

**AGREEMENT AND JOINT PLAN FOR EXCLUSION
OF CERTAIN PROPERTY FROM
THE BLACK FOREST FIRE RESCUE PROTECTION DISTRICT
OF EL PASO COUNTY, COLORADO**

This Agreement and Joint Plan for Exclusion of Certain Property from the Black Forest Fire Rescue Protection District of El Paso County, Colorado (the "Agreement"), is entered into between the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City") and the Black Forest Fire Rescue Protection District (the "District"), pursuant to the provisions of Part 5 of Article 1 of Title 32, C.R.S., a provision of the Special District Act.

PARTIES, JURISDICTION AND VENUE

1. This action is based upon the Petition to be filed by the City pursuant to C.R.S. § 32-1-502, *et seq.*, to exclude certain real property from the District because that property has been annexed into the City, which also provides fire suppression, fire prevention, ambulance, emergency rescue, hazardous materials and emergency medical services (collectively, "Emergency Services"). The property to be excluded is described in **Exhibit A** attached hereto and incorporated herein by reference (the "Property").

2. This Agreement and Joint Plan was prepared and submitted pursuant to and in satisfaction of the requirements of C.R.S. § 32-1-502(2)(c) which provides that as a condition to the exclusion of the Property:

[t] he governing body of the City and the board of directors of the District shall each submit a plan for the disposition of assets and continuation of services to all areas of the District, and that said plans shall include, if applicable, provisions for the maintenance and continuity of facilities to be utilized by the territories both within and without the municipal boundaries and of services to all territories served or previously served by the special district, and further, that if the City and the District agree upon a single plan and enter into a contract incorporating its provisions, the court shall review such contract, and if it finds the contract to be fair and equitable, the court shall approve the contract and incorporate its provisions into its exclusion order.

3. The City Council of the City, as its governing body, has met, considered and approved all of the terms of this Agreement and Joint Plan.

4. The Board of Directors of the District, as its governing body, has met, considered and approved all of the terms of this Agreement and Joint Plan.

5. The Court has jurisdiction over all claims for relief asserted and venue is proper

pursuant to C.R.S. § 32-1-303(1)(a).

AGREEMENT AND JOINT PLAN

1. All notice requirements of the statute and of the Colorado Rules of Civil Procedure have been fully, completely and properly complied with. No objection to the exclusion has been made by any taxpaying elector. The District and the City consent to the exclusion of the Property, subject to the provisions of this Agreement and Joint Plan.

2. The parties further stipulate that:

- A. The City has provided and is now providing comparable Emergency Services that the District provides in or to the Property.
- B. The City Council has agreed by resolution to this Agreement and Joint Plan which will provide the Emergency Services provided by the District to the Property effective January 1, 2021.
- C. No election has been held or is required to be held pursuant to C.R.S. § 32-1-502(5), and the parties stipulate that the quality of service including, but not limited to, the fire insurance costs for the improvements within the Property will not be adversely affected by this exclusion.
- D. The District owns no facilities or assets located within the Property.

3. Pursuant to C.R.S. § 32-1-502, District and City agree to the following plan for disposition of assets and continuation of services to all areas of the District:

- A. The District owns no real property or improvements within the Property and the City does not seek ownership of any such assets located in any other part of the District.
- B. The City does not seek ownership of any firefighting equipment or other personal property now owned by the District and the Order of Exclusion may so state.
- C. The City shall provide Emergency Services to the Property and shall continue to honor any mutual aid agreement with the District applicable to any District territory not excluded.
- D. Primary responsibility for Emergency Services in all territory of the District not proposed for exclusion shall remain with the District.

4. The City shall assume primary responsibility for Emergency Services to the

Property effective January 1, 2021. Nothing in this Agreement and Joint Plan shall impair or negate the validity or effectiveness of any existing mutual aid agreement between the parties.

5. The District and its firefighters, including those residing in the Property, shall continue to have the right to operate District and personal vehicles and equipment as authorized emergency vehicles within said excluded area and the City, for bona fide emergency purposes, as the District may deem necessary in fulfilling District obligations. Authorized emergency vehicles shall be those as defined by C.R.S. § 42-1-102 and shall include the right of District firefighters who reside in the excluded area to respond to emergency calls in personal vehicles and District vehicles which are operated as emergency vehicles.

6. Pursuant to C.R.S. § 32-1-503:

- A. The change of boundaries of the District, which is accomplished by the Court Order, shall not impair nor affect its organizations, nor shall it affect, impair or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.
- B. For taxes imposed in year 2021 and thereafter, the excluded property shall not be subject to any property tax levied by the District for operating costs.
- C. For the purpose of retiring the District's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the Property shall be obligated to the same extent as all other property within the District but only for that proportion of the District's outstanding indebtedness and the interest thereon existing immediately prior to January 1, 2021.
- D. The Property shall in no event become obligated for the payment of any bonded indebtedness created after the date of the Court's order of exclusion.

7. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement of this Agreement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person or entity, including, but not limited to, the past, present and future owners and occupants of the Property or any portion of the Property, or any of their successors or assigns. It is the express intention of the City and the District that any person or entity, other than the Parties to this Agreement, receiving services or benefits hereunder shall be deemed to be incidental beneficiaries only.

8. In the event the court does not approve the petition under the terms and conditions of the Agreement and enter an order of exclusion as provided for in the Agreement, this Agreement shall be deemed void.

9. This Agreement and Joint Plan is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado home rule city. Court venue and jurisdiction shall exclusively be in the District Court for El Paso County, Colorado.

10. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Agreement are expressly subject to appropriation of funds by the City Council and the availability of those funds under Constitutional and Charter limitations. In accord with the Colorado Constitution, Article X, Section 20, performance of the District's obligations under the Agreement is expressly subject to the appropriation of funds by the Board of Directors of the District and the availability of these funds under Constitutional limitations.

11. The following provisions shall be contained in any order for exclusion of property from the District:

The order shall provide for the retention of jurisdiction by the Court as necessary to implement, interpret, or modify the Court Order and shall provide for the retention by the Court of jurisdiction for the implementation, interpretation, or modification of this Agreement.

12. This Agreement shall not be deemed a waiver by the City of provisions available to the City under Article 1 of Title 32 C.R.S. or as otherwise provided by law to exclude the Property; nor shall this Agreement be deemed a waiver by the District to object to or contest any exclusion proceedings initiated by the City under the provisions available to the District under Article 1 of Title 32 C.R.S. or as otherwise provided by law.

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DONE this _____ day of _____, 2020.

DISTRICT:

Black Forest Fire Rescue Protection District

By: _____
Richard Nearhoof, Board Chair

ATTEST:

Secretary

APPROVED AS TO FORM:

Linda Glesne
Counsel for the District

CITY:

City of Colorado Springs, a home rule
city and Colorado municipal corporation

By: _____
John W. Suthers, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Frederick Stein
Office of the City Attorney

EXHIBIT A

Excluded Property Address List