

Elk Creek Fire Protection District
Board of Directors
Special Meeting Agenda
Friday, April 21, 2023 – 16:30 hours
Zoom Meeting Only

- I. Call to Order
- II. Roll Call of Board Members
- III. Special Meeting Agenda–
 1. Consideration/Possible Action –
Pre–Consolidation IGA
 2. Consideration/Possible Action
Shadow Mountain Bike Park
- IV. Adjournment

PRE-CONSOLIDATION INTERGOVERNMENTAL AGREEMENT

THIS PRE-CONSOLIDATION INTERGOVERNMENTAL AGREEMENT (the “**Agreement**”) is entered into by and between the Elk Creek Fire Protection District (“**Elk Creek**”), a Title 32 special district and political subdivision of the State of Colorado, the Inter-Canyon Fire Protection District (“**Inter-Canyon**”), a Title 32 special district and political subdivision of the State of Colorado, and the North Fork Fire Protection District, a Title 32 special district and political subdivision of the State of Colorado (“**North Fork**”) (each individually, a “**Party**” or “**District**” and collectively, the “**Parties**” or “**Districts**”).

RECITALS

WHEREAS, the Parties are each fire protection districts organized and operating pursuant to Title 32 of the Colorado Revised Statutes (“Title 32”); and

WHEREAS, pursuant to the authority granted under Title 32, the Districts carry out fire prevention and suppression activities, emergency medical and rescue services, fire code enforcement, hazardous material responses and other activities permitted under Title 32; and

WHEREAS, Article XIV, § 18(2)(a) of the Colorado Constitution and § 29-1-203, C.R.S. permit and encourage political subdivisions of the state to make efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and

WHEREAS, the Parties, being located adjacent to one another, have developed a collaborative working relationship to more efficiently and effectively carry out their individual responsibilities under Title 32; and

WHEREAS, the Parties have determined that it is in the best interest of the health, safety, and public welfare of their respective citizens to integrate the Parties’ services as provided in this Agreement, so that there is a merger into a single fire protection district, regarding all aspects of their operations, administration, and services, as permitted under Title 32; and

WHEREAS, the Parties have agreed to use the consolidation process, as provided in Title 32 (“Consolidation”), to effect the merger of Elk Creek, Inter-Canyon, and North Fork into a single, new fire protection district serving all areas currently covered by the three separate Parties (“Merged District”); and

WHEREAS, this Agreement is intended to set forth the actions to be taken to effect a successful merger of the Parties and to ensure the orderly transfer of all duties, functions, and liabilities of each Party to the Merged District in a manner that assures the continuation of equivalent service and responsible administration and maintenance of facilities, and whereby all property within the boundaries of each Party is consolidated, as set forth in Title 32, within the boundaries of the Merged District.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties hereto as follows:

AGREEMENT

1. EFFECTIVE DATE. The Parties have determined that this Agreement, along with all of its terms and conditions, shall go into effect as of April 12, 2023 once approved by all Parties

("Effective Date").

2. CONTINGENCY. To the extent the effectuation of obligation or duty set forth in this Agreement requires further approval through judicial or electoral processes, or other future action by the Parties through their respective Boards of Directors, under the provisions of Part 6, Article 1, of Title 32, C.R.S., it is contingent upon obtaining such approvals.

3. PRE-CONSOLIDATION ACTIONS.

3.1. Administration.

3.1.1. Consolidation Resolution. As soon as is reasonably practical following execution of this Agreement by the Parties, the Board of Directors of Elk Creek shall adopt a consolidation resolution pursuant to Part 6, Article 1, Title 32, C.R.S., declaring that Inter-Canyon, Elk Creek, and North Fork are so situated that all such districts may operate effectively and economically as a consolidated district and that the public health, safety, prosperity, and general welfare of the inhabitants of Elk Creek will be better served by the consolidation of such districts. The consolidation resolution shall further set forth the name of the Merged District, that the Merged District shall provide all fire protection services, as set forth in Title 32, within the boundaries of the Merged District, that the board of the Merged District will have five (5) directors, any special conditions that may attach to the Merged District, and that Inter-Canyon and North Fork must approve the consolidation resolution by June 22, 2023 in order to be included within the proposed consolidated district.

3.1.2. Concurring Resolutions. As soon as is reasonably practical following Elk Creek's approval of the consolidation resolution, the Board of Directors of Inter-Canyon and North Fork shall approve a resolution concurring in the consolidation resolution. Upon approval of the concurring resolution, Inter-Canyon and North Fork shall promptly file their respective concurring resolutions with Elk Creek, but in any event no later than June 22, 2023.

3.1.3. Documentation and Prosecution. Except as otherwise provided herein, each Party shall produce all documentation necessary or desirable for the efficient completion of the Consolidation, including agreements, resolutions, notices, election materials (except to the extent prepared by the Clerk and Recorder), and property transfer documents.

3.1.4. Access to Records. Each Party shall grant unlimited access to its records to the other Parties, including but not limited to, all accounting records maintained either by a Party or any of its consultants. Where necessary, each Party, or its appropriate representatives connected therewith, shall execute such documents, provide such authorizations, and take such actions as are required to allow the full and unrestricted access contemplated by this section.

3.1.5. Costs. Each Party shall bear its own costs for taking part in and efficiently completing the Consolidation. However, the Parties agree to cooperate in good faith in identifying efficiencies and cost-savings in this process, where possible. In particular, the Parties agree to coordinate all court filings and election procedures, and to designate a single Designated Election Official to prosecute

the elections. The Parties may also consider using a single legal counsel to prepare documents necessary to complete the Consolidation following approval of this Agreement.

- 3.1.6. Timetable. The Parties agree, to the extent practicable, to jointly complete tasks as needed in order to fulfill the purposes of this Agreement in accordance with applicable law.

3.2. Document Production and Review.

- 3.2.1. Real Property and Equipment Inventory. On or before April 27, 2023, each Party shall prepare an inventory of its real property (including easements) and equipment, including as to each item of equipment, a general description, serial number, model number, current condition and expected remaining life, and a list of all security interests, if any, encumbering each item of equipment (the "Inventories"). The Inventories shall be shared with all Parties on or before April 27, 2023.
- 3.2.2. Fire Station Sites. On or before April 27, 2023, each Party shall ensure that title insurance for each fire station site shall be transferable to the Merged District as the successor entity to the Party owning the station. Furthermore, each Party shall disclose any material repairs or defects of any fire station site to the other Parties on or before April 27, 2023.
- 3.2.3. Employee Records. On or before April 27, 2023, each Party shall provide a list to the other Parties of all employees, including the employment and benefits status for each employee, copies of all employment contracts, if any, and a list of all volunteers.
- 3.2.4. Contracts. On or before April 27, 2023, each Party shall provide a list to the other Parties of all contracts entered into between one or more Parties and any other party, including all intergovernmental agreements. The Parties shall confer to determine what contracts should remain in place for the Merged District and what contracts should be terminated if the Consolidation is approved. Each Party agrees to provide prompt written notice to any and all of its public and private contractors of the termination of such contract or contracts, contingent upon and effective as of the date of the Consolidation. Should the terms of any contract between any Party and third parties not permit cancellation, the Party to such contract shall notify the other Parties.
- 3.2.5. Financial Audit. As close to the Effective Date as is possible, each Party shall provide the other Parties with its audit for fiscal year 2021. Furthermore, each Party shall provide the other Parties with its audit for fiscal year 2022 as soon as it is completed.
- 3.2.6. Pending Litigation. On or before April 27, 2023, each Party shall provide to the other Parties a list of any and all pending litigation or other administrative proceedings to which a Party is involved. Any new litigation following the Effective Date shall be disclosed as soon as is possible.
- 3.2.7. Technical Documents and Data. Each Party shall be entitled to inspect all

videos, maps, easements and all technical information relating to the other Parties' operations. Each Party hereby agrees to keep confidential all such information that is required to be kept confidential by the provisions of § 24-72-204, C.R.S.

- 3.2.8. Timing. Unless otherwise provided herein, all documents and information to be provided by the Parties pursuant to this Section 3.2 shall be provided to the other Parties as soon as is reasonably practical, but in no event later than April 27, 2023, unless the Parties agree otherwise.

4. MILL LEVY INCREASE. The Consolidation shall be contingent upon each Party's voters simultaneously approving a mill levy increase to ensure the Merged District can certify a mill levy of 16 mills to operate and meet the liabilities of the Merged District ("Mill Levy"). If the voters of one or more Parties do not approve the Mill Levy, the Consolidation shall not be effective and the Parties agree to work in good faith to determine whether to amend or terminate this Agreement in accordance with Section 8.

5. POST-CONSOLIDATION PROCEDURE. If a majority of the voters of each Party approve both the Consolidation measure and the Mill Levy, along with any other ballot measures determined to be necessary to complete the Consolidation, the following procedure shall be followed to finalize the Consolidation:

5.1. Organizational Board. The members of the Boards for each Party shall constitute the organizational board of the Merged District ("Organizational Board"). The Organizational Board shall remain as the Board of the Merged District until such time as the first board of the Merged District is selected as provided in section 5.3. The Organizational Board shall formally authorize the filing of the Petition as set forth in Section 5.2 confirming, among other things, that the Board of the Merged District shall be made up of five (5) Directors.

5.2. Petition for Order. On or before December 5, 2023, the Organizational Board shall file a Petition for Consolidation Order with the following information included, with the goal of having the Merged District and Initial Board appointed and operational as of January 1, 2024:

- 5.2.1. Name of the Merged District;
- 5.2.2. Names and addresses of the five (5) initial Directors of the Merged District;
- 5.2.3. Terms of the initial Directors in accordance with Sec. 32-1-603(2)(b), C.R.S., to ensure that terms are rotated with a 2-3 split;
- 5.2.4. Bond or blanket insurance coverage covering the faithful performance of the Directors in amounts of at least \$1,000 per Director and \$5,000 for the Treasurer, with proof of such coverage attached to the Petition.

5.3. Initial Board. The Districts shall discuss and agree on a selection process for the five (5) initial Directors of the Merged District on or before November 15, 2023.

5.4. Merged Board Elections. At the first regular special district election following the Consolidation (May 2025), two (2) of the initial Directors shall be up for election for a 4-year term. At the second regular special district election following Consolidation (May 2027), the remaining three (3) initial Directors shall be up for election for a 4-year term.

6. DISPOSITION OF ASSETS. Following court approval of the Consolidation and pursuant to Section 32-1-607(2), C.R.S., the Merged District shall immediately become the owner of and entitled to receive, hold, sue for, and collect all moneys, funds, taxes, levies, assessments, fees, and charges and all property and assets of any kind or nature owned, leased, or claimed by or due to any of the Parties. As set forth in Section 3, each Party shall take all steps reasonable and necessary to ensure the efficient transfer of assets as set forth above upon approval of the Consolidation.

7. FINANCIAL PLAN. Following court approval of the Consolidation, the Parties agree to implement the following financial plan:

7.1. Legal Proceedings. The Merged District will take all steps necessary to update pending litigation of any Party to reflect it as the real party in interest or successor entity to the Party that is involved in the pending litigation.

7.2. Liabilities. The Merged District will assume all of the liabilities of each Party that remain valid and outstanding at the time of the Consolidation.

7.3. Employee Retirement Plan/Volunteer Pension.

7.3.1. Paid Employee Retirement/Pension. Each Party shall take all necessary steps for allocation and transfer of all paid employee plan assets to the Merged District, pursuant to § 31-31-401(3), C.R.S. All paid firefighters shall be considered to be lateral transfers to the Merged District for purposes of the Fire and Police Pension Administration ("FPPA") death and disability policy only.

7.3.2. Volunteer Pension. Each Party will transfer all fund assets of their respective Volunteer Firefighter Pension Funds to the Merged District; provided, however, that each of the pension funds shall remain separate and shall not be commingled. As provided in § 31-30-1107, C.R.S., the Pension Board of Trustees will consist of seven (7) members selected from the Parties' current Pension Boards. The initial combined Pension Board shall consist of four (4) members of the Board of Directors established in Section 5.2 above, along with one (1) elected volunteer or retired volunteer from each Volunteer Pension Fund. Subsequent volunteer representation on the combined Pension Board shall continue with one (1) member of the North Fork Pension Fund, one (1) member of the Inter-Canyon Pension Fund, and one (1) member of the Elk Creek Pension Fund.

7.4. Employee Insurance. In addition to the foregoing, the Merged District shall administer, for the benefit of the employees of each Party, to the extent required by law, all health and insurance benefits, including but not limited to each individual employee's COBRA rights and benefits to which they may be entitled following the effective date of the Consolidation.

7.5. Employees. Upon a successful Consolidation election and court approval thereof, all employees of each Party will become employees of the Merged District subject to the Merged District's Rules and Regulations as of January 1, 2024.

7.6. Services. Upon a successful Consolidation election and court approval thereof, the Merged District shall provide service to the current service areas of each Party pursuant

to this Agreement.

8. TERMINATION. If the court approves the Consolidation, this Agreement shall terminate on the effective date of the court's order. In the event that the voters of one or more of the Parties do not approve the Consolidation, or related ballot measures, this Agreement shall remain in effect until such time as either Party provides thirty (30) days prior written notice of termination. If this Agreement continues in effect for purposes of instituting a subsequent merger process, the Parties shall amend this Agreement accordingly.

9. MISCELLANEOUS PROVISIONS. This Agreement shall be subject to the following miscellaneous provisions.

9.1. Notices. Any notice required hereunder shall be in writing and shall be sufficient if deposited in the United States mail, postage prepaid to:

Elk Creek Fire Protection District
Attn: Board President
P.O. Box 607
Conifer, CO 80433

Inter-Canyon Fire Protection District
Attn: Board President
7939 South Turkey Creek Road
Morrison, CO 80465

North Fork Fire Protection District
Attn: Board President
P.O. Box 183
Buffalo Creek, CO 80425

9.2. Consent. Whenever any provision of this Agreement requires consent or approval of the Parties, the same shall not be unreasonably withheld.

9.3. Amendments. This Agreement may only be amended in writing, as required, by the Parties in furtherance of the purposes of this Agreement.

9.4. Severability. In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions of this Agreement shall remain in full force and effect unless and until otherwise determined. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provision of the Agreement.

9.5. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties.

9.6. Assignment and Delegation. No party shall assign any of the rights or delegate any of the duties created by this Agreement without the written consent of the Parties.

9.7. No Third-Party Beneficiaries. This Agreement is made for the exclusive benefit of the Parties hereto and shall not be construed to be an agreement for the benefit of any third party or parties and no third party shall have a right of action hereunder for any cause

whatsoever.

- 9.8. Transfer Documentation. The Parties hereby agree to execute any and all leases, conveyances, amendments and any other documents necessary to effectuate the transfer of all assets and property.
- 9.9. Counterparts. This Agreement may be executed in several counterparts and as so executed, shall constitute one agreement, binding on all parties even though all parties have not signed the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages, which altogether contain the signatures of all the parties, shall be deemed a fully executed instrument for all purposes.

[Signature Page Follows]

DRAFT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed on the dates noted below.

ELK CREEK FIRE PROTECTION DISTRICT

By: _____
President

Dated: _____

ATTEST:

Secretary

INTER-CANYON FIRE PROTECTION DISTRICT

By: _____
President

Dated: _____

ATTEST:

Secretary

NORTH FORK FIRE PROTECTION DISTRICT

By: _____
President

Dated: _____

ATTEST:

Secretary