

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF COLORADO SPRINGS, ON BEHALF OF ITS ENTERPRISE
COLORADO SPRINGS UTILITIES, AND
ELLICOTT FIRE PROTECTION DISTRICT
FOR INVESTMENT RECOVERY SERVICES**

This Intergovernmental Agreement (“Agreement”) for investment recovery services dated this ____ day of _____, 20____, is made between the City of Colorado Springs, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities (“Utilities”) and Ellicott Fire Protection District, a Title 32 special district and political subdivision of the State of Colorado, (“District”). Utilities and the District may be referred to collectively as “Parties” or individually as “Party.”

RECITALS

WHEREAS, the Parties are authorized under §29-1-203, C.R.S. to cooperate and contract with one another to provide the functions, services, and facilities provided for herein; and

WHEREAS, the Utilities Investment Recovery Operation (“IRO”) provides investment recovery services by and through the disposal of obsolete and surplus items of personal property (“Investment Recovery Services”); and

WHEREAS, IRO’s mission is to maximize the return on investment for obsolete/surplus property owned by Utilities and all other agencies that use IRO’s services; and

WHEREAS, IRO provides Investment Recovery Services for Utilities and the City of Colorado Springs and other agencies by agreement; and

WHEREAS, it makes economic sense for IRO to provide Investment Recovery Services to other local governmental agencies to achieve economies of scale and expertise for this service; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement to define the scope of Investment Recovery Services to be provided by IRO to the District.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and the terms and conditions set forth below, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Scope of Services and Costs. The Parties agree that the Investment Recovery Services to be provided under this Agreement and the costs associated with those services are those services and associated costs set forth in Exhibit A, which is attached hereto and incorporated herein.

2. Utilities' Responsibilities. Utilities agrees to provide to the District the Investment Recovery Services, the scope of which services are set forth on Exhibit A. Services beyond the specifications of Exhibit A are to be negotiated and compensated for separately. Utilities will deliver cost effective Investment Recovery Services to maximize the return on investment for obsolete/surplus property owned by THE DISTRICT.

3. District Responsibilities. The District agrees to pay Utilities for the costs and expenses for performance of Investment Recovery Services as set forth in Exhibit A. Additional services and unforeseen expenses required by the District outside of the scope of Exhibit A shall be paid directly by the District. The amount and terms of compensation referenced in Exhibit A shall not be modified unless mutually agreed to in writing by the Parties.

4. Funding Availability.

A. The District. The Investment Recovery Services will be paid for by Utilities retaining a portion of the proceeds from each disposal service. Financial obligations of the District in excess of those that may be recovered through the Investment Recovery Services payable after the current fiscal year are contingent upon appropriation for, and budgeting of, funds for those obligations.

B. Utilities: Utilities has adequate funds available to provide the Investment Recovery Services for the current fiscal year and succeeding years. Investment Recovery Services obligations of the Utilities after the current fiscal year are contingent upon appropriation for, budgeting of, and receipt of funds for those obligations..

5. Term and Termination. Upon the lawful execution of this Agreement by both Parties, this Agreement shall be effective January 1, 2021 through December 31, 2021, which term is consistent with the term of Exhibit A. Subject to appropriation of funds for each additional year, this Agreement may be extended as provided in Exhibit A, unless terminated by the Parties. Either Party may terminate this Agreement, with or without cause, on thirty (30) days prior written notice to the other Party. If the District terminates the Agreement, Utilities shall take all reasonable measures to cease its services in an orderly manner. If the District retains a new contractor to complete the services Utilities will reasonably cooperate with the District in assisting the new contractor to take over the services, and the District shall pay Utilities for such transition assistance. Whether Utilities or the District terminates the Agreement, Utilities shall be paid for all reasonable costs incurred and for services rendered through the date of termination of this Agreement.

6. Dispute Resolution. The Parties shall first make all reasonable attempts to negotiate in good faith to resolve any disputes concerning the terms or performance of this Agreement. If the Parties are not successful in resolving the dispute informally, then the Parties shall have such remedies as provided by law or equity to enforce the provisions of this Agreement, including the right to seek specific performance of any provision thereof. In the event of default by either Party, the non-defaulting Party shall thereupon have the right to terminate this Agreement for cause by

giving a thirty (30) day written notice to the defaulting Party of its intent to terminate, which will include at least ten (10) days' opportunity to cure the default or show cause why termination is otherwise not appropriate.

7. Rights and Remedies Not Waived. No assent, express or implied, by either Party to any breach of this Agreement by the other Party shall be held to be a waiver by such non-breaching Party of any later breach by the other Party. Neither Utilities nor the District shall be excused from complying with any provision of this Agreement because of any failure to insist upon, or to seek compliance with, such provision.

8. Amendment. Utilities and the District may amend or modify the terms of Exhibit A by executing such amendment or modification in writing signed by both Parties.

9. Assignment. Utilities and the District each understands and agrees that they shall not assign their respective rights and obligations under this Agreement, except upon the prior written consent and approval of the assignment by the other Party.

10. Applicable Law, Jurisdiction, and Venue. This Agreement is subject to and shall be interpreted under the laws of the state of Colorado, the Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs, Colorado, applicable regulations of El Paso County, Colorado, and applicable federal law. Court jurisdiction and venue shall be exclusively in the District Court for El Paso County, Colorado.

11. No Third Party Beneficiaries. 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 C.R.S. § 24-10-101, *et seq.*

12. Limitations on Jurisdiction. Nothing herein shall be construed so as to in any manner expand upon or limit the lawful jurisdiction and authority of either the City or the District.

13. Entire Agreement. This Agreement together with all Exhibits attached hereto, including Exhibit A, which Exhibits are incorporated herein by this reference, is intended as the complete integration of the understanding between the Parties and constitutes the entire agreement between the Parties. All other representations or statements previously made, whether verbal or written, are merged herein.

14. Parties Bound by Agreement. This Agreement is binding upon the Parties hereto and upon their respective legal representatives, successors, and assigns.

15. Captions. All captions and headings contained in this Agreement are for convenience only and for reference, do not define or limit the scope or intent of any provisions of this Agreement, and shall not be construed to define or limit the terms and provisions hereof.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

17. Severability. It is understood and agreed by the Parties that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any federal laws, or any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision determined by the court to be invalid.

18. Notice. Except as may otherwise be provided in this Agreement, all notices required or permitted to be given under this Agreement shall be in writing and shall be valid and sufficient if dispatched by: (a) registered or certified mail, return receipt requested, postage prepaid, in any post office in the United States, (b) hand delivery, (c) overnight courier, or (d) email to the below-designated addresses with proof of receipt. The Parties agree that written notices regarding general operational issues may be accomplished through email.

UTILITIES:

THE DISTRICT:

19. Independent Contractor, Oversight, and Compensation. Utilities, by and through its IRO staff, is an independent contractor under this Agreement. Except as otherwise stated in this Agreement, neither Party to this Agreement shall be required to pay any compensation to 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 supervision or employment of another Party. Each Party remains responsible for all pay, entitlement, employment decisions, and worker's compensation liabilities for its own personnel.

20. Liability. Each Party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each Party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the District or Utilities by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* and Article XI of the Colorado Constitution.

21. Fiscal Obligations. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the District or the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the District or Utilities which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the District or Utilities.

IN WITNESS THEREOF, Utilities and the District have signed this Agreement on the day and year indicated below.

**City of Colorado Springs,
home rule city and Colorado municipal
corporation, on behalf of its enterprise
Colorado Springs Utilities**

By: _____
Aram Benyamin, Chief Executive Officer

Dated _____, 2020.

**Ellicott Fire Protection District,
a Title 32 special district and political
subdivision of the State of Colorado**

By: _____

Dated _____, 2020.

APPROVED AS TO FORM:

By: _____
Office of the City Attorney, Utilities Division

EXHIBIT A

1. Introduction

- A. Background. Colorado Springs Utilities (“Utilities”) Investment Recovery Operation (“IRO”) provides disposal services for obsolete/surplus property, also known as investment recovery services (“Services”) for Utilities, the City of Colorado Springs (“City”), and other local governmental agencies to achieve economies of scale and expertise for this service.
- B. Mission Statement. IRO’s mission is to maximize the return on investment for obsolete/surplus property owned by Utilities and all other agencies that use IRO’s services. For assets that are not salable, IRO ensures that the property is recycled or disposed of following all applicable federal, state, and local laws.
- C. Purpose. Ellicott Fire Protection District (the “District”) desires to receive Services from IRO and IRO desires to provide Services for the District, subject to the terms and conditions herein. The terms of such Services are memorialized in this Exhibit A.

2. Definitions

- A. Agreement – means the Intergovernmental Agreement between Utilities and the District regarding Services, including this Exhibit A
- B. District or Customer– means Ellicott Fire Protection District
- C. Hazardous Substance – as defined in Colorado Rev. Stat. § 29-22-101 (2016)
- D. Hazardous Waste – as defined by the Colorado Hazardous Waste Regulations Part 261, Subpart A §261.3
- E. IRO – means Investment Recovery Operation
- F. PDF – means Property Disposition Form
- G. Services – means
- H. Universal Waste – as defined by the Colorado Hazardous Waste Regulations Part 261, Subpart A §261.9
- I. Utilities – means Colorado Springs Utilities

3. Services Provided

- A. Subject to the terms and conditions of this Agreement, IRO will provide the following services for the District:
 - i. Professional evaluation of the salability of the District assets to be disposed.
 - ii. Professional evaluation of type of auction at which to sell the District’s personal property. Pursuant to City Code §1.5.205, IRO sells obsolete and unusable personal property based on competitive bid whenever possible. IRO uses several types of auctions to sell assets. IRO uses research and historical data to determine the most appropriate type of auction to use for each type of asset. When determining which type of auction is the most appropriate, IRO considers a number of factors, including the asset’s type, size, number of potential buyers, etc. The factor given the most weight is such a determination is maximization of revenue.
 - iii. Respond to questions from prospective buyers regarding the condition, location, size, serviceability, etc., of assets advertised for sale.

- iv. Store items in secure storage area pending sale and arrange for buyer pickup of items once a sale and payment are finalized.
- v. Collect sale revenue and distribute proceeds to the proper Customer account.
- vi. Arrange for placement and manage recycling containers at the Customer's site to collect non-salable items of personal property that are recyclable. The Customer will be reimbursed for their recyclable items that have a residual value.

B. Services Not Provided

- i. Internal reallocation of property slated for disposal (ex: Fleet Department calls and indicates that they have a desk at IRO that they would like transferred to the Finance Dept.)
- ii. Collection or disposal of Hazardous Substances
 - a. IRO will adhere to all federal, state and local laws regarding identification and disposition of Hazardous Substances (IRO does not collect or dispose of Hazardous Substances).

Regulation ID	Gov't Entity	Impact
47 CRF 170-174	Code of Federal Regulations, EPA	Transportation of Hazardous Substances
C.R.S. § 25-15-101, et seq.	Colorado Revised Statutes	Colorado Hazardous Waste Act
6 CCR 1007-3, Part 273	Colorado Code of Regulations	Standards for Universal Waste Management
QBD Document 11805	Colorado Springs Utilities	Hazardous Waste Control

4. Customer Responsibilities

- A. Deliver the assets that are to be disposed of to the IRO Hancock location or to an alternate location as determined by IRO. The IRO Hancock location is at 1510 S. Hancock Expressway, Colorado Springs, CO. Exceptions to this requirement may be made for very large or fragile items that might best be listed for sale while remaining at the customer's site; provided however, any exception of this nature must have mutual approval by customer and IRO Supervisor.
- B. Give a minimum of one (1) business day notice prior to delivery.
- C. Ensure that the items for disposal do not contain Hazardous Substances.
- D. Provide a completed PDF (see sample document in Appendix A-1) with as much information about the asset as possible (ex: model number, serial number, manuals, spare parts, potential buyers for specialized items, and other pertinent information).
- E. Remove all confidential information prior to delivery to IRO (clear hard drives; remove any sensitive or proprietary data; etc.).
- F. Remove all branding, if required (logos, etc).

5. Performance Goals Monitoring/Indicators Reporting

- A. Below are the suggested metrics that IRO will be measured against in providing Services to ensure acceptable performance of this Agreement

- i. IRO will accept deliveries with at least one (1) business day prior notification from the customer during normal business hours. (IRO hours are 7:30AM - 3:00PM Monday through Friday except for federal, state, and City holidays).
- ii. Within ninety (90) days of receipt, IRO will have completed final disposition of the asset (sold or disposed of) unless the recovery from the asset would benefit from added marketing to affect sale or if the item is seasonal in nature (i.e. plows in the summer or tractors in the winter).
- iii. If the asset is sold, customers will be paid within sixty (60) days of receipt of payment (to IRO) from the buyer.

6. Dispute Resolution

- A. If a dispute or conflict arises between IRO and customer or if an issue regarding the Services arises, the following process shall be followed:
 - i. Customer shall immediately notify the IRO Supervisor. The parties shall meet as soon as possible, and in all events within 14 days of the notice, to discuss the situation and attempt to resolve the issue while adhering to the terms of this Agreement.
 - ii. If the conflict or issue cannot be resolved to the satisfaction of the customer and IRO, the issue will be raised to the next level of management within Utilities and The District. If necessary, a meeting shall be convened between the parties within ten (10) business days of escalation to discuss and resolve the issue.

7. Payment for Services

- A. The cost for disposal of customer's assets shall be **25%** of the sale price of the assets. This cost will be reviewed annually and may be revised based upon IRO's operational overhead rate. There will be no additional charge for disposal of non-saleable assets. IRO's expense for disposal of non-saleable items is covered by the 25% fee for sale of salable assets (except as noted in section 3.0 above).
- B. Customer will not be entitled to payment unless and until an item has been sold and IRO receives payment therefor.
- C. IRO will remit to customer the revenue IRO receives for the asset less IRO's 25% fee, net 30 days after IRO receives payment from the buyer.
- D. Payments will be made via Electronic Funds Transfer (EFT).

8. Additional Provisions

- A. Initiating Services.
 - i. To initiate services, customers must contact IRO's main telephone number 719-668-7628.
- B. Acceptance and Disposal.
 - i. Once items are brought to IRO and accepted by IRO the items become the property and responsibility of IRO for all aspects of disposition. If under extreme situations an item needs to be returned to customer for use by customer, if possible the item will be returned to customer and customer will pay the 25% commission fee for such item to IRO.
- C. Vehicles and Equipment

- i. IRO has “First right of refusal on all vehicles and equipment” which means that IRO has the first right to dispose of any or all surplus or obsolete vehicles and equipment being disposed of by customer.
 - ii. Customer will have the right to pursue other means of disposal if IRO wishes to not provide its services for any particular items.
- D. Outside Services Management
- i. IRO uses suppliers and subcontractors for recycling, including (without limitation):
 - a. Colorado Industrial Recycling – Ferrous and non-ferrous material recycling
 - b. Rocky Top – Scrap wood

9. Contacts

A. Investment Recovery’s Contact Listing:

Name	Role	Responsibility/Contact Number
	Colorado Springs Utilities IRO Supervisor	Manages the day to day operations of the IRO and is the Service Representative. 719-668-7629
	Colorado Springs Utilities IRO Analyst	Secondary contact to Service Representative and on-site contact for IRO. 719-668-7630

B. The District Contact Listing

Name	Role	Responsibility

10. Term and Termination

- A. In accordance with the Agreement, the Services will begin on January 1, 2021 and continue for a period of one year. The term may be renewed and extended for additional one-year periods by mutual agreement of the parties, in writing. Renewals require review and approval by management level employees.
- B. Either party may terminate the Services in accordance with the Agreement.

11. Amendment

- A. Any changes to this Exhibit A must be approved by the District’s authorized representative (_____ or appointee) and the IRO Manager and must be memorialized in an addendum to this Agreement executed by both parties and approved by the City Attorney’s Office.