

**INTERGOVERNMENTAL AGREEMENT
FOR THE TRANSFER OF EMERGENCY SERVICES**

This Intergovernmental Agreement For The Transfer of Emergency Services ("**Agreement**") is entered into by and between the City of Evans ("**City**") and the Evans Fire Protection District ("**Fire District**"). The City and the Fire District are referred to collectively as the "**Parties**" or individually as a "**Party**".

RECITALS

WHEREAS, the City is a Colorado municipal corporation. Since its incorporation in 1869, the City has been charged with protecting the health, safety, and welfare of the citizens and property within its corporate boundaries. For nearly 100 years, the City, through its Fire Rescue Department, has provided fire and other emergency services to the citizens and property within its corporate boundaries; ambulance services are currently provided by Weld County Paramedic Services. Today, the Fire Rescue Department provides fire and other emergency services through a workforce of 15 highly motivated and professionally trained firefighters and support personnel, and approximately 36 volunteer firefighters; and

WHEREAS, the City Council and Senior Staff, with the assistance of outside consultants, have carefully evaluated the options for providing sustainable, high quality, and cost-effective Emergency Services (defined below) to the City's citizens and their property in future years. The City Council has determined that the health, safety, and welfare of its citizens and their property will be best served by organizing the Fire District pursuant to the Act (defined below) and by transferring responsibility for providing the Emergency Services to the Fire District upon its organization; and

WHEREAS, C.R.S. § 29-1-203 permits and encourages local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized function, service, or facility; and

WHEREAS, the Parties desire to enter into this Agreement to ensure the smooth transfer of Emergency Services to the Fire District upon its organization.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings set forth in this Agreement, the Parties mutually agree as follows:

**ARTICLE I
Definitions**

In addition to the terms defined elsewhere in this Agreement, the following definitions apply to this Agreement:

1. "**Act**" means the Colorado Special District Act, C.R.S. § 32-1-101, *et seq.*
2. "**Board**" means the Board of Directors of the Fire District, its governing body.
3. "**City Council**" means the City Council of the City, its governing body.

4. "**Consumer Price Index**" means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, all Urban Consumers, all items, Denver/Boulder/Greeley Urban (1982-84, equals 100), or the successor of that Index.

5. "**C.R.S.**" means the Colorado Revised Statutes, including all amendments thereto.

6. "**Effective Date**" means the date the last Party signs this Agreement.

7. "**Emergency Services**" means all authorized or mandated services, functions, and activities of a fire protection district as authorized in the Colorado Revised Statutes including, without limitation, fire suppression and related investigatory activities, fire prevention and public education services, emergency rescue and extrication services, hazardous materials services, and emergency medical services. The term "Emergency Services" does not include ambulance services, which are currently provided by Weld County Paramedic Services; however, nothing in this Agreement shall limit or prohibit the Fire District's authority under the Act to provide ambulance services directly to the citizens and their property at any time in the future in the sole discretion of the Fire District Board.

8. "**Fire Administration Office**" means the Evans Fire Rescue Administration Office located at 1100 37th Street, Evans, Colorado 80620.

9. "**Fire Apparatus**" means all of the emergency apparatus and vehicles owned or leased by the City or the City's Fire Rescue Department as of the Organization Date, or that are purchased or leased by the City during the Transition Period, and which the Fire Rescue Department or the Fire District uses in providing Emergency Services.

10. "**Fire Equipment**" means all of the personal property (other than Fire Apparatus) owned or leased by the City or the City's Fire Rescue Department as of the Organization Date, or that are purchased or leased by the City during the Transition Period, and which the Fire Rescue Department or the Fire District uses in providing Emergency Services.

11. "**Fire Stations**" means Fire Station #1 located at 3918 Denver Street, Evans, Colorado, and Fire Station #2 located at 2100 37th Street, Evans, Colorado.

12. "**Fire Code**" means, within the City's corporate boundaries, (a) the 2006 edition of the International Fire Code with the local amendments, as adopted by the City, and (b) any subsequent edition of the International Fire Code, or amendments to the current or any future edition of the Fire Code, adopted by the City after the Effective Date pursuant to this Agreement. The term also includes all Nationally Recognized Standards incorporated into (by appendices or otherwise) or referenced by the Fire Code.

13. "**Organization Date**" means the date upon which the Fire District is legally organized for all purposes under the Act.

14. "**Service Plan**" means the Service Plan approved by the City Council and the Weld County District Court incident to the legal organization of the Fire District.

15. "**Training Equipment**" means all of the Emergency Services training simulators, equipment, props, and other personal property located at the Evans Municipal Operations Center, 1948 40th Street, Evans, Colorado, owned or leased by the City or the City's Fire

Rescue Department as of the Organization Date, or that are purchased or leased by the City during the Transition Period, including the two-story fire simulator, propane tanks and related piping and equipment, confined space props, flammable liquid pit, and all other simulators, equipment, props, and other personal property, which the City's Fire Rescue Department or Fire District uses for Emergency Services simulation and training.

16. **"Training Site"** means the 1.1 acre real property site located at the Evans Municipal Operations Center, 1948 40th Street, Evans, Colorado, historically used by the City's Fire Rescue Department for Emergency Services simulation and training, and the permanent concrete foundation pads and improved driving surfaces located at such site.

17. **"Transition Period"** means the period between the Organization Date and the date when: a) Step Two of the Funding Process (Section V(2)(b), Service Plan) has been accomplished; and (b) the Fire District has received sufficient *ad valorem* revenues and other funds to be financially capable of providing the Emergency Services directly to the citizens and property within its jurisdiction and boundaries.

ARTICLE II

Jurisdiction and Service Area

1. **Conforming the Parties' Boundaries.** The Parties intend that the Fire District's boundaries and jurisdiction shall at all times include all property located within the City's corporate boundaries, as such boundaries may be adjusted from time to time through annexation, de-annexation, or otherwise. To this end, the Parties agree:

a. The City and the Fire District shall each use its best reasonable efforts to include within the boundaries and jurisdiction of the Fire District all land that, as of the Organization Date, is (i) within the City but is not within the Fire District's boundaries or (ii) not within the City or the Fire District's boundaries, but which is subsequently annexed by the City.

b. At all times after the Organization Date, the City shall require, as an express condition of annexing any real property to the City, that the owner of the real property agree to include the real property into the Fire District's jurisdiction and shall petition the Fire District for inclusion within 90 calendar days of the real property being annexed to the City. This requirement shall be contained in any annexation agreement approved by the City Council after the Organization Date. The Fire District shall reasonably assist the property owner in including the real property into the Fire District's jurisdiction.

c. The City and the Fire District shall each assist the other and cooperate fully in all respects to undertake and pursue to conclusion all actions and/or legal proceedings, including appellate proceedings, which are necessary or desirable in order to accomplish the inclusion of land pursuant to this Agreement. The Fire District and the City also may agree as to the allocation of payment of all legal and other expenses associated with such actions or legal proceedings related to the inclusion or exclusion of land pursuant to this Agreement.

d. The Fire District shall require City approval as an express condition of including any property into the Fire District that is not also annexed to the City. This condition shall be contained in any Resolution for inclusion of real property adopted by the Fire District Board. In granting or denying approval, the City may consider the level of financial contribution that the proposed inclusion is expected to make to the Fire District and whether the proposed inclusion will dilute the services provided by the Fire District to the City and its citizens and their property. The City shall have 90 calendar days from the date the City's approval for a proposed

inclusion is requested to affirmatively grant or deny such approval. The City's failure to affirmatively grant or deny approval within such time shall be deemed an approval of the proposed inclusion.

e. The City shall not seek to exclude any property from the Fire District. The Fire District shall not exclude real property that is within the City's corporate boundaries without the prior approval of the City Council, unless otherwise required by law.

2. **Service Area.** The Fire District's service area may extend beyond the City's corporate boundaries through automatic or mutual aid agreements with other emergency services providers.

ARTICLE III

Transfer of Emergency Services

1. **Transfer Date; Assumption of Obligations and Responsibilities.** On and after the Organization Date, the Fire District shall be solely responsible for providing Emergency Services to the citizens and property within its jurisdiction. The City's Fire Rescue Department shall cease providing Emergency Services on the Organization Date.

2. **Pre-Existing Contracts and Agreements.** As soon as practicable after the Organization Date, the Parties shall jointly evaluate all contracts and agreements that the City or the City's Fire Rescue Department has entered into with any other private or governmental entity or person that relates to the provision of Emergency Services, and shall mutually determine whether each contract or agreement should be continued or terminated. The Parties shall take such reasonable actions as are necessary and appropriate to substitute the Fire District for the City on contracts or agreements that will be continued, and to terminate the contracts and agreements, if any, the Parties mutually determine should be terminated.

3. **Emergency Services During the Transition Period.**

a. During the Transition Period, all of the City's Emergency Services personnel will remain employees or volunteers of the City and the City will continue to own the Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and Training Site. During the Transition Period, the City agrees to lease its Emergency Services personnel and its Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and Training Site to the Fire District. The City shall invoice the Fire District monthly for the costs actually incurred by the City during the preceding month incident to the City's continued employment of the Emergency Services personnel and ownership of the Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and Training Site, but such invoices shall not include those costs related to insurance, maintenance, and repair identified in subparagraph (c) below. The Fire District shall remit payment to the City within 30 calendar days of receiving an invoice. Unless the Parties mutually agree to a different process, the Fire District's payments shall be made by wire transfer. The Parties shall execute such additional agreements, contracts, and other documents as they may mutually deem necessary or appropriate from time to time to memorialize and/or accomplish the City's leasing of its Emergency Services personnel and its Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and Training Site to the Fire District during the Transition Period.

b. During the Transition Period, the Fire District shall maintain its financial accounts with the same financial institution as the City in order to facilitate the smooth transfer of funds between the two entities.

c. During the Transition Period, the City shall continue such comprehensive casualty and liability insurance for the Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and Training Site as is maintained by the City immediately before the Organization Date. During the Transition Period, the City shall continue to be responsible for such maintenance and repair of the Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and Training Site as are necessary to maintain the Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and Training Site in good working order and free from material damage and/or breakdown, without regard to the cause or reason that such maintenance or repair is necessitated. Maintenance or repair includes the replacement of the Fire Apparatus, Fire Equipment, Fire Stations, Fire Administration Office, Training Equipment, and/or Training Site where replacement is the most practical or economical alternative.

d. Notwithstanding anything in this Agreement to the contrary, the Parties shall take all actions necessary and appropriate to ensure, to the extent reasonably practicable, that the level of Emergency Services provided during the Transition Period will be equal to or greater than the level of Emergency Services being provided by the City's Fire Rescue Department immediately before the Organization Date.

4. Emergency Services After the Transition Period.

a. Once Step Two of the Funding Process (Section V(2)(b), Service Plan) has been accomplished and the Fire District has received sufficient *ad valorem* revenues and other funds to be financially capable of providing the Emergency Services directly to the citizens and property within its jurisdiction, the City's Emergency Services personnel shall become employees or volunteers of the Fire District as provided by Articles VI and VII below, ownership of the City's Fire Apparatus, Fire Equipment, Fire Stations, and Training Equipment shall be transferred to the Fire District, and the Fire Administration Office and Training Site shall be leased to the Fire District. Once the Emergency Services personnel, Fire Apparatus, Fire Equipment, Fire Stations, and Training Equipment have been transferred to the Fire District, and the Fire Administration Office and Training Site have been leased to the Fire District, the Fire District shall solely provide the Emergency Services directly to the citizens and property within its jurisdiction, and the City shall cease all participation in the same.

b. Notwithstanding anything in this Agreement to the contrary, the Parties shall take all actions necessary and appropriate to ensure, to the extent reasonable practicable, that the level of Emergency Services provided during the transfer of the City's Emergency Services personnel, Fire Apparatus, Fire Equipment, Fire Stations, and Training Equipment, and the lease of the Fire Administration Office and Training Site, to the Fire District will be equal to or greater than the level of Emergency Services provided during the Transition Period.

c. Once the Fire Apparatus, Fire Equipment, Fire Stations, and Training Equipment have been transferred to the Fire District, the Fire District shall provide comprehensive casualty and liability insurance for the Fire Apparatus, Fire Equipment, Fire Stations, and Training Equipment, and shall be responsible for the maintenance and repair of the same. The Fire District Board, in its sole discretion, may elect to purchase all or a portion of the comprehensive casualty and liability insurance, and/or maintenance and repair services, from or through the City pursuant to Article V below. The City shall continue to provide

comprehensive casualty and liability insurance for, and shall continue to be responsible for the maintenance and repair of, the Fire Administration Office and Training Site as provided by Article III(3)(c) above.

5. **No Assumption of Liability for the Intentional or Negligent Acts or Omissions of the City.** The Parties expressly agree that the City shall remain solely responsible for the intentional or negligent acts or omissions of the City, and its council members, officers, employees, volunteers, and agents, that occur prior to date on which all of the City's Emergency Services personnel, Fire Apparatus, Fire Equipment, Fire Stations, and Training Equipment are transferred to the Fire District, and the Fire Administration Office and Training Site are leased to the Fire District, and that, notwithstanding anything to the contrary in this Agreement, the Fire District is not assuming responsibility or liability for such intentional or negligent acts or omissions.

6. **No Assumption of Liability for the Intentional or Negligent Acts or Omissions of the Fire District.** The Parties expressly agree that the Fire District shall remain solely responsible for the intentional or negligent acts or omissions of the Fire District, and its directors, officers, employees, volunteers, and agents, that occur on or after the Organization Date, and that, notwithstanding anything to the contrary in this Agreement, the City is not assuming responsibility or liability for such intentional or negligent acts or omissions.

ARTICLE IV The City's Financial Obligations

1. Annual Contribution.

a. Each year the City shall contribute to the Fire District an amount equal to the Fire District's approved annual budget, less the amount of revenue the Fire District anticipates collecting from its property tax during the calendar year to which the budget applies ("**Annual Contribution**"); provided, however, that if the Fire District's proposed annual budget and anticipated property tax revenue in a given year would cause a percentage increase in the City's Annual Contribution that is greater than that of the Consumer Price Index over the City's Annual Contribution in the immediately preceding year, the Fire District Board shall obtain the City Council's approval of the Annual Contribution prior to adopting the budget; if the City Council does not grant such approval, the budget adopted by the Fire District Board shall not require the City's Annual Contribution to increase by a percentage exceeding that of the Consumer Price Index.

b. As provided by Article V(2)(a) of the Service Plan, the City's estimated Annual Contribution amount for the year 2012 is \$1,426,163, which represents the approximate amount of funding that the City has budgeted for its Fire Rescue Department in year 2012. All amounts in this Agreement, Section V of the Service Plan, and the Financial Plan (Exhibit B, Service Plan) related to the City's budget and or budgeted amounts are based upon the City's 2012 budget, current as of the time of submission of the Service Plan to the City Council. The Parties agree that such amounts may be adjusted as appropriate according to any changes that are subsequently made by the City to its 2012 budget.

c. The City shall pay the Annual Contribution to the Fire District in four equal payments, such payments to be made on or before the first day of January, April, July, and October of each year. Unless the Parties mutually agree to a different process, the Annual Contribution payments shall be made by wire transfer. If the City fails or refuses to pay the Annual Contribution to the Fire District in accordance with the terms of this subparagraph (c),

the Fire District may take legal or equitable action to obtain the Annual Contribution payments from the City.

d. If at any time an objective analysis of the Fire District's budget and most recent audited financial statements demonstrates that the Fire District's revenue from all sources (other than the City's Annual Contribution) is sufficient to support and sustain the Fire District's level of Emergency Services into the future, and that the City's Annual Contribution is no longer needed in the best interests of the Fire District, the City, and the community, the City Council may take action to permanently terminate the City's Annual Contribution to the Fire District. The objective analysis must include, without limitation, consideration of the following:

- i. The Fire District's current and projected ability to meet the minimum nationally recognized standards for staffing, response times, apparatus/equipment deployment, etc. established by the National Fire Protection Association;
- ii. The Fire District's current ISO rating and any anticipated change thereto;
- iii. The Fire District's current and projected capital improvement and replacement needs;
- iv. The Fire District's current and projected staffing and training needs;
- v. The Fire District's current indebtedness, if any, and the repayment schedule of such indebtedness; and
- vi. The current and projected need for Emergency Services within the Fire District's jurisdiction and service area, including those portions, if any, of the Fire District's jurisdiction and service area that extend beyond the City's corporate boundaries through inclusion or automatic or mutual aid agreements.

The City Council shall notify the Fire District at least 60 days before taking action to permanently terminate the City's Annual Contribution to the Fire District, and shall allow the Fire District such time to submit written comment thereon. If the City Council takes action to permanently terminate the City's Annual Contribution to the Fire District, the Fire District Board and the City Council shall mutually agree on the date and procedure by which the City's Annual Contribution shall be permanently terminated. If, despite their good faith efforts, the Fire District Board and the City Council cannot agree on such a date and procedure, then the City's Annual Contribution shall be permanently terminated in its entirety at 11:30 p.m. on December 31 of the year after the year in which the City Council takes action to approve the permanent termination of the City's Annual Contribution.

2. **TABOR Reserve Payment.** Within 90 days of the Organization Date, the City shall make a one-time payment to the Fire District of an amount sufficient to allow the Fire District to fully fund the 3 percent emergency reserve obligation required by Article X, Section 20 of the Colorado Constitution in its initial year of operation ("**TABOR Reserve Payment**"). The Parties shall mutually agree on the amount of the TABOR Reserve Payment to be contributed to the Fire District. Unless the Parties mutually agree to a different process, the TABOR Reserve Payment shall be made by wire transfer. If the City fails or refuses to pay the TABOR Reserve Payment to the Fire District within the time specified in this Paragraph 2, the Fire District may take legal or equitable action to obtain the TABOR Reserve Payment from the City.

3. **Transfer of Emergency Contingency Fund Revenue.**

a. On or before April 15 of the calendar year immediately following the year in which the property tax transfer provided for in Section V(2)(b) of the Service Plan is complete, the City shall remit to the Fire District a portion of the funds no longer required to be held in the City's Emergency Contingency Fund ("**ECF Revenue**") as a result of a reduction in the amount of funds the City is paying for Emergency Services in a given fiscal year. The Parties shall mutually agree on the amount of ECF Revenue to be transferred to the Fire District; provided, however, that the amount of ECF Revenue to be transferred to the Fire District shall not exceed the difference between: (i) the amount of funds the City was required to maintain in its Emergency Contingency Fund for the cost of Emergency Services immediately before the property tax transfer provided for in Section V(2)(b) of the Service Plan is complete, and (ii) the reduced amount of funds the City is required to maintain in its Emergency Contingency Fund for the cost of Emergency Services immediately after such property tax transfer is complete. Unless the Parties mutually agree to a different process, the ECF Revenue payment shall be made by wire transfer.

b. The Fire District shall use the ECF Revenue to begin capitalizing a reserve fund.

c. If the City fails or refuses to pay the ECF Revenue to the Fire District within the time specified in subparagraph (a) above, the Fire District may take legal or equitable action to obtain the ECF Revenue payment from the City.

4. **No Right of Offset.** The City's financial obligations set forth in this Article IV are absolute and unconditional in all respects, and shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without suspension, deferment, diminution or reduction.

ARTICLE V

Administrative Services

1. **Administrative Services to be Provided.** Certain administrative services are essential to the efficient and effective administration and operation of the Fire District, including but not limited to, human resources, benefits administration, risk management, payroll and finance services, general liability insurance, workers' compensation and unemployment insurance, Information Technology (IT) support, legal expenses, Fire District Board expenses, and annual audit expenses (collectively, "**Administrative Services**"). The Fire District Board has the right, in its sole discretion, to determine the Administrative Services to be provided to the Fire District and how such Administrative Services will be provided. The Parties expect that, at least initially, some of the Administrative Services likely will be more efficiently provided through the City, due to the scale of operations and the Fire District's historic relationship with the City. The Parties anticipate that initially the Fire District will purchase the following Administrative Services from the City:

- a. Human resources, benefits administration, and risk management;
- b. Payroll and finance services;

c. General liability insurance, and workers' compensation/unemployment insurance; and,

d. IT support services.

2. **Supplies, Services, and Asset Management.** During the Transition Period, the Fire District shall pay directly for all items, supplies, and services specifically identified in the Fire District's "supplies and services" budget and asset management plan. Such items, supplies, and services may, but need not, include items such as personal protective equipment, self-contained breathing apparatus, training, communications equipment, or small tools. The Fire District may seek guidance and/or assistance from the City finance director regarding the Fire District's direct payment for such items, supplies, and services.

3. **Administrative Services Contract.** Within 45 days of the Organization Date, and on or before December 31 of each calendar year thereafter, the City and the Fire District shall enter into a mutually acceptable Administrative Services Contract, which shall list the specific Administrative Services to be provided by the City, the level and frequency of each such service, and the amount the Fire District shall pay the City for each such service.

4. **Payment on Administrative Services Contract.** The Administrative Services Contract shall provide that the City shall invoice the Fire District monthly for the Administrative Services provided by the City pursuant to the Administrative Services Contract during the preceding month. The Fire District shall remit payment to the City within 30 calendar days of receiving an invoice. Unless the Parties mutually agree to a different process, the Fire District's payments shall be made by wire transfer.

5. **Termination of Administrative Services Contract.** The Administrative Services Contract shall give both the Fire District and the City the individual right and discretion to terminate the Administrative Services Contract for any or no reason upon 90 days prior written notice to the other Party. Notwithstanding anything in this Agreement to the contrary, the Parties shall have no obligation to enter into an Administrative Services Contract in any year following the year of termination.

ARTICLE VI

Paid Emergency Services Personnel

1. During the Transition Period.

a. During the Transition Period, all of the City's paid Emergency Services personnel will remain City employees, and the City shall lease the City's paid Emergency Services personnel to the Fire District. The City shall be solely responsible for the employees' compensation, benefits, and terms and conditions of employment, and the Fire District Board shall have no authority to control, manage, or otherwise direct the same. As provided by Article III(3)(a) above, the City shall invoice the Fire District monthly for the costs actually incurred by the City incident to its continued employment of the City's paid Emergency Services personnel during the preceding month. The Fire District shall remit payment to the City within 30 calendar days of receiving an invoice. Unless the Parties mutually agree to a different process, the Fire District's payments shall be made by wire transfer. The Parties shall execute such additional agreements, contracts, and other documents as they may mutually deem necessary or appropriate from time to time to memorialize and/or accomplish the City's leasing of its paid Emergency Services personnel to the Fire District during the Transition Period.

b. The City may hire up to nine part-time firefighters during the Transition Period. Such hiring shall commence upon receipt by the Fire District of sufficient property tax revenue to fund the hiring and continued employment of all or a portion of such firefighters. The part-time firefighters shall not work more than 1,599 hours in a calendar year and shall not be eligible to receive or participate in benefits provided by the City, except for unemployment compensation insurance and workers' compensation insurance. The City shall invoice the Fire District monthly for any costs actually incurred in hiring and employing the firefighters during the preceding month. The Fire District shall remit payment to the City within 30 calendar days of receiving an invoice. Unless the Parties mutually agree to a different process, the Fire District's payments shall be made by wire transfer. Notwithstanding the above, the City shall not begin hiring the part-time firefighters if any of the funding necessary for such hiring and/or employment is or will not be available, or if the City and the Fire District mutually agree that such hiring and/or employment should not occur or should occur only at a later time.

c. The City may hire one part-time administrative assistant (approximately 20 hours per work week) during the Transition Period. Such hiring shall be made as soon as reasonably practicable following the Organization Date. The City shall invoice the Fire District monthly for any costs actually incurred in hiring and employing the part-time administrative assistant during the preceding month. The Fire District shall remit payment to the City within 30 calendar days of receiving an invoice. Unless the Parties mutually agree to a different process, the Fire District's payments shall be made by wire transfer. Notwithstanding the above, the City shall not begin hiring the part-time administrative assistant if any of the funding necessary for such hiring and/or employment is or will not be available, or if the City and the Fire District mutually agree that such hiring and/or employment should not occur or should occur only at a later time.

2. After the Transition Period.

a. Once Step Two of the Funding Process (Section V(2)(b), Service Plan) has been accomplished and the Fire District has received sufficient *ad valorem* revenues and other funds to be financially capable of providing the Emergency Services directly to the citizens and property within its jurisdiction, the Fire District shall make an offer to employ each City Emergency Services employee in the position held and at the compensation earned as a City employee at the time the Fire District makes the offer. No City Emergency Services employee shall be required to accept the Fire District's offer of employment; however, the City shall provide each City Emergency Services employee with a notice that his/her employment with the City will terminate on the date on which the Fire District's offer of employment expires, regardless of whether the employee accepts the Fire District's offer.

b. Except for the part-time administrative assistant, each City Emergency Services employee who accepts employment with the Fire District pursuant to Paragraph 2(a) above, shall, as a condition of employment, be required to enter into an employment contract that shall contain, at a minimum, the following terms and conditions: i) the employment contract shall be for a period of 36 months from the date of hire; ii) during the 36 month period, the employee shall receive compensation equal to the compensation the employee received as a City employee at the time the Fire District made the offer of employment; iii) during the 36 month period, the employee shall receive substantially the same benefits, if any, the employee received as a City employee at the time the Fire District made the offer of employment; and iv) during the 36 month period, the Fire District may only terminate the employee for "just cause", which shall be defined as one or more of the following:

- i. Failure to perform duties satisfactorily;
- ii. Violation of any Fire District, rule, policy, or procedure, or any federal, state, or local law or regulation;
- iii. Insubordination to a higher ranking Fire District employee or volunteer, the Fire District Board, or an individual Director;
- iv. Conviction of, a plea of guilty to, or failure to contest, a crime that bears on the employee's fitness to perform the duties of the position;
- v. Falsification of, or material omission from, any Fire District or City record, whether in electronic or paper form;
- vi. Unauthorized or improper use of Fire District vehicles, equipment, or apparatus;
- vii. Excessive absences or tardiness;
- viii. Engaging in unprofessional behavior while on duty or performing any Fire District activity;
- ix. Failure to maintain the required certification(s), training, or other qualifications for the position;
- x. Elimination of position or reduction in force.

c. During the 36 month period, the Fire District Board may, at its sole discretion, modify the compensation of any employee who entered into an employment contract pursuant to subparagraph (b) above; provided, however, that such employee's compensation shall not at any time during the 36 month period be less than the compensation the employee received as a City employee at the time the Fire District made the offer of employment.

d. At the end of the 36 month period, the Fire District shall have no obligation to extend any employment contract entered into pursuant to subparagraph (b) above, or to enter into new employment contracts with any of the former City employees, and the employees shall become "at-will" employees for all purposes.

e. For the 36 month period following the Transition Period, the Fire District will, to the extent reasonably practicable, maintain personnel rules, policies, and procedures that are substantially the same as those historically maintained by the City in order to facilitate a smooth transfer of the City's paid Emergency Services employees to the Fire District. Thereafter, the Fire District's personnel rules, policies, and procedures, and its employee compensation and benefits, may differ from those maintained by the City, as the Fire District Board deems appropriate in its sole discretion, considering such factors as applicable laws and regulations, industry standards, historic practice, financial and economic conditions, and the best interests of the Fire District and the community.

f. The Parties shall execute such additional agreements, contracts, and other documents as they may mutually deem necessary or appropriate from time to time to

memorialize and/or accomplish the transfer of the City's paid Emergency Services personnel to the Fire District.

ARTICLE VII

Volunteer Emergency Services Personnel

1. **During the Transition Period.** During the Transition Period, all of the City's volunteer Emergency Services personnel will remain City volunteers, and the City shall lease the City's volunteer Emergency Services personnel to the Fire District. The City shall be solely responsible for the volunteers' stipends (if any), benefits, expense reimbursements, and the terms and conditions of volunteer service, and the Fire District Board shall have no authority to control, manage, or otherwise direct the same. As provided by Article III(3)(a), the City shall invoice the Fire District monthly for the costs actually incurred by the City incident to the continued service of the City's Emergency Services volunteers during the preceding month. The Fire District shall remit payment to the City within 30 calendar days of receiving an invoice. Unless the Parties mutually agree to a different process, the Fire District's payments shall be made by wire transfer. The Parties shall execute such additional documents as they may mutually deem necessary or appropriate from time to time to memorialize and/or accomplish the City's leasing of its volunteer Emergency Services personnel to the Fire District during the Transition Period.

2. **After the Transition Period.**

a. Once Step Two of the Funding Process (Section V(2)(b), Service Plan) has been accomplished and the Fire District has received sufficient *ad valorem* revenues and other funds to be financially capable of providing the Emergency Services directly to the citizens and property within its jurisdiction, the Fire District shall accept all of the City's volunteer Emergency Services personnel into the Fire District's Volunteer Program without such personnel being required to take any separate action to join the Fire District's Volunteer Program. The Fire District Board shall, in its sole discretion, establish the components of the Fire District's Volunteer Program, which may, among other components, include a Volunteer Firefighter Program, Reserve Volunteer Firefighter Program, Active Retiree Program, Administrative Support Volunteer Program, and/or Auxiliary Volunteer Program.

b. Any City Emergency Services volunteer who is accepted into the Fire District's Volunteer Program, but who does not want to participate in the Fire District's Volunteer Program, may withdraw from the Fire District's Volunteer Program by submitting a written notice of withdrawal to the Fire District's Fire Chief.

c. The City shall provide each City Emergency Services volunteer with a notice that his/her volunteer service with the City will terminate on the date that the Fire District accepts the volunteer Emergency Services personnel into the Fire District's Volunteer Program, whether or not the volunteer participates in the Fire District's Volunteer Program.

d. The Fire District Board shall have the sole discretion and authority to determine the terms and conditions of volunteer service and the stipends (if any), benefits, and expense reimbursements to be provided to the volunteer Emergency Services personnel under the Fire District's Volunteer Firefighter Program. The Fire District Board's discretion and authority pursuant to this subparagraph (d) includes, without limitation, the discretion and authority to establish a Length of Service Award Plan (LOSAP) for the benefit of the volunteer Emergency Services personnel.

e. The City is the sponsor of the City of Evans Volunteer Firefighter Pension Fund ("**Pension Fund**") for the purpose of providing pension benefits to qualified volunteer firefighters in accordance with the Colorado Volunteer Firefighter Pension Act, C.R.S. § 31-30-1100, *et seq.* ("**Pension Act**"). The Pension Fund is administered by the Fire and Police Pension Association ("**FPPA**"). During the Transition Period, the Fire District shall establish a new volunteer firefighter pension fund under the Pension Act ("**New Pension Fund**"). As soon as reasonably practicable after the Fire District establishes the New Pension Fund, the City, the Fire District, and the New Pension Fund shall enter into a written agreement to transfer all of the Pension Fund's assets to the New Pension Fund at the end of the Transition Period, which agreement shall at a minimum address:

i. The date and method by which the Pension Fund's assets will be transferred to the New Pension Fund;

ii. The level of pension benefits to be provided, which shall not be less than the level of pension benefits being provided by the City on the date the City's volunteer firefighters are accepted into the Fire District's Volunteer Program; provided, that the Fire District may pro rate pension benefits in accordance with C.R.S. § 31-30-1124 if at any time there are insufficient funds to meet the benefits obligations;

iii. Recognition of years of volunteer service to the City Fire Rescue Department toward an individual's vesting in pension benefits; provided, that such volunteer service meets the State training requirements and any additional requirements imposed by the City to maintain "good standing" for purposes of receiving pension credit;

iv. Maintaining the City's 10-year Early Vesting Program, by which a volunteer firefighter who completes 10 years of continuous, qualified volunteer services for the City becomes vested in a pension equal to one-half of the benefit vested in a qualified volunteer firefighter who completes 20 years of volunteer services. The pension benefit shall be pro rated equally for a qualified volunteer firefighter who provides between 10 and 20 years of volunteer services to the City. A volunteer participating in the New Pension Fund will be given credit for years of continuous, qualified volunteer services to the City; and,

v. Taking such actions as are necessary and appropriate for FPPA to administer the New Pension Fund without an interruption in pension benefit payments to eligible volunteer firefighters.

f. The Fire District Board shall have the sole discretion and authority to terminate all or any portion of its Volunteer Program, and/or to transition its personnel system to an all-paid (career) firefighter force.

ARTICLE VIII

Acquisition and Transfer of Real and Personal Property

1. **Acquisition of Real and Personal Property.** The City may purchase one or more Fire Apparatus, Fire Equipment, or Training Equipment during the Transition Period. Such purchase shall be made as soon as reasonably practicable following the Organization Date. The City shall invoice the Fire District monthly for the actual cost of the Fire Apparatus, Fire Equipment, or Training Equipment purchased during the preceding month. If the City purchases a Fire Apparatus, Fire Equipment, and/or Training Equipment through a lease-purchase or other financing mechanism, the City's monthly invoice shall include only the debt service payments made by the City during the preceding month. The Fire District shall remit payment to the City

within 30 calendar days of receiving an invoice. Unless the Parties mutually agree to a different process, the Fire District's payments shall be made by wire transfer. Notwithstanding the above, the City shall not begin purchasing the Fire Apparatus, Fire Equipment, or Training Equipment if any of the funding necessary for such purchase is or will not be available, or if the City and the Fire District mutually agree that such purchase should not occur or should occur only at a later time.

2. **Transfer of Real and Personal Property.** Once Step Two of the Funding Process (Section V(2)(b), Service Plan) has been accomplished and the Fire District has received sufficient *ad valorem* revenues and other funds to be financially capable of providing the Emergency Services directly to the citizens and property within its jurisdiction, the City shall:

a. Transfer and convey all right, title, and interest in and to all Fire Apparatus, Fire Equipment, and Training Equipment to the Fire District. The Fire Apparatus, Fire Equipment, and Training Equipment shall be transferred "as-is" with no warranty by the City; provided, that the City shall assign any manufacturer's warranties on any Fire Apparatus, Fire Equipment, and Training Equipment if such warranties are still in force and effect. Conveyance of the Fire Apparatus, Fire Equipment, and Training Equipment shall be accomplished by one or more Bills of Sale in a form mutually acceptable to the Fire District and the City. The City shall not receive any monetary consideration for transferring and conveying all right, title, and interest in and to all Fire Apparatus, Fire Equipment, and Training Equipment to the Fire District;

b. Transfer and convey all right, title, and interest in and to the Fire Stations to the Fire District. The City shall adopt an ordinance approving the conveyance of the Fire Stations and determining that it would not be in the best interest of the City's citizens to conduct an election regarding the same. Conveyance of the Fire Stations shall be accomplished by Quit Claim Deeds in a form mutually acceptable to the Fire District and the City. The City shall not receive any monetary consideration for transferring and conveying all right, title, and interest in and to the Fire Stations to the Fire District;

c. The City shall lease the Fire Administration Office to the Fire District for a period of 99 years; the Fire District shall pay annual rent of \$1.00. During the Transition Period the Parties shall enter into a Fire Administration Office Lease Agreement in a form mutually acceptable to the Fire District and the City. The Fire Administration Office Lease Agreement shall give either Party the right to terminate such lease at any time for any business reason upon 90 days prior written notice to the other Party; provided, however, that if the City terminates the Fire Administration Office Lease Agreement, it must offer the Fire District comparable alternative administration office space at the same rental rate for the balance of the 99 year term; and

d. The City shall lease the Training Site to the Fire District for a period of 99 years; the Fire District shall pay an annual rent of \$1.00. During the Transition Period the Parties shall enter into a Training Site Lease Agreement in a form mutually acceptable to the Fire District and the City. The Training Site Lease Agreement shall give either Party the right to terminate the such lease at any time for any business reason upon 90 days prior written notice to the other Party; provided, however, that if the City terminates the Training Site Lease Agreement, it must offer the Fire District a comparable alternative training site at the same rental rate for the balance of the 99 year term.

3. **Additional Documents.** The Parties shall execute such additional documents and take such actions as are reasonably necessary to accomplish the requirements of Paragraph 2 above.

ARTICLE IX Collaboration

The Service Plan intends that the City and the Fire District maintain a close, collaborative relationship. Consistent with this intent, the Parties agree that:

1. **Fire District Name.** The Board shall not seek to change the name of the Fire District without the prior consent of the City Council.

2. **Appearance of Apparatus and Equipment.** Initially, the general appearance of, and logos, emblems, and wording on, the Emergency Services equipment, apparel, and apparatus will remain substantially the same. The Fire District may at a future time redesign the appearance of such equipment, apparel, and apparatus if the Fire District Board finds it to be in the best interest of the Fire District and the community.

3. **Historical Services to the City.** During and after the Transition Period, the Fire District will provide the following services to the City and its citizens that historically have been provided by the City's Fire Rescue Department. The services shall be provided at no cost to the City unless the Parties mutually agree otherwise. If at a future time the Fire District determines that it lacks the financial, staffing, or other resources to provide one or more of the following services, it will notify the City of this fact and the Parties will in good faith work together to determine if there are actions that can be taken by one or both of the Parties to enable the Fire District to continue to provide these historical services.

a. City Fire Extinguishers. The Fire District will service the City's fire extinguishers located at or within all City buildings, facilities, and vehicles once each calendar year.

b. CPR/First Responder Training. The Fire District will conduct a CPR/First Responder training for City employees at least once each calendar year.

c. Community Events. The Fire District will provide one engine and at least two firefighters to assist the City at the Evans Fest, Pancake Breakfast, and Neighborhood Night Out.

4. **Fire Chief's Participation in the City's Senior Management Team.** The Fire District's Fire Chief will, to the extent practicable, participate in meetings, work/study sessions, and other activities of the City's senior management team to provide input on Emergency Services issues. The appropriate City personnel will provide the Fire Chief with as much advance notice as possible of those meetings, work/study sessions, *etc.* where Emergency Services issues will be considered, and the Fire Chief shall make every reasonable effort to attend such meetings, work/study sessions, *etc.*

5. **Development of Municipal Services.** The City shall coordinate with the Fire District in the development and expansion of municipal services, such as water supply, street construction or modification, *etc.*, to ensure that the Fire District's Emergency Services needs are appropriately addressed. The Fire Chief or his/her designee shall be included in the conceptual design phase of any such municipal services.

6. **Emergency Management.** The Parties shall cooperate in good faith on the development, implementation, and management of emergency operations within the City and the Fire District, including the development, implementation, and management of any applicable municipal, county, and/or other regional emergency management plans. The Parties shall execute such additional documents and take such additional actions as are reasonably necessary to accomplish the requirements of this Paragraph 6.

7. **Fire District Policies Significantly Impacting the City.** At least 30 calendar days before taking final action on a policy that will have a significant impact on the City, its citizens or their property, Fire District Board, directly or through the Fire Chief, will confer with the City Council or the City's senior management team regarding the proposed policy. The City and Fire District shall use their good faith best efforts to resolve any concerns the City may have regarding the proposed policy.

8. **Annual Report.** On or before March 1 of each year, the Fire District will provide a written report to the City Council that summarizes the Fire District's Emergency Services to the City's citizens and their property during the preceding year. The annual report will be prepared in such form and content as the Fire District Board and City Council shall mutually determine, and will include, without limitation: a) the number of emergency incidents to which Fire District personnel were dispatched; b) the average response time; c) fire prevention and public education activities; and d) training of Fire District personnel. The Fire District also shall provide a copy of its most recent audited financial statements to the City Council within fifteen days of the Fire District Board's acceptance thereof.

9. **Annual Joint Meeting.** The City Council and the Fire District Board shall hold an annual joint meeting for the purpose of discussing matters directly or indirectly relating to or affecting the Fire District's provision of Emergency Services to the City, its citizens and their property, unless both Parties mutually agree otherwise. The annual joint meeting shall be held on or before May 30 of each year, or as soon thereafter as is reasonably practicable. The City and the Fire District shall each pay one-half of all costs and expenses incurred in conducting the joint annual meeting. The joint annual meeting shall be conducted in accordance with the Colorado Sunshine Law and shall be open to the public, except for any executive session duly called and held in accordance with applicable law, including the Colorado "common interest" doctrine.

10. **Fire District Transparency.** The Fire District Board shall comply fully with all federal, state, and local laws, ordinances, and regulations governing the transparency and conduct of the Fire District Board, including, without limitation:

- a. Colorado Sunshine Law (Open Meetings), C.R.S. § 24-6-401 *et seq.*;
- b. 72-Hour Posted Notice of Public Meetings, C.R.S. § 32-1-903;
- c. Executive Session, C.R.S. § 24-6-402(4);
- d. Colorado Public (Open) Records Act, C.R.S. § 24-72-201 *et seq.*;
- e. Special District Transparency Notice, C.R.S. § 32-1-809;

- f. Conflict of Interest Disclosure, C.R.S. §§ 31-1-902(3), 18-8-308; and
- g. Standards of Conduct and Fiduciary Duty, C.R.S. § 24-18-101 *et seq.*

ARTICLE X

Fire Code Adoption and Enforcement

1. **Fire Code Adoption or Modification.** After the Effective Date, either Party may propose (a) modifications to the Fire Code then in effect or (b) adoption of a different edition of the Fire Code, with or without amendments. The Party seeking to modify the Fire Code then in effect or to adopt a new edition of the Fire Code shall provide 60 days prior written notice to the other Party. The Parties shall engage in good faith efforts to resolve any concerns one or both of the Parties may have regarding modifying the Fire Code then in effect or adopting a new edition of the Fire Code. The City Council shall have the final authority to approve or reject any proposal to modify the Fire Code then in effect, or adopt a new edition of the Fire Code, for use within the City's corporate boundaries. If the City Council approves a proposal to modify the Fire Code then in effect or to adopt a new edition of the Fire Code, such approval shall be set forth in an Ordinance that details the modification(s) to the Fire Code then in effect or the adoption a new edition of the Fire Code and any amendments thereto. The City shall promptly provide a copy of the approved Ordinance to the Fire District. The Fire District Board shall adopt a Resolution approving the City Ordinance as soon thereafter as reasonably practicable.

2. **Plan Reviews.** The City shall promptly refer to the Fire District all applications for modification to or renovation of existing properties, facilities, or buildings, and any new construction or development, which includes review by the Fire District under the Fire Code. The Fire District shall complete its review within 60 days of receipt from the City, unless the size or complexity of the project requires additional time. The Fire District shall state in writing whether the application is "approved without condition or comments", "approved with conditions or comments", or "disapproved". If the Fire District states an application is "disapproved", it shall provide citation(s) to the applicable Fire Code provision(s) upon which the disapproval is based.

3. **Fees and Charges.** The Fire District may impose reasonable fees and charges as authorized by the Act and the Fire Code, including but not limited to, reasonable fees and charges for plan reviews, permits, inspections, false alarm inspections, *etc.* The Fire District shall be solely responsible for assessing and collecting such fees and charges.

4. **Enforcement of the Fire Code.** The Fire District shall enforce the Fire Code. If a question or dispute arises as to the proper interpretation of the Fire Code, the Fire Chief and the City's Chief Building Official shall meet as soon as possible to resolve the question or dispute. If, despite their good faith efforts, the Fire Chief and the Chief Building Official are unable to agree upon the proper interpretation of the Fire Code, the question or dispute shall be submitted to the Board of Appeals in accordance with the appeals procedure set forth in the Fire Code. The Board of Appeals shall include at least one Fire District representative selected by the Fire District.

As provided in the Act, the Fire District shall refer a Fire Code violation to the City Attorney for prosecution or to the District Attorney for prosecution in the appropriate District Court. The City will assist the Fire District in enforcing the Fire Code in any Municipal Court action. If the Fire Code violation is not satisfactorily resolved, or will not be satisfactorily resolved, through prosecution in Municipal Court or District Court, the Fire District may bring a civil action to enforce the Fire Code, utilizing the Fire District's legal counsel.

5. **Cooperative Arson Investigations.** The Parties agree to cooperate in investigating all fires of suspicious origin within the City's corporate boundaries. The Fire District shall determine the cause and origin of all fires. Immediately upon determining that a fire is of suspicious origin, the Fire District shall preserve the scene and shall present the facts of its investigation to the City's Police Department, which shall have primary responsibility for investigation of the case from that point.

6. **Communication and Cooperation.** The Parties acknowledge and agree that regular communication and continued cooperation are vital to the successful implementation of this Article X. The Parties' representatives shall periodically meet and confer regarding Fire Code adoption, administration and enforcement issues within the City's corporate boundaries, including but not limited to, plan review procedures, inspections, Fire Code enforcement, and any potential modifications to the Fire Code then in effect or adoption of a different edition of the Fire Code.

ARTICLE XI Additional Provisions

1. **Relationship of the Parties.** By entering into this Agreement, the Parties are not creating, and shall not be construed as creating, a joint venture, partnership, authority or any other type of legal relationship, and each Party shall remain a separate and distinct entity for all purposes under this Agreement. Neither the fact of this Agreement nor the Parties' performance of this Agreement shall in any manner alter each Party's constitutional, statutory and common law rights, powers, duties, and authority, except to the extent expressly set forth in this Agreement.

2. **Legal Compliance.** In performing the terms of this Agreement, the Parties shall comply fully with all federal, state, and local laws, ordinances, resolutions, operating procedures, rules, and/or regulations.

3. **Term and Termination.**

a. This Agreement shall commence on the Effective Date and shall continue unless and until terminated pursuant to subparagraphs (b) and (c) below.

b. The Parties expressly declare and intend that this Agreement is an essential part of the Service Plan approved by the City Council, which Service Plan plays a fundamental role in the Emergency Services provided by the Fire District. Termination of this Agreement would significantly frustrate implementation of the Service Plan and could jeopardize the Fire District's efficient and effective provision of Emergency Services to the City and the Fire District's citizens and their property. Accordingly, neither Party may unilaterally terminate this Agreement. This Agreement may not be terminated unless:

i. An Amended Service Plan that is mutually acceptable to the Fire District Board and the City Council is submitted to the City Council for approval pursuant to the Act;

ii. The proposed Amended Service Plan removes this Agreement as an exhibit to the Amended Service Plan and adequately provides for the continued financial viability, and the efficient and effective administration and operation, of the Fire District without the terms, conditions, and covenants set forth in this Agreement;

- iii. The City Council approves the Amended Service Plan; and
- iv. The Amended Service Plan is recorded with the Weld County Clerk and Recorder.

c. This Agreement shall terminate for all purposes on the date an Amended Service Plan satisfying the requirements of subparagraph (b) above is recorded with the Weld County Clerk and Recorder.

4. **Governmental Immunity.** Nothing in this Agreement shall be construed as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

5. **Notice.** Any notice permitted or required by this Agreement shall be in writing and shall be sent by certified or registered mail, postage prepaid, return receipt requested, to:

ATTN: City Manager
City of Evans
1100 37th Street
Evans, CO 80620

ATTN: Fire Chief
Evans Fire Protection District
1100 37th Street
Evans, CO 80620

The notice shall be deemed to have been given when deposited in the United States mail and shall be deemed effective 72 hours after having been given.

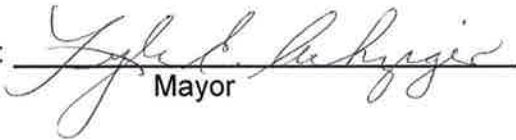
6. **Headings and Captions.** The headings and captions used in this Agreement are for the convenience of reference only and do not form a part of this Agreement.

7. **Additional Terms.** Colorado law governs this Agreement. Jurisdiction and venue for any action arising under this Agreement or for the enforcement of this Agreement shall lie exclusively in the Weld County District Court. This Agreement may be amended only by a document signed by both Parties. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement, expressly including enforcement of any of the terms and conditions of this Agreement; all rights of action relating to such enforcement shall be strictly reserved to the Parties. In any dispute arising from or relating to this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including any attorneys' fees, costs, and expenses incurred in collecting upon any judgment, order, or award. This Agreement may be executed in several counterparts and by facsimile, each of which shall be deemed an original and all of which shall constitute one and the same instrument.


[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF EVANS, a Colorado municipal corporation

By: 
Mayor

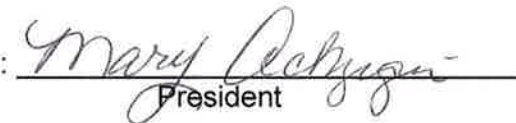
ATTESTED:


City Clerk

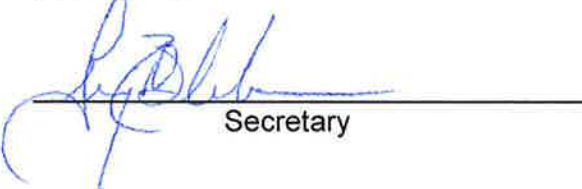
APPROVED AS TO FORM:


City Attorney

EVANS FIRE PROTECTION DISTRICT,
a political subdivision of the State of Colorado

By: 
President

ATTESTED:


Secretary

APPROVED AS TO FORM:


Attorney for the Fire District

**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
FOR THE TRANSFER OF EMERGENCY SERVICES**

This First Amendment to Intergovernmental Agreement for the Transfer of Emergency Services ("**First Amendment**") is entered into between the City of Evans ("**City**") and the Evans Fire Protection District ("**Fire District**").

WHEREAS, in 2011, the City and the Fire District entered into an Intergovernmental Agreement For The Transfer of Emergency Services ("**IGA**"); and

WHEREAS, Article IV(1) of the IGA provides for the City to pay an Annual Contribution, as defined therein, to the Fire District, and further provides for the City's termination of its Annual Contribution under certain circumstances; and

WHEREAS, the City and the Fire District have conferred regarding the City's potential termination of its Annual Contribution pursuant to the provisions of the IGA; and

WHEREAS, the City and the Fire District desire to extend certain deadlines in the IGA governing the City's notice of termination of its Annual Contribution to enable the City and the Fire District to pursue a possible agreement related to such potential termination.

NOW THEREFORE, in consideration of the mutual promises, covenants, and undertakings set forth in this First Amendment, the City and the Fire District agree as follows:

1. The last paragraph of Article IV(1)(d) of the IGA is amended by adding the underlined language, to read in its entirety as follows:

The City Council shall notify the Fire District at least 60 days before taking action to permanently terminate the City's Annual Contribution to the Fire District, and shall allow the Fire District such time to submit written comment thereon. If the City Council takes action to permanently terminate the City's Annual Contribution to the Fire District, the Fire District Board and the City Council shall mutually agree on the date and procedure by which the City's Annual Contribution shall be permanently terminated. If, despite their good faith efforts, the Fire District Board and the City Council cannot agree on such a date and procedure, then the City's Annual Contribution shall be permanently terminated in its entirety at 11:30 p.m. on December 31 of the year after the year in which the City Council takes action to approve the permanent termination of the City's Annual Contribution. Notwithstanding the foregoing, if the City Council takes action to approve the permanent termination of the City's Annual Contribution on or before February 28, 2022, then the City's Annual Contribution shall be permanently terminated in its entirety at 11:30 p.m. on December 31, 2022.

2. Except as specifically amended in Section 1, above, all other provisions of the IGA shall remain in full force and effect as written, and are unaffected by this First Amendment.

IN WITNESS WHEREOF, the City and the Fire District have executed this First Amendment.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

CITY OF EVANS, a Colorado municipal corporation

By: _____

Brian Rudy, Mayor

ATTESTED:

Julie Kamka, City Clerk

APPROVED AS TO FORM:

City Attorney



EVANS FIRE PROTECTION DISTRICT, a political subdivision of the State of Colorado

By: _____

Mary Achziger, Board President

ATTESTED:

Tim Naylor, Director

**SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
FOR THE TRANSFER OF EMERGENCY SERVICES**

This Second Amendment to Intergovernmental Agreement for the Transfer of Emergency Services ("**Second Amendment**") is entered into between the City of Evans ("**City**") and the Evans Fire Protection District ("**Fire District**"). The City and the Fire District are referred to collectively herein as the "**Parties**".

WHEREAS, in 2011, the City and the Fire District entered into the Intergovernmental Agreement For The Transfer Of Emergency Services attached hereto as Attachment 1, as amended by that certain First Amendment To Intergovernmental Agreement For The Transfer Of Emergency Services attached hereto as Attachment 2 (collectively, the "**IGA**");

WHEREAS, Article IV(1) of the IGA provides for the City to pay an Annual Contribution, as defined therein, to the Fire District, and further provides for the City's termination of its Annual Contribution under certain circumstances; and

WHEREAS, the City and the Fire District have conferred regarding the City's payment of the Annual Contribution to the Fire District, and desire to amend the IGA to provide for the wind-down and termination of the City's payment of the Annual Contribution on December 31, 2026.

NOW THEREFORE, in consideration of the mutual promises, covenants, and undertakings set forth in this Second Amendment, the Parties agree as follows:

1. Article IV(1) of the IGA is amended in its entirety as follows:

1. **Annual Contribution.**

a. Commencing on the Organization Date the City shall make an annual contribution of funds to the Fire District as provided herein ("**Annual Contribution**"). From the Organization Date and continuing until December 31, 2021, the City's Annual Contribution amount in each year shall be an amount equal to the Fire District's approved annual budget, less the amount of revenue the Fire District anticipates collecting from its property tax during the calendar year to which the budget applies; provided, however, that if the Fire District's proposed annual budget and anticipated property tax revenue in a given year would cause a percentage increase in the City's Annual Contribution that is greater than that of the Consumer Price Index over the City's Annual Contribution in the immediately preceding year, the Fire District Board shall obtain the City Council's approval of the Annual Contribution prior to adopting the budget; if the City Council does not grant such approval, the budget adopted by the Fire District Board shall not require the City's Annual Contribution to increase by a percentage exceeding that of the Consumer Price Index.

b. Commencing January 1, 2022 and continuing until December 31, 2026, the City's Annual Contribution amount in each year shall be as follows:

- i. 2022 \$543,983
- ii. 2023 \$200,000
- iii. 2024 \$200,000
- iv. 2025 \$200,000
- v. 2026 \$200,000

The City's obligation to make an Annual Contribution shall terminate on December 31, 2026 and the City shall not be obligated to make any further Annual Contribution to the Fire District after December 31, 2026.


c. The City shall pay the Annual Contribution to the Fire District in four equal payments, such payments to be made on or before the first day of January, April, July, and October of each year. Unless the Parties mutually agree to a different process, the Annual Contribution payments shall be made by wire transfer. If the City fails or refuses to pay the Annual Contribution to the Fire District in accordance with the terms of this subparagraph (c), the Fire District may take legal or equitable action to obtain the Annual Contribution payments from the City.

2. This Second Amendment is effective as of the date both Parties have signed this Second Amendment. Except as specifically amended in Section 1, above, all other provisions of the IGA shall remain in full force and effect as written, and are unaffected by this Second Amendment.

IN WITNESS WHEREOF, the City and the Fire District have executed this Second Amendment.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

CITY OF EVANS, a Colorado municipal corporation

By: 
Brian Rudy, Mayor

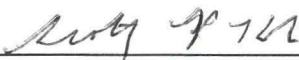
Date: 11/2/2021

ATTESTED:


Julie Kamka, City Clerk



APPROVED AS TO FORM:


City Attorney

EVANS FIRE PROTECTION DISTRICT, a political subdivision of the State of Colorado

By: 
Mary Achziger, Board President

Date: 10-25-2021

ATTESTED:


Martin Schanwolf, Board Secretary