

## EXHIBIT "A" TO RESOLUTION

### PRE-INCLUSION INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF STEAMBOAT SPRINGS AND THE STEAMBOAT SPRINGS AREA FIRE PROTECTION DISTRICT

This Pre-Inclusion Intergovernmental Agreement Between The City Of Steamboat Springs And The Steamboat Springs Area Fire Protection District ("**Agreement**") is entered into by and between the City of Steamboat Springs, a Colorado home rule municipality ("**City**"), and the Steamboat Springs Area Fire Protection District, a political subdivision of the State of Colorado ("**District**"). The District and the City are referred to individually as a "**Party**" and collectively as the "**Parties**".

#### RECITALS

**WHEREAS**, the City is charged with protecting the health, safety, and welfare of its approximately 13,000 permanent residents and their property within its roughly 10 square miles corporate boundaries and the significant number of individuals who visit the City each year;

**WHEREAS**, the District was organized under the Colorado Special District Act, C.R.S. 32-1-101, *et seq.*, to provide fire and emergency services to approximately 8,000 residents within its roughly 428 square miles jurisdictional boundaries, which completely surround, but do not include, the area within the City;

**WHEREAS**, for over 40 years the Parties have worked as partners to jointly provide critical, life-saving fire suppression, fire protection, public education, rescue, extrication, hazardous materials, ambulance, and emergency medical services (collectively, "**Emergency Services**") to the citizens and property within their combined boundaries. This partnership is most recently reflected in the 2009 Amended Contract for Services Between the Steamboat Springs Rural Fire Protection District and the City of Steamboat Springs ("**2009 Agreement**"). Pursuant to the 2009 Agreement, the City operates Steamboat Springs Fire Rescue, which provides Emergency Services on behalf of the City and the District, the City and the District share real and personal property, and the District provides financial payments to pay proportionately for the costs of the Emergency Services operations and related capital improvements;

**WHEREAS**, over the years, the City Council and the District's Board of Directors ("**Board**") have continued to monitor and evaluate how best to deliver sustainable, high quality, and cost effective Emergency Services to the Steamboat Springs community. The Emergency Services needs of the Steamboat Springs community have sharply increased over the last decade, with minimal increase in the capacity to respond to such needs, while the costs associated with providing modern Emergency Services have steadily risen; and,

**WHEREAS**, the Parties have carefully evaluated the options for providing sustainable, high quality, and cost-effective Emergency Services to the citizens and property within the Steamboat Springs community, and have determined that the health, safety, and welfare of their respective citizens and their property will be best served by a single fire protection district that is responsible for the provision of Emergency Services to the citizens and property within the areas

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currently served by the City and the District. To accomplish this goal, the Parties will seek to include all of the territory within the City's corporate boundaries into the District's jurisdictional boundaries in accordance with the terms of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Creation of a Single, Integrated Fire Protection District. Subject to a vote of the citizens of the City, the Parties intend to form a single, integrated fire protection district to serve all areas currently served by the Parties by including all territory currently within the City into the District (the "**Inclusion**") pursuant to C.R.S. §§ 32-1-401(2)(a)(II)(b) – (e). Unless mutually agreed to otherwise by the Parties, the Parties shall take the following actions to seek approval for the Inclusion at a special election to be held on May 7, 2019 (the "**Initial Inclusion Election**"):

a. Initial Inclusion Resolution. Upon its determination to proceed with the Initial Inclusion Election, the District Board will, pursuant to C.R.S. § 32-1-401(2)(a)(II), adopt a resolution proposing the Inclusion and setting a public hearing to adopt a Resolution Initiating Inclusion Election. Thereafter, the District shall publish and mail notices as required by C.R.S. §§ 32-1-401(2)(b) & (3).

b. Resolution Initiating the Initial Inclusion Election. At its meeting specified in the resolution and notices referenced above in Section 1(a), the District Board shall conduct a public hearing and consider adoption of a Resolution Initiating Inclusion Election pursuant to C.R.S. § 32-1-401(2)(b). The Resolution Initiating Inclusion Election shall include, as conditions of the Inclusion, that if the voters approve the Inclusion:

(i) the City shall discontinue providing Emergency Services, and the District shall begin providing Emergency Services, on January 1, 2020, or on such other date as may be mutually agreed to by the Parties to ensure a smooth and efficient transfer of Emergency Services from the City to the District; and,

(ii) on or before November 15, 2018, the City and the District shall mutually agree to the financial actions the City shall take to offset or reallocate the realized City Sales Tax savings (\$2,300,000 based on the 2018 approved budget) that will result from the District's property tax that will be approved by the City's taxpayers ("**Financial Actions**"), which shall be set forth in a written addendum to this Agreement. If the Parties fail to agree upon and sign a written addendum by November 15, 2018, this Agreement shall automatically terminate with no further action required by either Party.

c. Request Court Order for Inclusion Election. If the District Board approves the Resolution Initiating Inclusion Election following the public hearing, it shall immediately file a motion requesting an order from the Routt County District Court setting a special election to seek

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voter approval of the Inclusion, appointing a Designated Election Official and approving the ballot question in substantially the form attached hereto and incorporated herein as Exhibit A.

d. Conduct of the Initial Inclusion Election. Upon receipt of the order from the Routt County District Court, the District, through its Designated Election Official, shall certify the ballot no later than sixty (60) days prior to the Initial Inclusion Election date, and take all actions necessary or desirable to conduct the Initial Inclusion Election pursuant to the Colorado Local Government Election Code and the Special District Act.

e. Court Order of Inclusion. If a majority of the voters approve the Inclusion, the District shall immediately seek a final Order of Inclusion from the Routt County District Court and record and file the same as necessary to make the Order of Inclusion effective, as required by the Colorado Local Government Election Code and the Special District Act.

f. Subsequent Inclusion Election. If a majority of the electors at the Initial Inclusion Election do not approve the Inclusion, the District shall conduct a mail ballot or polling place inclusion election in either November of 2019 or May of 2020, whichever date is mutually agreed to by the Parties ("**Second Inclusion Election**"). The Parties shall follow the procedures set forth in subsections 1(a) through (e), above, except that the Resolution Initiating Inclusion Election shall include, as a condition of the Inclusion, that if the voters approve the Inclusion, the City shall discontinue providing Emergency Services, and the District shall begin providing Emergency Services, on January 1, 2021, or on such other date as may be mutually agreed to by the Parties to ensure a smooth and efficient transfer of Emergency Services from the City to the District. If a majority of electors do not approve the Inclusion by a vote prior to June 1, 2020, this Agreement shall automatically terminate and be null and void and of no further effect.

g. Payment of Inclusion Election Costs. For the Initial Inclusion Election and, if necessary, Second Inclusion Election, the City shall pay sixty-six percent (66%) of the cost of conducting the election including, but not limited to, costs associated with public education and election consulting services. Public education and election consulting services paid for in any part by either party shall be limited to those permissible under article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act, C.R.S. § 1-45-101, *et. seq.*

### 2. Provision and Funding of Emergency Services After Inclusion.

a. District to Provide Emergency Services. If the Initial Inclusion Election is successful, the District will begin providing Emergency Services within the City's corporate boundaries and the District's jurisdictional boundaries on January 1, 2020. In the event the Initial Inclusion Election is not successful, but the Second Inclusion Election is successful, the District will begin providing Emergency Services within the City's corporate boundaries and the District's jurisdictional boundaries on January 1, 2021. The date on which the District begins providing Emergency Services following the successful Initial Inclusion Election or, if necessary, the successful Second Inclusion Election, shall be referred to as the "**Transfer Date**". The District's

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provision of Emergency Services shall include enforcement of fire codes as previously adopted by the City; any future amendments, repeals, revisions or adoptions of fire codes by the City will be done only after written notice from the City to, and consultation with, the District.

b. Optional Agreement to Change the Transfer Date. In order to effectuate a smooth and efficient transition of Emergency Services from the City to the District, the Parties may mutually agree to extend the Transfer Date to a later date upon such terms and conditions as the Parties may mutually agree pursuant to a separate written agreement. In addition, if the Second Inclusion Election occurs, and is successful, in November of 2019, the Parties may mutually agree to move the Transfer Date to an earlier date upon such terms and conditions as the Parties may mutually agree pursuant to a separate written agreement.

c. Provision of Emergency Services Before the Transfer Date. If a majority of the electors approve the Inclusion, the Parties shall continue to operate pursuant to the 2009 Agreement until the Transfer Date.

d. District Mill Levy. Upon recording the Court Order of Inclusion with the County, the District shall take all actions necessary to impose its maximum voter authorized mill levy of 9.00 mills upon each dollar of the total valuation for assessment of all taxable property within the District.

3. Amendment and Termination of 2009 Agreement. As of the Effective Date, the following new paragraph is added to the end of ARTICLE XV of the 2009 Agreement, entitled "Term and Termination":

Effective August 28, 2018, the Parties entered into a Pre-Inclusion Intergovernmental Agreement Between The City Of Steamboat Springs And The Steamboat Springs Area Fire Protection District ("***Pre-Inclusion Agreement***"), pursuant to which the Parties intend to include all of the territory currently within the City into the District's jurisdictional boundaries and have the District assume sole responsibility for the provision of Emergency Services. Accordingly, and notwithstanding anything in this Agreement to the contrary, on the Transfer Date, as defined in the Pre-Inclusion Agreement, this Agreement shall terminate in its entirety and all further contractual obligations between the City and the District shall be controlled by the Pre-Inclusion Agreement.

4. Agreement to transfer certain City's Emergency Services Tangible and Intangible Assets. As of the Transfer Date, the City shall discontinue providing Emergency Services. On or before the Transfer Date, the City shall transfer to the District all of the City's legal and equitable title and interest in and to any and all tangible and intangible assets and property currently used by the City for the provision of Emergency Services, free and clear of all liens and encumbrances, with the exception of the real property and improvements located at 840 Yampa Street ("840 Yampa Property"). Assets and property include, but are not limited to, real property, fixtures, improvements, buildings, personal property, furniture, appliances, supplies, plans, tools, vehicles,

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apparatus, mobile equipment, machinery, and all other tangible and intangible assets of any type and nature whatsoever used by the City for the provision of Emergency Services (collectively, "**Emergency Services Assets**"). All of the City's ownership and reversionary interests in real property shall be transferred from the City to the District pursuant to warranty deeds. All tangible personal property shall be transferred from the City to the District pursuant to one or more omnibus bills of sale.

Notwithstanding the foregoing, the City shall not transfer its interest in the 840 Yampa Property to the District pursuant to this Agreement. In consideration of the City retaining its ownership of the 840 Yampa Property, the City agrees to lease the 840 Yampa Property to the District for a period of five years, with the District's option to renew such lease for an additional five years upon expiration of the initial lease term, in exchange for rent payments from the District of \$1.00 per year, and subject to the terms and conditions of a mutually acceptable Commercial Lease Agreement, which the Parties shall enter into prior to the Transfer Date. The City and the District acknowledge and agree that the current 840 Yampa Property does not represent a long-term solution to the Emergency Services needs of the City, the District, or the residents of the City and the District. As a result, the City and the District agree that, within three (3) years of the Transfer Date, they will collaboratively determine the total cost of acquiring property and constructing a new District-owned fire station and selecting the site for the new fire station, and the City shall contribute to the District 50% of the total cost of acquiring property and constructing the new fire station ("**Central Fire Station Contribution**"). The City may make the Central Fire Station Contribution through the donation of mutually agreed upon property, cash or a combination of property and cash. The City shall pay to the District any cash portion of the Central Fire Station Contribution within 30 calendar days of the date the District gives the City written notice that the District intends to commence construction of the new District-owned fire station in the City's central area.

5. Transfer of City's Emergency Services Personnel. On or before the Transfer Date, the City shall transfer to the District all of the City's Emergency Services employees and volunteers (collectively, "**Emergency Services Personnel**"), which Emergency Services Personnel shall become employees and volunteers of the District. The District will integrate such Emergency Services Personnel within its organization with equivalent rank, seniority, compensation, and benefits as they held with the City immediately prior to their ceasing to be employees and volunteers of the City and their becoming employees and volunteers of the District. The Parties shall work cooperatively to execute such documents as necessary, appropriate, and desirable to accomplish the transfer of the City's Emergency Services Personnel and all related benefits programs. The transfer of the City's Emergency Services Personnel and all related benefits programs shall expressly include the transfer of such funds as are necessary to meet the City's financial obligation under its benefits programs for the Emergency Services Personnel, including but not be limited to, retirement and pension plans, and accrued vacation and sick leave also known as paid time off or "PTO", and all other funds necessary to meet the City's financial and benefits obligations (regardless of current funding liabilities) to its Emergency Services Personnel as of the Transfer Date. The City's PTO obligations shall be calculated by multiplying accrued PTO hours for each employee by that employee's pay rate as of the day

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before the Transfer Date, including any salary increase approved for that employee prior to the Transfer Date. With respect to retirement and pension plans, the District will accept the transfer of the existing balance of the various Steamboat Springs retirement and pension funds in full satisfaction of the City's obligation.

6. Pre-Existing Contracts and Agreements. On or before the Transfer Date, the Parties shall jointly evaluate all contracts and agreements that the City 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 District for the City on contracts or agreement that will be continued, and to terminate the contracts and agreement, if any, the Parties mutually determine should be terminated.

7. Term and Termination.

a. Term. The "**Effective Date**" of this Agreement shall be the date upon which the last Party signs the Agreement. The term of this Agreement shall be unlimited and shall extend until terminated as provided herein.

b. Termination. This Agreement shall automatically terminate on the Transfer Date; provided, that the provisions herein obligating the City to transfer the City's Emergency Services Assets and Emergency Services Personnel, and the provision regarding Pre-Existing Contracts and Agreements, shall survive such termination until satisfied. Per paragraph 1(f), above, if a majority of electors do not approve the Inclusion by a vote prior to June 1, 2020, the terms of this Agreement shall automatically terminate and be null and void and of no further effect. This Agreement may also be terminated at any time by the mutual written agreement of the Parties.

c. Payments Subject to Annual Appropriation. All payments due hereunder are subject to annual appropriations by the Party from which payment is due, and therefore shall not constitute a multiple fiscal year financial obligation. In the event either Party fails to appropriate such payments, except for the Central Fire Station Contribution, through such Party's budget approval process prior to the calendar year in which such payment is due, this Agreement shall terminate as of January 1 of the year in which such payment is due.

8. Miscellaneous.

a. Notices. Any formal notice, demand or request required or related to this Agreement shall be in writing and shall be given in person, by facsimile, or sent by registered or certified mail, postage prepaid to the Parties at the addresses as set forth on each signature page

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attached hereto, unless another address is certified to the Parties. If sent by registered or certified mail, the notice shall be deemed given 72 hours after being placed in the U.S. Mail.

b. No Third-Party Beneficiaries. Nothing in this Agreement shall be deemed to create any third-party benefits or beneficiaries, or create a right or cause of action for the enforcement of its terms, in any entity or person not a Party to this Agreement, including any employees, volunteers, officers or agents of the Parties.

c. Severability. In the event that any of the terms, covenants, or conditions of this Agreement or their application shall be held invalid as to any person, corporation or circumstance by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and such determination shall not affect or impair the validity or enforceability of any other provision, and the remaining provisions shall be interpreted and applied so far as possible to reflect the original intent and purpose of this Agreement.

d. Amendment. This Agreement may be amended only by a signed, written document approved by formal authority of the governing bodies of both Parties. Course of performance, not matter how long, shall not constitute an amendment to this Agreement.

e. No Assignment. This Agreement may not be assigned by either Party.

f. Governmental Immunity. This Agreement is not intended, and shall not 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, and their past and present councilmembers, directors, officers, employees and volunteers, under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., *et seq.*, as may be amended.

g. Governing Law, Jurisdiction and Venue. Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the District Court for Routt County, Colorado.

h. Waiver of Breach. A Party's waiver of the other Party's breach of any term or provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by either Party.

i. Execution. This Agreement may be executed in several counterparts, and by facsimile, electronic pdf, or other electronic means, each of which will be deemed an original, and all of which together will constitute one in the same instrument.

**[SIGNATURE PAGE IMMEDIATELY FOLLOWS]**

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

STEAMBOAT SPRINGS AREA FIRE PROTECTION DISTRICT

By: \_\_\_\_\_  
Eric Schmidt, President

Date: \_\_\_\_\_

Address: Steamboat Springs Area Fire Protection District  
c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Blvd.  
Loveland, CO 80537

Attest:

\_\_\_\_\_  
Tom Ihrig, Secretary

CITY OF STEAMBOAT SPRINGS

By: \_\_\_\_\_  
Jason Lacy, City Council President

Date: \_\_\_\_\_

Address: 137 10<sup>th</sup> St.  
Steamboat Springs, CO 80487

Attest:

\_\_\_\_\_

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\_\_\_\_\_  
[Name], [Title]

DISCUSSION DRAFT 8-3-18

**EXHIBIT A**

**Ballot Question**

Shall the following described area become a part of the Steamboat Springs Area Fire Protection District upon the following conditions?

Description of Area: All real property located within the boundaries of the City of Steamboat Springs.

Summary of Conditions:

1. [Include conditions agreed upon by the Parties]; and,
2. Unless approved by the voters in advance, the maximum mill levy that may be imposed by Steamboat Springs Area Fire Protection District is 9.00 mills, exclusive of refunds and abatements; and,
3. The proposed inclusion is subject to the terms and conditions of the Pre-Inclusion Intergovernmental Agreement By and Between the Steamboat Springs Area Fire Protection District and the City of Steamboat Springs dated \_\_\_\_\_, 2018;

For inclusion .....

Against inclusion.....