

Draft

**INTERGOVERNMENTAL AGREEMENT BETWEEN TETON COUNTY, IDAHO, CITY OF TETONIA, CITY OF DRIGGS, CITY OF VICTOR AND THE TETON COUNTY FIRE PROTECTION DISTRICT, CONCERNING THE COLLECTION, PAYMENT AND USE OF FIRE PROTECTION IMPACT FEE**

**THIS INTERGOVERNMENTAL AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and among Teton County, Idaho, City of Tetonina, City of Driggs, City of Victor (“County/City”) and Teton County Fire Protection District (“Fire District”), a special district of the State of Idaho.

**RECITALS**

**WHEREAS**, PURSUANT TO THE AUTHORITY GRANTED IN Section 67-8201, et seq., Idaho Code, the County/City may Impose Impact Fees to fund expenditures by the Fire District on Capital Improvements needed to serve new development; and

**WHEREAS**, the Board of Teton County Fire Commissioners retained BBC Research and Consulting, Inc. (“Consultant”) to analyze and assess new development projections for the period of 2012 to 2032 in order to determine the demand for Fire District Capital Improvements to accommodate new development within the Teton County Fire Protection District; and

**WHEREAS**, it is the desire of the County/City and Fire District to address growth, land use, infrastructure, service and fire protection issues in a coordinated and effective manner; and

**WHEREAS**, Teton County Fire Protection District Impact Fee Study and Capital Improvement Plan, prepared by BBC Research and Consulting, dated April 15, 2009 (“Impact Fee Study”), incorporated herein by reference, sets forth a reasonable methodology and analysis for determining and quantifying the impact of various types of new residential and nonresidential Development in the Fire District; quantifies the reasonable impact of new development on the established delivery system addressed therein; determines the costs necessary to meet demands created by new development; and determines Impact Fees as set forth in this Agreement that are at a level no greater than necessary to defray the cost of planned Capital Improvements to service capacity of the Fire District’s existing infrastructure; and

**WHEREAS**, the Fire District formed a Capital Improvement Plan Advisory Committee made up of one (1) appointed member by Teton County, an appointed member by each of the three (3) municipalities within the Fire District, and three (3) at-large members who were residents of the Fire District to review the Impact Fee Study and advise the Fire District; and

**WHEREAS**, the Board of Teton County Fire Commissioners have reviewed both the Impact Fee Study and Capital Improvement Plan, and the Summary of Impact Fee Advisory Committee’s Recommendation, and after careful study and a thorough discussion at an open public meeting have passed Teton County Fire Protection District Resolution Number 10-08, resolving to enter into Intergovernmental Agreements and other arrangements as are necessary to implement Impact Fees within the Fire District; and

**WHEREAS**, this Intergovernmental Agreement (“Agreement”) respects the autonomy of each City and the County to provide comprehensive planning and land use regulatory control within its jurisdiction; and

**WHEREAS**, this Agreement is not intended to, and does not alter or change the responsibilities of each party of the Agreement, nor does it relieve any party of any function, duty, or obligation otherwise imposed by law; and

**WHEREAS**, a copy of this Agreement, upon its execution by the parties hereto, shall be on file with the Clerk of the governing body of each Agency; and

**WHEREAS**, under Idaho law, including but not limited to Idaho Const. Art. XII Sect. 2, and Idaho Statutes Sect. 31-602, 31-604, 50-301, 67-2326, 67-2327, 67-2328, 67-2332, the Agencies are authorized to enter into this Intergovernmental Agreement; and

**WHEREAS**, this Intergovernmental Agreement specifies the duration, purpose, and methodology employed in carrying out the Agreement.

**NOW, THEREFORE**, in consideration of the Recitals stated above, and the mutual covenants and promises of the parties hereto, the receipt and sufficiency of which is acknowledged, the County/City and Fire District agree as follows:

## **SECTION 1.**

### **PURPOSE**

The purpose of this Agreement is to provide for the cooperative and uniform application of the Teton County Fire Protection District Capital Improvement Plan. County and City government participating in this Agreement, and by their ordinance, facilitate the Capital Improvement Plan of the Teton County Fire Protection District to plan for the future fire protection service demands of new development.

## SECTION 2.

### **IMPOSITION AND COLLECTION OF AN IMPACT FEE FOR FIRE PROTECTION SERVICES**

- 2.1 During the term of this Agreement, the County/City shall impose an impact fee for Fire Protection Services on each Lot (or other portion) of a Development or Building Site which shall be paid at the time of issuance of a Building Permit.
- 2.2 The County/City shall not issue a Building Permit, when subject to this Fire Protection Impact Fee, until the applicant provides proof of the applicant's payment of the impact fee.
- 2.3 Thy County/City may waive the applicable impact fee for Fire Protection Services on the development of "Low-Income" Housing, providing the County/City is waiving all other applicable impact fees.

## SECTION 3.

### **ADMINISTRATION AND EXPENDITURE OF FIRE PROTECTION SERVICE IMPACT FEE REVENUES**

- 3.1 When an impact fee for Fire Protection Services is paid to the County/City, such funds shall be transferred by the County/City to the Fire District within sixty (60) days following receipt of such funds, less two percent (2%) of the fee as an administrative fee to offset the County/City's cost of collecting and administering the impact fee. The County/City hereby appoints and designates the Fire District as the County/City's designee and agent for the purpose of administering and expending the impact fees for Fire Protection Services as provided herein.
- 3.2 Upon receipt, the Fire District shall deposit the County/City's impact fees for Fire Protection Services in an interest-bearing account identifying the lot, development activity and development approval for which the impact fee was collected and the associated category, account, or fund of capital expenditure for which such impact fee was imposed. Any interest or other income earned on moneys deposited in the interest-bearing account shall be credited to the account.
- 3.3 The Fire District shall use the County/City's impact fees for Fire Protection Services to fund, in combination with Fire District funds, the capital facilities necessary to provide the Fire Protection Services needed to serve the development, as contemplated by the Teton County Fire Protection District Impact Fee Study and Capital Improvement Plan, dated April 15, 2009, prepared by BBC Research &

Consulting, Inc., or any updated, amended or replacement analysis adopted by the Teton County Fire Protection District as recommended by the Capital Improvement Plan Advisory Committee, attached hereto as Exhibit 'A'.

- 3.4 The Fire District may only utilize the impact fee revenues for planning, preliminary architectural and engineering services, architectural and engineering design studies, land surveys, land acquisition, site improvements and off-site improvements associated with new or expanded facilities; the construction of buildings and other facilities; and the purchase of apparatus and equipment, including communications equipment, with an average useable life of at least five (5) years. No impact fees shall be used for periodic or routine maintenance of facilities and equipment, personnel costs, or operational expenses, or any purpose not otherwise authorized by Idaho Statute Sect. 67-8210.
- 3.5 In the event bonds or similar debt instruments are used to fund Fire Protection Service Capital Improvements necessary to provide Fire Protection Services to a development within the Teton County Fire Protection District prior to collecting the impact fees associated with the development as herein provided, once collected, the impact fees may be used to pay debt service on such bonds or similar debt instruments.
- 3.6 The Fire District shall account for all impact fees for Fire Protection Services collected pursuant to this Agreement in the manner required by Idaho Statute Sect. 67-8210 and other applicable law.
- 3.7 The Fire District shall establish and maintain a separate accounting system to ensure that all impact fees for Fire Protection Services administered by the Fire District pursuant to this Agreement are expended for the purposes set forth in this Agreement. Such monies shall be considered to be spent in the order collected, on a first-in/first-out basis, that is, the first impact fees paid shall be considered the first fees appropriated and expended. No less than annually, and more frequently as may be reasonably requested by the County/City, the Fire District shall provide the County/City an accounting of all impact fees collected, held and expended and otherwise administered by the District. The Fire District shall also provide to the County/City no later than December 1 of each year a report of anticipated expenditures of Fire Protection Services Impact Fees for the coming year.

## **SECTION 4.**

### **LIABILITY AND INDEMNIFICATION**

- 4.1 Any other provisions of this Agreement notwithstanding, if the County/City is required to make any refund of any impact fee for Fire Protection Services, the Fire District shall reimburse the County/City for the required refund. The Fire District shall indemnify, defend and hold the County/City harmless from and against any and all claims of liability arising from the County/City's implementation of this Agreement; or the administration and expenditure by the Fire District of any of Fire Protection Services impact fees.
- 4.2 Specifically, this indemnification shall include, but not be limited to, any legal action by any party contesting this Agreement or the Impact Fee Ordinance on the grounds of unconstitutionality, lack of authority, or preemption by State law. The Fire District shall also indemnify, defend and hold the County/City, and its officers, agents and employees, harmless from and against any and all claims arising from any breach or default in the performance of the obligations on the Fire District's part to be performed under the provisions of this Agreement, or arising from any intentional acts, negligence or omissions of the Fire District or any of its officers, agents, and employees. Such indemnification by the Fire District as provide in this Section shall include all costs, attorneys' fees, expenses and liabilities incurred in the defense of any claim or any action or proceeding brought on any such claim; provided, however, nothing contained herein waives or is intended to waive any protection that may be applicable to the Fire District under any rights, protections, immunities, defenses or limitations on liability provided by law, and subject to any applicable provisions of the Idaho Constitution and applicable laws. In the event the County/City is named as a party in any legal action, in consultation with the Fire District, the Fire District shall select legal counsel to represent the County/City in such Action.

## **SECTION 5.**

### **TERM OF AGREEMENT**

The term of this Agreement shall commence upon execution of this Agreement and shall continue until the Impact Fee Ordinance is repealed; provided, however, either party may terminate this Agreement upon giving at least ninety (90) days written notice of such intent to terminate to the other party. Upon termination, the Fire District shall promptly return to the County/City all impact fees for Fire Protection Services and interest accrued thereon that have not been expended on capital facilities under this agreement; and each party shall have no further obligations under this Agreement.

## **SECTION 6.**

### **REMEDIES**

- 6.1 Time is of the essence in this Agreement.
- 6.2 If a party violates or breaches or fails to keep or perform any covenant, agreement, term or condition of this Agreement at the time designated; or in the event a party is in default or in violation of a term of this Agreement for which no specific time is designated, and the default or violation continues or is not remedied within thirty (30) days after notice in writing is given by the non-breaching party shall be entitled to pursue all remedies available at law or in equity to enforce the terms of this Agreement, including the right of specific performance; provided, however, with respect to any default that cannot be cured within thirty (30) days, such legal remedies shall not be pursued if the breaching party takes all steps necessary to cure the default within such period and thereafter continuously exercises due diligence to cure the default.
- 6.3 The County/City shall use its best efforts to collect the impact fees for Fire Protection Services and to withhold building permit approvals until the impact fees are paid as provided in this Agreement; however, inadvertent failure to do so by the County/City shall not give rise to any liability by the County/City. The County/City's failure to collect the impact fees or the County/City's issuance of building permit approval without first receiving the impact fees shall not constitute a waiver of the County/City's authority to collect such fees. In such case, the non-collected impact fees shall remain valid obligations and the County/City and the Fire District shall cooperate to take such actions as are necessary to facilitate the collection of the same including, without limitation and to the extent legally permissible, suspending or revoking any permission to develop, construct, or build previously granted.

## **SECTION 7.**

### **NOTICES**

- 7.1 All notices that may be required or given pursuant to this Agreement by a party to the other, shall be deemed to have been fully given when made in writing and delivered in person or deposited in the United States first class mail.

## SECTION 8.

### MISCELLANEOUS PROVISIONS

- 8.1 This Agreement is expressly conditioned upon the continuance in force of the Impact Fee Ordinance. In the event the Impact Fee Ordinance is repealed or amended in a manner that is inconsistent with the terms of this Agreement, this Agreement shall terminate.
- 8.2 No modification or waiver of this Agreement or any covenant, condition or provision contained herein shall be valid unless in writing and duly executed by all parties.
- 8.3 This written Agreement embodies the whole Agreement between the parties and there are no inducements, promises, terms, conditions or other obligations made or entered into by the parties other than those contained herein.
- 8.4 This Agreement shall be binding upon the parties hereto, the respective successors or assigns, and may not be assigned by any party without the express written consent of the other party.
- 8.5 All terms contained in this Agreement are severable and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid term or condition is not contained herein.
- 8.6 The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, noticed, meetings and /or hearings pursuant to any law required to authorize their execution of this agreement have been made.
- 8.7 This Agreement may be amended from time to time by written Agreement duly authorized by all the parties to this agreement.
- 8.8 This agreement does not and shall not be deemed to confer upon or grant to any third party any right enforceable at law or equity arising out of any term, covenant, or condition herein or the breach thereof.
- 8.9 This Agreement, or a memorandum of this Agreement, may be recorded in the records of the Teton County Clerk and Recorder.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

Teton County Fire Protection District

By:

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Ruby Parsons, Chair of Board of Fire Commissioners

ATTEST:

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Bob Zombro, Secretary of Board of Fire Commissioners

Teton County, Idaho

By:

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Kathy Rinaldi, Chair of Board of Commissioners

ATTEST:

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Mary Lou Hansen, County Clerk

City Council of City of Tetonia

By:

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Gloria Hoopes, Mayor

ATTEST:

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Samantha Robles, City Clerk

City Council of City of Driggs

By:

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Dan Powers, Mayor

ATTEST:

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Sonnie Adams, City Clerk

City Council of City of Victor

By:

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Zachary Smith, Mayor

ATTEST:

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Craig Sherman, City Clerk

**Exhibit A**  
**Teton County Fire Protection District**  
**Impact Fee Study and Capital Improvement Plan,**  
**Final Report, April 15, 2009**  
**BBC Research & Consulting, Inc.**