

Intergovernmental Agreement for the Exclusion of Certain Property from the Donald Wescott Fire Protection District

This Intergovernmental Agreement for the Exclusion of Certain Property from the Donald Wescott Fire Protection District (the "Agreement") is made as of the _____ day of _____ 2016 by and between the Donald Wescott Fire Protection District of El Paso County, Colorado ("Wescott FPD"), and the City of Colorado Springs, a home-rule city and Colorado municipal corporation ("Colorado Springs").

WHEREAS, Wescott FPD is a duly organized fire protection district under Title 32 of the Colorado Revised Statutes; and

WHEREAS, Colorado Springs is a home-rule city and municipal corporation organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, Wescott FPD and Colorado Springs are referred to collectively in this Agreement as "Parties" or individually as a "Party"; and

WHEREAS, the Parties provide fire protection and emergency response services within incorporated areas of Colorado Springs that overlap the boundaries of Wescott FPD; and

WHEREAS, the Parties desire to prepare for and to provide for the orderly exclusion of certain property from Wescott FPD in phases so that continuity of fire protection and emergency services is maintained; and

WHEREAS, the Parties enter into this Agreement under the authority of C.R.S. 29-1-203; and

WHEREAS, the Parties desire to exclude from Wescott FPD the property more particularly described in Exhibit 1 attached hereto and made a part hereof (the "Phase One Property") with such exclusion to become effective on January 1, 2017; and

WHEREAS, the Parties desire to exclude from Wescott FPD the property more particularly described in Exhibit 2 attached hereto and made a part hereof (the "Phase Two Property") with such exclusion to become effective on January 1, 2018; and

WHEREAS, the Parties desire to enter into this Agreement to memorialize their obligations and understandings with respect to the process of the above referenced exclusions of property.

NOW, THEREFORE, the Parties, for valuable consideration including the mutual

promises and considerations set forth below, agree as follows:

1. On or before October 31, 2016, the Parties shall file a Petition for Exclusion and Agreement and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase One Property, to be effective January 1, 2017, as set forth in Exhibit 3.
2. On or before July 31, 2017, the Parties shall file a Petition for Exclusion and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase Two Property to be effective January 1, 2018, in substantially the same form as set forth in Exhibit 4.
3. In the event that the court does not order the exclusion of the Phase One Property or the Phase Two Property in accordance with the terms and conditions of the agreements and joint plans set forth herein, the Parties shall have no further obligation with respect this Agreement.
4. Wescott FPD agrees that if it undertakes new indebtedness prior to the effective date of the exclusion of the Phase Two Property, such indebtedness shall only apply to a duly created sub-district formed from areas not including the Phase Two Property.
5. Wescott FPD agrees, however, that its obligations under this Agreement shall not be contingent upon the creation of any sub-district.
6. Colorado Springs agrees that it shall not, for a period of fifteen (15) years from the date of this Agreement, undertake exclusion of any additional annexed areas within the Wescott FPD, aside from the planned Phase One Property and the Phase Two Property (“Non-Exclusion Period”). Colorado Springs further agrees that, during the Non-Exclusion Period, if Colorado Springs annexes a property within Wescott FPD’s boundaries on or after January 1, 2028, Colorado Springs will not undertake exclusion of such property from Wescott FPD until three (3) years from the date the property is annexed to Colorado Springs. Provided, however, that Colorado Springs’ obligation to forgo additional exclusions shall be conditioned upon Wescott FPD maintaining a minimum response time of 8 minutes on 80% of the emergency responses within all annexed areas (“Minimum Service Level”). If Wescott FPD fails to maintain the Minimum Service Level for any period of 180 consecutive calendar days, Colorado Springs’ obligation to forgo additional exclusions shall terminate.
7. Except as modified by the above referenced joint plans for exclusions, or as otherwise agreed to by the Parties, this Agreement shall not affect any agreement for mutual or automatic aid.
8. If any terms, conditions, or provisions of this Agreement shall be held unconstitutional, illegal, or void, such finding shall not affect any other terms, conditions, or provisions of this Agreement.

By duly adopted resolutions of their respective governing bodies, the Parties have authorized this Agreement and the filing of a Petition for Exclusion and the Agreement and

Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase One Property, to be effective January 1, 2017, as set forth in Exhibit 3. Moreover, such resolutions have authorized the filing of a Petition for Exclusion and Joint Plan for Exclusion of Certain Property from the Donald Wescott Fire Protection District of El Paso County, Colorado, pertaining to the Phase Two Property to be effective January 1, 2018, in substantially the same form as set forth in Exhibit 4.

IN WITNESS hereof the signatures of the authorized representatives to the Parties to this Agreement are set forth below.

[signatures of Parties appearing on subsequent pages in counterpart]

DONALD WESCOTT FIRE PROTECTION DISTRICT

By: _____

_____, Board President

Board of Donald Wescott Fire Protection District

ATTEST:

By: _____

_____, Board Secretary

APPROVED AS TO FORM:

By: _____

Dino A. Ross, Esq., Legal Counsel to the District

CITY OF COLORADO SPRINGS, COLORADO

By: _____

John W. Suthers, Mayor

ATTEST:

By: _____

Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

By: _____

David A. Andrews, Legislative Counsel

Exhibit 1

Phase One – Property Exclusion Map

Exhibit 2

Phase Two – Property Exclusion Map

Exhibit 3

Form of Petition and Agreement and Joint Plan 2016

Exhibit 4

Form of Petition and Agreement and Joint Plan 2017