

Black Diamond / Mountain View  
Joint Ad Hoc Committee  
Fire and Emergency Services in Black Diamond

June 2015

The City of Black Diamond adopted Resolution 15-1018 and Mountain View Fire and Rescue adopted Resolution 15-501, each of these Resolutions approving the continued work of the Fire Ad Hoc Committee, originally authorized in 2013. These Resolutions expanded the scope of their efforts, to include drafting a recommended “Pre-Annexation Agreement” between the City and District.

The Ad Hoc Committee has been developing this new scope of work; members of the Committee will soon be meeting individually with both the City Council and Board of Commissioners, for a short work session.

These work sessions will be employed to receive input related to the composition and main elements of the Draft Pre-Annexation Agreement. From these “main elements”, the Ad Hoc Committee will formulate detailed language related to each element.

The work sessions will ensure that the Committee has input from both the City and District in formulating this Draft Agreement.

Included here are two documents:

**Document 1** *Elements of Pre-Annexation Agreement list as developed by the Ad Hoc Committee.*

**Document 2** *Boiler Plate Example of Pre-Annexation Agreement between City and Fire District.*

Please review these two documents (incorporated here) in preparation for the work session(s) with members of the Ad Hoc Committee that will be scheduled for ~~July~~ August.

**Document 1 (Pre-Annexation Agreement, Main Elements, as developed by Ad Hoc Committee)**

ELEMENTS OF PRE-ANNEXATION AGREEMENT

- ☐ *Level of service*
  
- ☐ *Assets (who owns what if annexation takes place) (use of real property, future capital needs)*
- ☐ *Disposition of Property (owned by City)*
- ☐ *Maintenance and Repair (if required should City Maintain Ownership of facilities or equipment)*
  
- ☐ *Representation of City (what are the options)*
  
- ☐ *Pre Existing Capital Needs (how are these addressed) (Fire Stations, Apparatus etc.)*
- ☐ *Mitigation/Impact Fees (how are these handled)*
  
- ☐ *Legal issues (let the lawyers tell us)*
  
- ☐ *Other services to City (Fire Marshal, Investigation, Etc. .)*
- ☐ *Code Enforcement*
- ☐ *Fees for service*
  
- ☐ *Interlocal agreement (joint purchase opportunities) Chapter 39.34 RCW INTERLOCAL COOPERATION ACT*
- ☐ *Language related to other “shared” resources (IT, Vehicle Maintenance, Grounds Maintenance etc. etc.*

- ☐ *Language pertaining to areas that may be annexed into the City, that are not presently part of the Fire District. (RCW)*

*RCW 52.04.091*

*Additional territory annexed by city to be part of district.*

*When any city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, thereafter, any territory annexed by the city shall also be annexed and be a part of the fire protection district.*

- ☐ *Participation in Community Events*

- ☐ *CERT (Citizens Emergency Response Team)*

- ☐ *Disaster Preparedness, EOC, etc.*

- ☐ *Participation in City Planning and other functions.*

- ☐ *Public Information*

- ☐ *De-Annexation of City from District Language (As per RCW) (should the City opt to de-annex at a later date.)*

*RCW 52.04.101*

*Withdrawal by annexed city, partial city, or town — Election.*

*The legislative body of such a city, partial city as set forth in RCW 52.04.061(2), or town which has annexed to such a fire protection district, may, by resolution, present to the voters of such city, partial city as set forth in RCW 52.04.061(2), or town a proposition to withdraw from said fire protection district at any general election held at least three years following the annexation to the fire protection district. If the voters approve such a proposition to withdraw from said fire protection district, the city, partial city as set forth in RCW 52.04.061(2), or town shall have a vested right in the capital assets of the district proportionate to the taxes levied within the corporate boundaries of the city, partial city as set forth in RCW 52.04.061(2), or town and utilized by the fire district to acquire such assets.*

- ☐ *TERM OF AGREEMENT (how long does this document remain in effect?)*

*End of document 1*

**Document 2 (Boiler Plate Examples, Pre-Annexation Agreement between City and Fire District.)**

*INTERLOCAL AGREEMENT FOR ANNEXATION OF CITY OF \_\_\_\_\_ TO \_\_\_\_\_ COUNTY FIRE PROTECTION DISTRICT NO. X This AGREEMENT is entered into by the City of \_\_\_\_\_ (the "CITY") and \_\_\_\_\_ County Fire Protection District No. X (the "FIRE DISTRICT") for the purposes stated below.*

**RECITALS**

*WHEREAS, the City of \_\_\_\_\_ and \_\_\_\_\_ County Fire District X are both located in central \_\_\_\_\_ County and have contiguous boundaries and borders; and WHEREAS, the City of \_\_\_\_\_ and \_\_\_\_\_ County Fire District X have had a long and successful relationship, by working jointly in providing emergency services to the respective jurisdictions and communities sharing jointly owned fire station facilities; and*

*WHEREAS, the City of \_\_\_\_\_ and \_\_\_\_\_ County Fire District X are authorized by Chapter 52.04 RCW to cause an election to be held in order for voters of both jurisdictions to decide whether or not the City should become a part of the Fire District and the Fire District and the City have agreed to submit the annexation to the voters in the Month, Year election;*

*WHEREAS, the City of \_\_\_\_\_ and \_\_\_\_\_ County Fire District X have now reached agreement on said terms and conditions by which they will transition if the vote to annex is successful, and as such, the parties desire to formalize their Agreement in writing ; and*

*WHEREAS, the administration of the Joint Operating Agreement that governs the working relationship between the City and the Fire District has taken a significant amount of City staff and elected official time; and*

*WHEREAS, the City finds that the annexation into the Fire District will create a significant administrative cost savings to City residents and the City is therefore willing to provide the Fire District with the use of City fire department property in exchange for taking on the full responsibility for providing fire service to City residents; and*

*WHEREAS, the City also finds significant value in having the Fire District agree to provide fire inspection and code services to the City at fees only charged to third parties that are controlled by the City and these services also constitute consideration for Fire District use of City fire department property.*

#### *AGREEMENT*

*IN CONSIDERATION OF THE TERMS AND CONDITIONS SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:*

#### *1. ANNEXATION PROCESS*

*A. Pursuit of Annexation. Pursuant to RCW 52.04.061, the CITY and FIRE DISTRICT agree to pursue annexation of the City of \_\_\_\_\_ into the FIRE DISTRICT according to the provisions of Chapter RCW 52.04 and the terms and conditions set forth in this Agreement and any amendments thereto, subject to approval of such annexation by the \_\_\_\_\_ County Boundary Review Board and the electorate of both jurisdictions.*

*B. Boundary Review Board (BRB) Notices and Proceedings. 1. The City shall take the lead in filing a Notice of Intent with the \_\_\_\_\_ County Boundary Review Board pursuant to Chapter 36.93 RCW. 2. The City shall also act as lead agency for State Environmental Policy Act "SEPA" purposes in connection with the annexation. 3. Both parties agree that they will not request that the jurisdiction of the BRB be invoked to review the annexation. In the event that a request for review is filed by any person or persons authorized to do so under RCW 36.93.100, the District and the City agree to jointly coordinate, prepare, and present testimony to the BRB in favor of the annexation and to take all necessary actions to obtain BRB approval of the annexation.*

*C. Costs. The parties agree to fund their own respective costs for the annexation and election process.*

#### *2. POST ANNEXATION EMERGENCY SERVICES*

*A. Existing Agreement. 1. Upon annexation into the Fire District, the current Joint Operating Agreement between the City of \_\_\_\_\_ and \_\_\_\_\_ County Fire District X for fire and emergency medical services shall be cancelled, null and void except for where referenced in this agreement.*

*2. The term „annexation“ shall mean the date on which \_\_\_\_\_ County election officials certify the election and grant taxing authority for the City of \_\_\_\_\_ to the Fire District.*

3. Should the annexation ballot issue be unsuccessful or the date of the election is changed to a later date, the current agreement between the City of \_\_\_\_\_ and \_\_\_\_\_ County Fire District X for fire and emergency medical services shall remain in full effect.

*B. Emergency services. Upon annexation of the City of \_\_\_\_\_ into the Fire District, emergency services shall continue being provided by the District within the boundaries of the City at the same level of service as the rest of the District.*

*C. Other services. The City and the Fire District recognize their crucial role in disaster preparedness and response to the community. City and Fire District staff will continue to partner in joint, multi-discipline disaster planning, preparation, mitigation, exercises, and training. The City and the District mutually agree that Fire Prevention and Investigation Services are an integral service to the City and is best provided to the City by the District. In an effort to continue the relationship between the City and District with respect to Fire Prevention and Investigation Services post-annexation, the following method of ensuring continued and improved Fire Prevention and Investigation Services to the City is established as part of this post-annexation agreement.*

*1. Upon annexation by the City into the District, the District shall continue to provide to the City Fire Prevention and Investigation Services in a manner consistent with current practices. These Fire Prevention and Investigation Services shall include the following:*

*a. Plan Review: The District shall provide life and fire safety plan review for new development and construction, and tenant improvement projects consistent with applicable statutes, regulations and codes. The District shall coordinate plan review services with the City by attending pre-Application meetings, conducting plan reviews within established timelines, responding to applicant inquiries, and attending other meetings as necessary to provide Fire Prevention and Fire Marshal services to the City in a professional and competent manner.*

*b. Fire Marshal: The District shall provide an employee to serve as the City's Fire Marshal and Fire Code Official. The Fire Marshal shall represent the City and District with respect to Fire Prevention issues. The Fire Marshal shall recommend code amendments and fire department fee amendments to Council, attend Council meetings when requested or when representing Fire Department or Fire Prevention issues, and when requested to do so, attend meetings with other department members or department heads. The Fire Marshal shall administratively establish submittal requirements, submittal forms and render official interpretations of the fire code.*

*c. Fire Inspections: The District shall conduct a program of fire inspection of occupancies consistent with the International Fire Code.*

*d. Fire Investigation: The District shall investigate the origin and cause of City fires and explosions in a manner consistent with NFPA 921. Investigations of a criminal nature shall be conducted jointly with the \_\_\_\_\_ Police Department. The Fire District shall provide all Fire District services deemed necessary by the Police Department to conduct criminal investigations and prosecutions, including site inspections, lab analysis, written opinions and reports and expert testimony*

*e. Public Education: The District shall provide a program of public education activities within the City. The program shall include, but is not limited to annual fire safety education classes within public and private schools, senior life and safety education programs, participation at community events, and fire safety or first aid training to City employees.*

*f. Code Enforcement: The District shall provide a Fire Code official to the extent necessary to enforce the International Fire Code and fire prevention measures enacted into the \_\_\_\_\_ Municipal Code or otherwise . 2. Fire Prevention and Investigation Services described in Section 1 shall be provided to the City without compensation to the District except as noted below.*

*a. The City shall continue to collect fire department fees, as specified in the duly passed fees resolution, and remit these collected fees to the District on a quarterly basis.*

*b. The Permit Department shall continue to retain \$25 of each permit issued under the Fire Department fees (Table I). Fire Prevention Services provided by the District to the City shall be administered in the interest of the City and the District shall perform all responsibilities required by applicable law in its role as the City Fire Code Official and Fire Marshal, including but not limited to any responsibilities specified for these officials in the International Fire Code and \_\_\_\_\_ Municipal Code (as now or hereafter amended).*

*Nothing in this Agreement shall be construed as requiring the City to use the Fire District exclusively for its Fire Code Official and Fire Marshal. All actions of the Fire Code Official and/or Fire Marshal shall be subject to the approval of the City. The City may terminate the services of the Fire District as Fire Code Official and/or Fire Marshal at any time.*

### 3. OWNERSHIP AND USE OF REAL AND PERSONAL PROPERTY

*A. Ownership not Affected by Annexation. If the voters approve the annexation in the Month, Year election referenced in the whereas clauses to this Agreement, the parties agree that the annexation will not alter any property ownership interests of the Fire District or the City in any real or personal property. Upon the expiration of the Joint Operating Agreement as specified in this Agreement, the ownership interests of the parties to any property subject to Joint Operating Agreement shall be as specified by the Joint Operating Agreement immediately prior to expiration, subject to the following modifications:*

*1. The Fire District shall assume all outstanding obligations to pay for any personal property used by the Fire District under the Joint Operating Agreement until such time as the Council chooses to exercise its ownership rights as specified in Paragraph 3(b) herein. For personal property involving any outstanding obligation to pay, the Fire District's ownership interest shall be its prorata share of all principal payments, past and present, made on the personal property. For example, if the Fire District pays for 50% of the purchase price of a vehicle, excluding interest, the Fire District shall have a 50% ownership interest in the vehicle.*

*2. The Fire District shall assume all repair and maintenance costs for any personal property identified in this Paragraph 3. The costs of any such repairs and maintenance incurred after the expiration of the Joint Operating Agreement may be added to the acquisition cost of the property and the Fire District's ownership interest shall be adjusted accordingly. For example, if the Fire District has spent \$4,000 in repairs and costs to a fire truck, the cost of the truck will be increased by \$4,000 and the Fire District's contribution to the truck increased by \$4,000 for purposes of determining the Fire District's ownership interest.*

*B. Use of Real and Personal Property.*

*The Fire District shall have the exclusive right to use and possess the personal and real property identified in this Paragraph 3 until such time as the City Council determines that it would like to exercise its ownership rights to any or all such property.*

*C. Disposition of Property.*

*1. Should the City Council choose to exercise its ownership rights to any of the personal property identified in this Paragraph 3 as specified by Paragraph 3(b) of this Agreement, the parties at that time shall determine how the property is to be used or disposed. Should the parties be unable to come to agreement within 90 days of the Council's notice to exercise ownership rights, the property shall be liquidated pursuant to state law and the proceeds of sale allocated according to the parties' respective ownership interests. The City shall be responsible for liquidating the property and the Fire District shall pay 50% of the liquidating costs.*

*2. Should the City Council choose to exercise its ownership rights to any of the real property identified in this Paragraph 3 as specified by Paragraph 3(b) of this Agreement, the parties at that time shall determine how the property is to be used or disposed. Should the parties be unable to come to agreement within 90 days of the Council's notice to exercise ownership rights, the Fire District shall pay the City the fair market value of its ownership interest in the property within 24 months of the Council notice to exercise its ownership rights. Fair market value shall be determined as of the date payment is received.*

*D. Liability, Maintenance and Repair.*

*Unless and until the City Council exercises its ownership rights as specified in Paragraph 3(c) of this Agreement, the Fire District shall assume all responsibility for liability, maintenance and repair of the property subject to this Paragraph 3 to the same extent that it was the owner of the property. In this regard the Fire District takes all the property as is and the City makes no representations or warranties as to the suitability of the property for the uses intended by the District. The Fire District agrees to hold harmless, indemnify and defend the CITY, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising in any way out of the use or possession of the property identified in this Paragraph 3, provided, however, that:*

1. The Fire District's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and

2. The Fire District's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Fire District and the CITY, or of the Fire District and a third party other than an officer, agent, subconsultant or employee of the Fire District, shall apply only to the extent of the negligence or willful misconduct of the Fire District.

E. Property Subject to Paragraph 3.

Property referenced as "subject to" or "identified" in Paragraph 3 is comprised of the following: 1. Real Property

(a) The real property and building located at 12345 A Street, X \_\_\_\_\_, WA known as the "Station #XX".

(b) The real property and building located at 12345 B Street SE \_\_\_\_\_, WA known as Station X.

2. Personal Property. (a) The apparatus described as follows:

Manufacturer	Year	Type	Vehicle ID Number
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All other personal property shall be mutually agreed upon by addendum executed prior to December x, x. Any real or personal property not expressly identified in this Agreement by December x, x, shall not be subject to this Agreement.

*F. Insurance. The Fire District shall insure all property identified in this Paragraph 3 to the same degree as Fire District assets.*

*G. Sale, Lease, Transfer or Encumbrance. The Fire District will not sell, lease, transfer or in any way encumber any of the property identified in this Paragraph 3 without the written consent of the City.*

#### **4. BONDED INDEBTEDNESS**

*Annexation of the City of \_\_\_\_\_ into the Fire District shall not require any City residents to assume any of the District's existing debt service or the Fire District's residents to assume any of the City's existing debt service.*

#### **5. FIRE DISTRICT FEE FOR SERVICE**

*A. The City will continue to reimburse the Fire District per the Joint Operating Agreement for fire and emergency medical services until the calendar year in which the Fire District has legal authority to collect property taxes within the corporate limits of the City of \_\_\_\_\_.*

*For example, if the annexation election occurs in February 20x1 and is approved by the voters, the City will continue to pay for the fire and emergency medical services for the 20x1 calendar year. The Fire District can commence imposing its general levy on City residents in 20x2.*

*B. The City shall continue to levy, collect and remit taxes within the corporate limits of the City in the same manner as set forth in the Joint Operating agreement between the parties until the District has legal authority to do so.*

## 6. LIABILITIES — INDEMNITY

*A. Each of the parties shall, at all times, be solely responsible for the acts or the failure to act of its personnel that occur or arise in any way out of the performance of this contract by its personnel only and to save and hold the other party and its personnel and officials harmless from all cost, expenses, losses and damages, including cost of defense, incurred as a result of any acts or omissions of the party's personnel relating to the performance of this contract.*

*7. MODIFICATION A. This Agreement represents the entire agreement between the parties.*

*B. No change, termination or attempted waiver of any of the provisions of this Agreement shall be binding on either of the parties unless executed in writing by authorized representatives of each of the parties.*

*C. The Agreement shall not be modified, supplemented or otherwise affected by course of dealings between the parties.*

## 8. BENEFITS

*A. This Agreement is entered into for the benefit of the parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons.*

## 9. ARBITRATION

*A. In the event of a disagreement between the parties relating to the interpretation of the terms of this Agreement, the parties agree that such dispute shall be resolved by binding arbitration.*

*B. The arbitration shall be conducted by a panel of three (3) arbitrators selected from a list provided by the American Arbitration Association.*

*C. Each party shall appoint an arbitrator who shall not be employed or reside in \_\_\_\_\_ County, Washington.*

*D. The two arbitrators shall appoint a third arbitrator with the same qualifications.*

*E. Unless different rules are adopted by the Board of Arbitrators, the rules of the American Arbitration Association shall apply with respect to the arbitration proceedings.*

#### **10. REPORT**

*A. The Fire Chief will provide the City with a copy of the District's audit report.*

#### **11. OBLIGATIONS CONTINGENT.**

*A. The obligations of the parties under this Agreement are expressly contingent upon receipt of a favorable vote on annexation at the February 20xx election.*

*B. Except as otherwise expressly provided in this Agreement, in the event that the annexation ballot proposition is not submitted to the voters in November 20xx, or in the event that the proposition is submitted and does not receive the favorable vote in both the District and the City that is required for annexation, this Agreement shall terminate and the parties shall have no further obligations under it.*

*C. In the event that the annexation proposition is submitted and fails, the City and the District will continue to operate under the existing Joint Operating Agreement.*

*D. In the event the annexation proposition passes, the Joint Operating Agreement shall immediately terminate, and the parties hereto agree to waive the 180 day written notice of termination requirement set forth in the Agreement thereof, and intend to operate pursuant to the terms of this Agreement.*

12. COSTS A. Each party agrees to bear and pay its own expenses in connection with the negotiation and implementation of this Agreement, including, but not limited to, its attorney fees and consultant fees.

13. INTEGRATED AGREEMENT A. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and may be modified only by a written instrument signed by all parties hereto.

14. SEVERABILITY A. In the event that any section, sentence, clause or paragraph of this Agreement is held to be invalid by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

15 LITIGATION A. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for \_\_\_\_\_ County. B. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney fees, in addition to any other award.

16. THIRD-PARTY RIGHTS

A. Anything to the contrary notwithstanding, nothing contained in this Agreement shall be interpreted to create third-party rights in any person or entity not a party thereto.

17. EFFECTIVE DATE A. This Agreement shall become effective upon approval and execution by both parties.

CITY OF X

FIRE PROTECTION DISTRICT NO. X

Buy Date

Buy Date

End Of Document 2

*Should you have any questions please contact Chief Smith at*

*[chiefsmith@kcf44.org](mailto:chiefsmith@kcf44.org)*

*or call*

*253 569 7770 (Cell)*

*Chief Smith*

*For Ad Hoc Committee*