

FIRE SERVICE EXPANSION AGREEMENT

1. PARTIES. The parties to this Fire Service Expansion Agreement (this "Agreement") are the Elk Creek Fire Protection District ("District") and Foothills Housing 1, LLC ("FH1"). This Agreement shall be immediately effective upon the date it is fully executed by the parties.

2. RECITALS AND PURPOSE. District is a Title 32 special district providing fire protection service within its boundaries. FH1 is a developer with a pending rezoning application before the Jefferson County Planning Commission, case number 20-111200RZ. The District cannot serve the development as proposed; however, FH1 has agreed to provide certain financial support to the District to support necessary equipment and personnel that will address the identified concerns that will allow the District to serve the development. The financial support is a necessary condition to the District being able to serve the development and, therefore, shall be memorialized, to the extent possible, as part of any potential development approval by Jefferson County, as well as in any service plan for any government entity that may become a successor to FH1 and/or any of its affiliates. In addition, FH1 acknowledges that, with or without this Agreement, the development must comply with all required codes, as approved by Jefferson County, including, but not limited to the 2018 International Fire Code with Amendments adopted by the District on April 11, 2019 and approved by Jefferson County on July 16, 2019, and any future fire code adopted by the District and approved by Jefferson County (the "Fire Code"). Therefore, this Agreement is in the mutual best interests of the parties and for the health and safety of the community. The purpose of this Agreement is to set forth the terms and conditions of the parties agreement and to establish the relationship between the parties. Accordingly, the parties covenant and agree to the following.

3. DEVELOPMENT. The development is proposed on a tract of land located in the Southwest Quarter of Section 13 and the Southeast Half of Section 14, Township 06 South, Range 71 West, of the 6th P.M., County Of Jefferson, State Of Colorado, containing approximately 47.1 Acres, as further described on **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property"). The Property is within the District's boundaries. This Agreement shall apply to any proposed development on the Property, including, but not limited to the development reflected in Jefferson County case number 20-111200RZ (the "Development")

4. CONDITIONS AND OBLIGATIONS OF DEVELOPER. FH1, for itself and any successors, heirs, or assigns, does hereby agree to the following obligations as express preconditions to the District being able to provide service to the Development, if the Development receives final approval from Jefferson County (final approval shall mean obtaining all required approvals and issuance of a building permit):

- a. Staffing and Training:
 - i. Beginning in the calendar year that the Development receives final approval from Jefferson County, within ninety (90) days of said approval and by every January 31 thereafter, FH1 shall annually pay the District the amounts listed in the following schedule to offset the cost of hiring three (3) new firefighters:
 1. Years 1 through 5: 75% of the then-current cost to the District of three (3) full-time firefighters;
 2. Years 6 through 8: 50% of the then-current cost to the District of three (3) full-time firefighters; and,
 3. Years 9 through 11: 25% of the then-current cost to the District of three (3) full-time firefighters.
 - ii. Within thirty (30) days of the Development receiving final approval from Jefferson County, FH1 shall pay the District \$4,500.00 to offset the cost of training new firefighters.

iii. Following receipt of the payment in year 1 required by Paragraph 4(a)(i)(1), all remaining payments from years 2 through 11 shall be reduced by the amount of property taxes actually received by the District from the Development.

b. Equipment: Within ninety (90) days of the Development receiving final approval from Jefferson County, FH1 shall pay the District the then-current market rate for the design and delivery of one (1) "quint" style fire engine, designed to meet the needs of the District, at the District's sole discretion. FH1's financial obligation for this Paragraph 4(b) shall not exceed One Million Five Hundred Thousand dollars (\$1,500,000.00).

c. Code Compliance: Along with all other applicable Jefferson County codes, FH1 shall ensure the Development meets all Fire Code requirements, as they currently exist and may be amended, including, but not limited to adequate fire flows for the Development.

5. DEVELOPMENT REVIEW. FH1 further agrees that this Agreement, and specifically the aforementioned conditions and obligations contained in Paragraph 4, shall be presented as a material condition of the Development during all relevant portions of the Jefferson County development review process.

6. ESCROW FUNDS. The District shall establish, in the name of the District, an escrow account to receive the financial obligations required for FH1 by this Agreement (the "Escrow Account"). If the Development receives rezoning approval from the Jefferson County Board of County Commissioners, FH1 shall make an initial deposit in the Escrow Account of One Hundred Thousand dollars (\$100,000.00) (the "First Deposit"), within thirty (30) days of the rezoning approval. If the Development receives site plan approval from the Jefferson County Board of County Commissioners, FH1 shall make a second deposit in the Escrow Account of One Hundred Thousand dollars (\$100,000.00) (the "Second Deposit"), within thirty (30) days of the site plan approval. Once deposited into the Escrow Account, the First Deposit and Second Deposit, respectively, shall be credited against the total equipment financial contribution required by FH1 under Paragraph 4(b) of this Agreement.

7. ACCEPTANCE AND RELEASE. FH1, for itself and any successors, heirs, or assigns, agrees that it has negotiated this Agreement in good faith and intends to be bound by its terms. FH1, for itself and any successors, heirs, or assigns, forever releases, waives, and discharges the District, and its directors, employees, volunteers, or assigns, from any and all claims related to the conditions and obligations of this Agreement. The aforementioned release shall not restrict any claims arising from the District defaulting under any term of this Agreement.

8. INDEMNIFICATION. FH1, for itself and any successor, heirs, or assigns, shall indemnify and hold harmless the District, and its directors, employees, volunteers, or assigns, from any and all third-party claims or causes of action which arise from or relate to the conditions and obligations undertaken by FH1 in this Agreement, and any acts or omissions related thereto.

9. DISTRICT OBLIGATIONS. Following execution of this Agreement, the District shall issue an updated "will-serve" letter for the Development, conditioned on full compliance with this Agreement. In addition, the District will not object to the Development in any public proceedings related to its possible approval; however, the District retains the right to raise or respond to any fire safety or emergency response concerns that are not contemplated by or covered by this Agreement, or that arise if there is a material change in the application, at any stage of the Development's review process. The District may object at any stage of the Development's review process if FH1 fails to abide by any requirements of this Agreement.

10. LEGAL RELATIONSHIP OF PARTIES. This Agreement shall not be deemed to create any partnership or joint venture or other enterprise between the parties. The parties shall remain separate entities for all purposes and neither party has the authority to bind the other party.

11. ALTERNATIVE DISPUTE RESOLUTION. In the event of any dispute or claim arising under or related to this Agreement, the parties shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbitrator Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the parties agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within 60 days following either party's written request therefore. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the local District Court of Jefferson County.

12. TERM. This Agreement shall commence upon execution and shall continue in full force and effect until all obligations in Paragraph 4 are fully and completely discharged to the satisfaction of the District.

13. ASSIGNMENT. The rights, duties and obligations of this Agreement are personal, and shall not be delegated or assigned by FH1 to any third party without the express written consent of the District, which shall not be unreasonably withheld, and presentation by FH1 of sufficient proof that the proposed assignee has the financial capability to meet the conditions and obligations of this Agreement, such proof to be determined in the District's sole discretion. The foregoing notwithstanding, if FH1 wishes to assign any of its duties or obligations of this Agreement to a governmental entity (i.e., metropolitan district), the following shall be express preconditions of such assignment: (i) all such proposed assigned duties and obligations are made express conditions of any service plan, or similar controlling document, of the governmental entity and included in the initial financial costs of establishing the new governmental entity; and (ii) the new governmental entity must be fully approved and formed with adequate funding available to meet the assigned obligations through specific designation in reserves, and shall not be subject to annual appropriation. Furthermore, the District may assign this Agreement to any successor entity which will provide fire service to the Development.

14. TABOR. All financial obligations of the District under this Agreement are contingent upon annual appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed to create a debt or multiple fiscal year financial obligation of the District, a pledge of the credit of the District, or a collection or payment guarantee by the District.

15. NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth below or otherwise provided by either party in writing. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

Elk Creek Fire Protection District
Attn: Chief Jacob N. Ware
PO Box 607
Conifer, CO 80433

Foothills Housing 1, LLC
Attn: Stuart Borne
3900 E. Mexico Ave., #300
Denver, CO 80210

Copy to:
Lyons Gaddis, PC
Attn: Adele Reester
PO Box 978
Longmont, CO 80502

16. NO THIRD-PARTY BENEFICIARIES. None of the terms, conditions or covenants set forth in this Agreement shall give or allow any claim, benefit or right of action by any third person not a party to this Agreement. Any person other than the parties to this Agreement who or which receive services or benefits under this Agreement shall be only an incidental beneficiary.

17. GOVERNING LAW AND VENUE. This Agreement shall be governed by the laws of the State of Colorado. Venue for any legal proceeding arising from or related to this Agreement shall be proper only in Jefferson County, Colorado.

18. GOVERNMENTAL IMMUNITY. No provision of this Agreement shall be construed as a contractual waiver, express or implied, of any immunities or defenses provided to the District by the Colorado Governmental Immunity Act, Section 24-10-101 and following, C.R.S., as amended, or any other applicable law.

19. ATTORNEYS' FEES. For any dispute arising from or related to this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs whether or not legal proceedings are instituted.

20. AUTHORITY. Each signatory to this Agreement certifies and agrees that they have the requisite legal authority to execute this Agreement and bind the respective entities to the obligations contained herein.

21. DRAFTING. Each party expressly agrees it had an equal chance to negotiate the terms of this Agreement and seek counsel as deemed necessary. As such, no provision of this Agreement shall be construed against either party as the drafter and, instead, this Agreement shall be interpreted in the manner most favorable to achieving its stated purposes.

22. WAIVER OF BREACH. The waiver or failure to act by any party following a breach of any provision or term of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

23. BINDING EFFECT. This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing contained in this provision shall be construed to permit the assignment of this Agreement except as otherwise specifically authorized herein. This Agreement shall be recorded in the real property records of Jefferson County and is intended to be a covenant running with the land described in Exhibit A.

24. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

25. SEVERABILITY. If any provision of this Agreement is deemed unenforceable or void by a court of competent jurisdiction, such provision shall be deemed severable and the remainder of this Agreement shall continue in full force and effect.

26. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

DATED: _____, 2021

FOOTHILLS HOUSING 1, LLC

Stuart Borne, Principal

DATED: _____, 2021

ELK CREEK FIRE PROTECTION DISTRICT

Board President

Attest:

Board Secretary

EXHIBIT A
(Development Plan and Legal Description of Property)