

CITY OF EVANS, COLORADO

ORDINANCE NO. 659-16

AN ORDINANCE AMENDING CHAPTER 3.20 OF THE EVANS MUNICIPAL CODE REGARDING IMPACT FEES TO IMPLEMENT THE INTERGOVERNMENTAL AGREEMENT ENTERED INTO BETWEEN THE CITY OF EVANS AND THE EVANS FIRE PROTECTION DISTRICT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES, ALSO KNOWN AS FIRE/RESCUE SERVICES IMPACT FEES

WHEREAS, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

WHEREAS, the Evans Fire Protection District provides emergency services, including fire and rescue services to the residents and visitors with the limits of the City of Evans; and

WHEREAS, the City of Evans has previously enacted a fire/rescue services impact fee as set forth in Chapter 3.20, along with other impact fees; and

WHEREAS, the Colorado legislature has recently adopted legislation clarifying the process and limitations of a municipality in assessing and collecting a fire/rescue services impact fee, sometimes referred to as an emergency services impact, for the use and benefit of a fire protection district, as reflected in Sections 32-1-1002(1)(d.6) and 29-20-104.5, of the Colorado Revised Statutes; and

WHEREAS, to implement the changes in the statute the City of Evans and the Fire Protection District have entered into a Intergovernmental Agreement For the Assessment, Collection, And Remittance of Emergency Services Impact Fees (“the IGA”); and

WHEREAS, pursuant to the provisions of the IGA, the City of Evans agreed, *inter alia*, to assess and collect a fire/rescue impact fee for the benefit of the Evans Fire Protection District and to remit those funds to the District in the manner set forth in the IGA, and

WHEREAS, the City Council, desires to implement the IGA through the adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:

1. Section 3.20.020 (C) in its current form which states as follows, reflects the results of the impact fee study conducted by Tischler/Bise and addressed in the IGA:

C. Fire Rescue Services Impact Fees

Single Unit	\$930 per housing unit
2+ Unit	\$726 per housing unit
Manufactured Home	\$723 per housing unit
Commercial	\$1.00 per square foot of floor area
Office/Institutional	\$0.39 per square foot of floor area
Industrial/Flex	\$0.25 per square foot of floor area

2. Section 3.20.102 is added providing in its entirety as follows:

3.20.102 Additional guidelines for fire/safety determinations

A. As part of the City’s development permit application process, the developer of any proposed new development within the Evans Fire Protection District boundaries shall confer with the District regarding whether, under the Impact Fee Schedule (or any updated impact Fee schedule), a Fire/Rescue Services Impact Fee is owed and, if owed, the amount of the Fee. The developer and the District may mutually determine whether an in-kind contribution will be made by the developer in lieu of paying a Fire/Rescue Services Impact Fee (“In-Kind Contribution”).

B. All Fire/Rescue Impact Fees collected by the City shall be paid to the District pursuant to the provisions of an agreement between the City and the District.

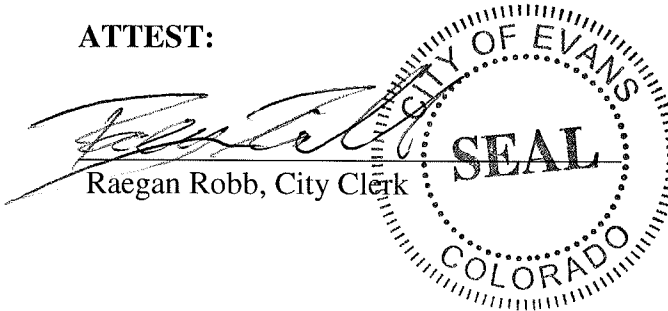
3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

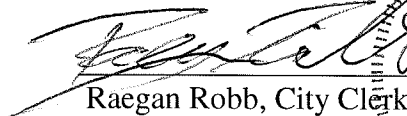
4. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

INTRODUCED, PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS THIS 15TH DAY OF NOVEMBER, 2016.

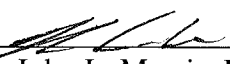
ATTEST:

CITY OF EVANS, COLORADO




Raegan Robb, City Clerk

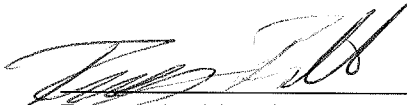
BY:


John L. Morris, Mayor


PASSED AND ADOPTED ON A SECOND READING 6TH DAY OF DECEMBER, 2016.

ATTEST:

CITY OF EVANS, COLORADO


Raegan Robb, City Clerk

BY:


John L. Morris, Mayor

**INTERGOVERNMENTAL AGREEMENT FOR THE
ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES
IMPACT FEES**

This INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES ("*Agreement*") is entered into by and between the City of Evans ("*City*") and the Evans Fire Protection District ("*District*"). The City and the District are referred to collectively as the "*Parties*" or individually as a "*Party*".

RECITALS

WHEREAS, the City is a home rule municipality of the State of Colorado ("*State*"), and the District is a political subdivision of the State organized pursuant to the Special District Act, C.R.S. § 32-1-101, *et seq.* The District was organized on November 9, 2011, following approval of its organization by the District's eligible electors at an election held on November 1, 2011. The District's boundaries and jurisdiction are wholly contained within the City's boundaries and jurisdiction;

WHEREAS, the District was organized to provide fire protection, rescue, and emergency services (collectively, "*Emergency Services*"), as well as other services, to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction. Prior to the District's organization, the City provided the Emergency Services through the City's Fire Rescue Department;

WHEREAS, historically, the City collected an Emergency Services impact fee on new development within the City in order to provide or assist in providing the financing required by it to acquire, develop, and maintain fire stations and other Capital Facilities ("*City Impact Fee*"). However, because the District now provides the Emergency Services to new development within the City, the City has determined that the City should cease collecting the City Impact Fee and, instead, that an Emergency Services impact fee should be assessed and collected pursuant to C.R.S. §§ 32-1-1002(1)(d.5) and the Impact Fee Act, C.R.S. § 29-20-104.5 ("*Act*") to defray the cost of Capital Facilities needed by the District to serve new development within the Parties' common jurisdictional boundaries ("*District Impact Fee*");

WHEREAS, the District obtained an Impact Fee Study dated September 1, 2016 to evaluate the nexus between new development within the District's jurisdictional boundaries and the projected impact that such development has on the District's Capital Facilities ("*Nexus Study*"). The Nexus Study recommended an Impact Fee schedule for both residential and non-residential development at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities ("*Impact Fee Schedule*");

WHEREAS, on October 24, 2016, the District's Board of Directors ("*Board*") adopted a Resolution approving the Impact Fee Schedule recommended by the Nexus Study. A copy of the approved Impact Fee Schedule is attached as Attachment 1; and,

WHEREAS, in accordance with C.R.S. § 29-20-104.5(2)(c), the Parties desire to enter into this Agreement to define the District Impact Fee, and the details of assessment, collection, and remittance, all in accordance with the requirements of the Act.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Definitions. In addition to the definitions provided elsewhere in this Agreement, the terms "***Development Permit***" and "***Capital Facility(ies)***" shall be defined as provided in the Act, including any amendments thereto.

2. Establishment of District Impact Fee.

a. The City agrees to impose the District Impact Fee on new development within the City in accordance with the Impact Fee Schedule attached as Attachment 1. The District Impact Fee shall be imposed on all new development for which a Development Permit application is submitted to the City on or after January 1, 2017.

b. The District anticipates that it will update the Nexus Study no less frequently than every seven years ("***Updated Nexus Study***"). If the Updated Nexus Study recommends any changes to the Impact Fee Schedule, then by September 1 of the then-current calendar year, the District Board shall, after considering such recommendations, adopt a Resolution approving an updated Impact Fee Schedule at a level no greater than necessary to defray the impacts of new development on the District's Capital Facilities ("***Updated Impact Fee Schedule***"). On or before September 10 of the then-current calendar year, the District shall submit to the City a copy of: (i) the Updated Impact Fee Schedule; (ii) the Resolution approving the Updated Impact Fee Schedule; and, (iii) the Updated Nexus Study. Unless the City objects to the Updated Impact Fee Schedule in accordance with Section 5 below, a copy of the Updated Impact Fee Schedule shall be attached to this Agreement as a new Attachment 1 and shall be effective January 1 of the following calendar year.

3. Procedures for Assessment, Collection, and Remittance.

a. As part of its Development Permit application process, the City shall require the developer of any proposed new development within the District's jurisdictional boundaries to confer with the District regarding whether, under the Impact Fee Schedule (or any Updated Impact Fee Schedule), a District Impact Fee is owed and, if owed, the amount of the District Impact Fee. The developer and the District may mutually determine whether an in-kind contribution will be made by the developer in lieu of paying a District Impact Fee ("***In-Kind Contribution***"). The developer and the District shall sign an Impact Fee Form that is substantially the same as the form attached as Attachment 2, stating one of the following: (i) a District Impact Fee is not owed; (ii) a District Impact Fee is owed and the amount of the District Impact Fee; or, (iii) the developer will make an In-Kind Contribution as described in the Impact Fee Form.

b. The developer shall submit the signed Impact Fee Form with the other documentation required by the City as part of the Development Permit application process.

c. If the City denies the Development Permit application, the developer shall not be required to pay a District Impact Fee or make an In-Kind Contribution to the District. If the

City grants the application and issues a Development Permit, the Development Permit shall require the developer to pay the District Impact Fee or to make the In-Kind Contribution to the District. The City shall promptly notify the District when it issues a Development Permit that requires the developer to pay a District Impact Fee or make an In-Kind Contribution to the District.

d. The City shall collect any District Impact Fee owed by the developer, and shall remit such District Impact Fee to the District as follows: Payments shall be made by the City to the District quarterly on or before April 30, July 31, October 31, and January 31 of each year. The payments for each quarter shall include all District Impact Fees received by the City at least 30 days prior to the payment date. Any In-Kind Contribution owed by the developer shall be made directly to the District, and the District shall promptly notify the City when it has accepted an In-Kind Contribution from the developer. The City shall not issue a building permit in connection with the new development until the developer has paid the District Impact Fee to the City, or the District has notified the City that the District accepted the In-Kind Contribution from the developer. For purposes of this paragraph 3(d), if an In-Kind Contribution to be made by the developer constitutes construction of improvements or apparatus, then "acceptance" shall mean a written agreement between the District and the developer for such construction.

e. No developer shall be required to provide any site-specific dedication or improvement to meet the same need for Capital Facilities for which the District Impact Fee is imposed, and no District Impact Fee shall be imposed on a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily contributed money for such other Capital Facility.

f. The District shall account for all District Impact Fees in accordance with Part 8 of Article 1 of Title 29, Colorado Revised Statutes.

4. Effective Date and Term. This Agreement is effective as of the date the last Party signs this Agreement, and shall continue in effect until terminated in accordance with its terms.

5. Termination.

(a) The Parties may at any time mutually agree in writing to terminate this Agreement.

(b) The District may at any time terminate this Agreement upon 30 calendar days prior written notice to the City.

(c) Within 30 calendar days of receiving an Updated Impact Fee Schedule and an Updated Nexus Study, the City may send the District written notice that it objects to the Updated Impact Fee Schedule. The Parties shall promptly meet to determine if they can agree upon a mutually acceptable Updated Impact Fee Schedule, or to continue the then-current Impact Fee Schedule. If the Parties are unable to agree upon a mutually acceptable Updated Impact Fee Schedule, or to continue the then-current Impact Fee Schedule, the City may terminate this Agreement upon 30 calendar days prior written notice to the District, and the City shall cease assessing the District Impact Fee as of the effective date this Agreement is terminated.

6. Default. If either Party defaults in its performance under this Agreement, the non-defaulting Party shall notify the defaulting Party of the default. The defaulting Party shall have the right to cure, or to make substantial efforts to cure, the default within 10 calendar days after the non-defaulting Party's notice of default is given. If the defaulting Party fails to cure, or to make substantial efforts to cure, the default within the 10 day period, the non-defaulting Party, at its option, may immediately terminate this Agreement or may elect to treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, then the non-defaulting Party shall have the right to bring an action for any remedy available to such Party in equity or at law; provided that any remedy of damages shall be limited to actual moneys owed and accrued interest.

7. Governmental Immunity. Nothing in this Agreement shall 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 under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

8. Entire Agreement. Except for that certain Intergovernmental Agreement for the Transfer of Emergency Services between the Parties ("**Transfer IGA**"), which shall remain in full force and effect, this Agreement is the entire Agreement between the Parties with respect to the matters covered by it, and supersedes any prior understanding or agreements, oral or written, with respect thereto. In the event of a conflict, however, between this Agreement and the Transfer IGA, the Transfer IGA shall control.

9. Notices and Requests. Any notice permitted or required by this Agreement shall be in writing and shall be hand-delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the following addresses. Notices are effective upon receipt.

City of Evans
Attn: City Manager
1100 37th Street
Evans, CO 80620

Evans Fire Protection District
Attn: Fire Chief
2100 37th Street
Evans, CO 80620

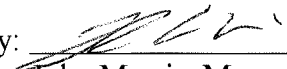
10. Miscellaneous. Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the Weld County District Court. This Agreement may be amended only by a document signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives and successors. Neither Party shall assign this Agreement. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.


[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF EVANS,
a Colorado municipal corporation

EVANS FIRE PROTECTION DISTRICT,
a political subdivision of the State of Colorado

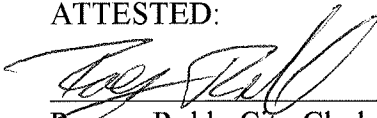
By: 
John Morris, Mayor

By: 
Mary Achziger, President

Date: 12-6-16

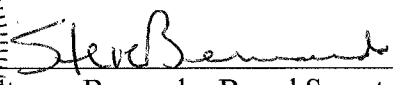
Date: 11-28-16

ATTESTED:


Raegan Robb, City Clerk



ATTESTED:


Steven Bernardo, Board Secretary

Attachment 1

EVANS FIRE PROTECTION DISTRICT
EMERGENCY SERVICES IMPACT FEE SCHEDULE
Effective January 1, 2017

Residential Units		Commercial Units	
<u>Unit Type</u>	<u>Fee Per Housing Unit</u>	<u>Land Use Type</u>	<u>Fee Per Square Foot of Floor Area</u>
Single Unit	\$930	Commercial	\$1.00
2+ Unit	\$726	Office/Institutional	\$0.39
Manufactured Home	\$723	Industrial/Flex	\$0.25

Attachment 2

**EVANS FIRE PROTECTION DISTRICT
IMPACT FEE FORM**

Developer Information			
Development Company		State of Incorporation	
Address			
Telephone		Fax	
Contact Person			
Name		Title	
Telephone		Cell Phone	
Email Address			
Development Information			
Name of Development		Location (Address or Cross Streets)	
Residential Units		Non-Residential Square Footage	
Single Units (\$930 per unit)		Commercial (\$1.00 per square foot)	
2+ Units (\$726 per unit)		Office/Industrial (\$0.39 per square foot)	
Manufactured Homes (\$723 per unit)		Industrial/Flex (\$0.25 per square foot)	
Impact Fee			
Check one: <input type="checkbox"/> No impact fee owed* or <input type="checkbox"/> Impact fee owed in the amount of \$ _____			
*No impact fee will be assessed if the amount of the impact fee would be less than that assessed on a manufactured home.			
If applicable: <input type="checkbox"/> An in-kind contribution will be made in lieu of paying an impact fee. Description of the in-kind contribution (attach additional information if necessary):			

The developer and the Evans Fire Protection District ("**District**") hereby attest that they conferred regarding whether, under the District's applicable Impact Fee Schedule: (a) an impact fee is owed in connection with the developer's proposed new development; (b) if owed, the amount of the impact fee; and, (c) whether the developer will make an in-kind contribution to the District instead of paying an impact fee.

The developer must submit this signed Impact Fee Form with the other documentation required by the City of Evans ("**City**") as part of its development permit application process. If the City denies the application, the developer is not required to pay the impact fee or make an in-kind contribution to the District. If the City grants the application and issues a development permit, the developer must pay the impact fee or make the in-kind contribution to the District within seven business days of the date the development permit is issued.

DEVELOPER:

EVANS FIRE PROTECTION DISTRICT:

By: _____

By: _____, Fire Chief

Date: _____

Date: _____

Attachment 2

FOR DISTRICT USE ONLY:

Impact fee in the amount of \$ _____ paid on _____, 20_____

or

In-kind contribution of (briefly describe) _____
made on _____, 20_____

District Signature: _____ Date: _____

Printed Name: _____