agreement may be terminated: (a) for convenience upon 90 days prior written notice to the other Party; (b) for breach of this Agreement upon 60 days prior written notice to the other Party that remains uncured; (c) annexation of the CCMD area described in Exhibit A hereto into the City's corporate limits; or (d) upon mutual written agreement of the Parties. Any termination notice provided pursuant to subparagraph (b) of this paragraph shall allow the Party alleged to have breached the Agreement a minimum of 30 days from the date of receiving notice to cure the alleged breach, or a reasonable time period if the breach cannot be cured within 30 days.

11. Remedy for Breach. In the event either Party breaches this Agreement or fails to cure an alleged breach, subject to the terms of paragraphs 10 and 24 the sole remedy available to the other Party shall be to terminate this Agreement. In this event, the new engine purchased by CCMD pursuant to this Agreement shall be returned to CCMD, less any equipment added by the CSFD and removed in its sole discretion. CCMD shall also immediately pay to the CSFD any current amount due for maintenance service provided pursuant to paragraph 8 of this Agreement.

12. Regulatory Modifications to the Agreement. The Parties acknowledge that their respective obligations under this Agreement may be subject to amended legal and regulatory control or requirements during the term of this Agreement. The Parties shall review and revise

this Agreement as necessary to ensure their respective, continued compliance with all applicable legal requirements.

13. Force Majeure. Neither Party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations under this Agreement due to causes or conditions beyond its reasonable control, or if such performance would be prohibited or limited by any federal, state, or local law, rule, regulations, order or directive.

14. Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed as a waiver or any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

15. No Third Party Beneficiaries. Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the Parties and their respective successors and assigns; and this Agreement shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right. It is the express intention of the Parties that any other person (other than the Parties) receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

16. Severability. The Parties hereto agree that if any provision of this Agreement should contravene or be held invalid under the laws of the State of Colorado, such contravention or invalidity shall not invalidate the whole Agreement but it shall be construed as though not containing that particular provision and the rights and obligations of the Parties shall be construed and in force accordingly.

17. Assignment. None of the rights or obligations contained in this Agreement may be assigned by either Party without the prior written consent of the other Party. Nothing herein, however, shall be construed as preventing the reorganization of either Party nor as preventing any other body corporate and politic succeeding the Party to assume or exercise the rights, privileges, powers immunities, liabilities, disabilities and duties of either Party as may be authorized by law, absent any prejudicial impairment of any contract obligation contained herein.

18. Notices. All notices or other communications between the Parties concerning this Agreement shall be in writing and personally delivered, sent by overnight service, or mailed by certified mail, postage prepaid and return receipt requested, to the following:

For the City:

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

For CCMD:

Colorado Centre Metropolitan District
Attn: District Manager
4770 Horizonview Drive
Colorado Springs, CO 80925

Informal communications between the Parties for administration of this Agreement may take place by electronic mail.

19. Amendments. This Agreement may be amended, modified, or changed in whole or in part only by a written agreement duly authorized and executed by the Parties.

20. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

21. Incorporation of Recitals. The foregoing recitals are incorporated into this Agreement and made a part hereof.

22. Compliance with Laws and Regulations. This Agreement, and the rights and obligations of the Parties hereunder, shall be subject to all applicable laws, orders, court decisions, directives, rules and regulations of any duly constituted governmental body or official having jurisdiction. Nothing herein shall require either Party to comply with any law, the validity or applicability of which shall be contested in good faith, if necessary or desirable, by legal proceedings.

23. Governing Law; Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado (without reference to conflicts of laws) and to the extent necessary to recognize the legal organization of the City, the CSFD, the Colorado Springs City Charter, City Code, City ordinances and resolutions, the legal organization of CCMD, CCMD resolutions and City and CCMD rules and regulations. Subject to paragraphs 10, 11 and 24 of this Agreement, in the event of any dispute over the terms and conditions of this Agreement, the District Court for El Paso County, Colorado shall have exclusive venue and jurisdiction over any legal claim brought by a Party to enforce the terms of this Agreement.

24. Appropriation of Funds. As concerning the appropriation of funds by each Party to carry out their respective obligations set forth in this Agreement:

a. 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 CCMD.

b. In accordance with the CCMD annual budgeting process, performance of CCMD's obligations under this Agreement is expressly subject to appropriation of funds by the CCMD Board of Directors. In the event funds are not appropriated in whole or in part sufficient for the performance of CCMD's obligations under this Agreement, or appropriated funds may not be spent due to Board-adopted spending limitations, then this Agreement shall thereafter be null and void by operation of law, and CCMD shall thereafter have no liability to the City for compensation or damages in excess of CCMD's authorized appropriation for this Agreement or the applicable spending limit, whichever is less.

25. Liability and Governmental Immunity. Each Party shall be responsible for its own negligence. Neither Party waives the benefits or obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., as the same may be amended.

26. 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.

27. Annexation. Nothing in this Agreement shall be construed as any consent to, or step towards annexation of the CCMD area described in Exhibit A into the City of Colorado Springs.

28. 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.

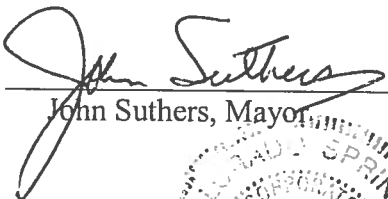
29. Exhibits. Exhibit A to this Agreement is incorporated herein by reference.

30. **Headings.** The headings used to designate the various sections of this Agreement are solely for the convenience of reference and shall not be construed to define or limit any of the terms or provisions hereof.


31. **Entire Agreement.** This Agreement constitutes the entire contract between the Parties relative to the subject matter hereof. Any previous negotiations and agreements among the Parties, whether oral or written, with respect to the subject matter hereof is superseded by this Agreement.

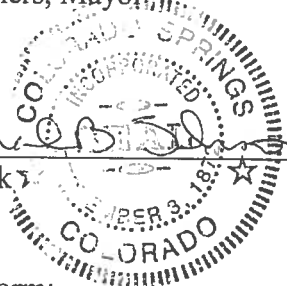
IN WITNESS WHEREOF, the representatives of each Party hereto certified via execution below that they are duly authorized to commit their organization to this Agreement in its entirety.

CITY OF COLORADO SPRINGS

By: 
John Suthers, Mayor

Date: 11/29/2018

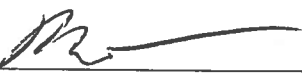
Attest: 
City Clerk




Approved as to form:


Frederick Stein, Senior City Attorney
City Attorney's Office

COLORADO CENTRE METROPOLITAN DISTRICT

By: 
Michael Cantin, President

Date: 11/15/18

Attest: 
Jackie McClintock, Secretary