

Return to: City of Airway Heights  
Attn: City Clerk  
1208 South Lundstrom  
Airway Heights, WA 99001

INTERLOCAL AGREEMENT REGARDING ANNEXATIONS  
OF PORTIONS OF THE WEST PLAINS URBAN GROWTH AREA  
BETWEEN THE CITY OF AIRWAY HEIGHTS, SPOKANE COUNTY, AND  
SPOKANE COUNTY FIRE PROTECTION DISTRICT NO. 10

*11-0613*  
THIS AGREEMENT, made and entered into this 28<sup>th</sup> day of June,  
2011 (the "Effective Date") by and between the **City of Airway Heights**, a Washington  
municipal corporation, hereinafter "City", **Spokane County Fire Protection District No.  
10**, a municipal corporation, hereinafter "District," and **Spokane County**, a political  
subdivision of the State of Washington, hereinafter "County", jointly hereinafter referred to  
as the "parties."

WITNESSETH:

**WHEREAS**, Washington's legislature, pursuant to Engrossed Substitute Senate Bill  
5808 (codified in RCW 35A.14.480), and consistent with the regional cooperation  
envisioned and anticipated as a result of implementation of the Growth Management Act,  
Chapter 36.70A RCW ("GMA"), has authorized a new method of annexation referred to as  
the interlocal method of annexation ("Interlocal Method of Annexation");

**WHEREAS**, following consultation with the District, the City and the County,  
together with the City of Spokane, previously entered into an agreement titled "Interlocal  
Agreement Regarding Annexations of Portions of the West Plains Urban Growth Area  
Between the City of Spokane, the City of Airway Heights, and Spokane County"  
(hereinafter the "Interlocal"), a copy of which is attached hereto as Exhibit A and the terms  
of which are incorporated into this Agreement;

**WHEREAS**, the Interlocal contemplates the parties to this Agreement providing for  
annexation by the City of an area within the West Plains Annexation Area, as shown in

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Exhibit B, hereinafter the "AH Annexation Area," pursuant to the Interlocal Method of Annexation;

**WHEREAS**, as contemplated in the Interlocal, and in the spirit of regional cooperation and leadership, the parties have elected to provide for the City's annexation of the AH Annexation Area pursuant to the Interlocal Method of Annexation;

**WHEREAS**, the City and the District previously entered into an agreement titled "Spokane County Fire Protection District No. 10 City of Airway Heights Fire Department Mitigation Services Agreement", dated March 21, 2008, relating to annexations by the City of unincorporated areas served by the District ("Fire Services Agreement"), a copy of which is attached and incorporated herein as Exhibit C; and

**WHEREAS**, in June 2010, the City and the District jointly executed the "West Plains Annexation Area Operational Plan" (the "Fire Operation Plan") in anticipation of the City's annexation of portions of the West Plains Urban Growth Area currently lying within the boundaries of the District and setting forth service responsibilities before and after the effective date of the annexation, attached as Exhibit D.

**NOW, THEREFORE**, in consideration of the facts, recitals, and commitments set forth in the Interlocal and this Agreement, which the parties mutually agree constitute good and adequate consideration for the obligations of the parties set forth herein, the parties hereby agree as follows:

**SECTION NO. 1:    PURPOSE**

The purpose of this Agreement is to set forth certain agreements between the parties relating to the City's annexation of the AH Annexation Area, as described in Exhibit B (the "Annexation").

**SECTION NO. 2:    APPLICABILITY OF THIS AGREEMENT**

The parties agree that the provisions of this Agreement shall apply to the Annexation.

**SECTION NO. 3:    STATEMENT OF GOALS**

3.1    Transfer of revenues and assets between the District and the City. The transfer of revenues and assets between the District and the City shall be governed by the Fire Services Agreement, attached and incorporated herein as Exhibit C.

3.2    Level of Service. The District and the City have entered into a Fire Services Agreement, Exhibit C and the Fire Operation Plan, Exhibit D, intended to mitigate and prevent any negative impacts on the level of service within the Annexation Area and within those areas of the District lying outside of the Annexation area. The parties agree that the

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impact on fire protection and emergency medical services within the incorporated area will not be negatively impacted at least through the budget cycle in which the annexation occurs. The City agrees to cooperate and work with the District and the WSSRB to minimize negative impacts to the insurance rating in unincorporated area.

3.3 Division of assets and its impact on citizens inside and outside the Annexation Area. The City and the District agree that there will be no division of assets and no resulting impact on citizens living inside and/or outside of the AH Annexation Area.

3.4 Agreed upon schedule of public meetings within the Annexation Area for community involvement.

Two West Plains Informational Meetings on Cooperative Annexation Plans were held at the Hilton Gardens Inn located within the Annexation Area at 9015 W. State Route 2:

6/3/2009, 6:30 PM to 8:00 PM Hosted by County Commissioner Bonnie Maeger, City of Airway Heights Mayor Matthew Peterson, and City of Spokane Mayor Mary Verner, and

8/19/2009, 6:30 PM to 8:00 PM Hosted by County Commissioner Todd Mielke, City of Airway Heights Mayor Matthew Peterson, and City of Spokane Mayor Mary Verner.

In furtherance of this Agreement, the City will hold a public hearing on the Ordinance authorizing the annexation before the Airway Heights City Council at a time and date set forth in the City's official newspaper and website - "www.cawh.org". The City will further make available, through the City Clerk, documents and information that relates to the annexation of the AH Annexation Area.

3.5 Revenue sharing, if any.

3.5.1 District. Revenue sharing between the District and the City shall be governed by the Fire Services Agreement and Fire Operational Plan, attached and incorporated herein as Exhibits C and D. The District acknowledges revenue sharing payments under the Fire Services Agreement commence as of the date of the annexation (January 1, 2012).

3.5.2 County. In lieu of any type of annexation mitigation/revenue sharing between the City and County, the City agreed to postpone the Effective Date of the Annexation until January 1, 2012.

3.6 Debt distribution. There is no distribution or assumption of debt by or amongst the parties.

3.7 Capital facilities obligations of the City and District. The capital facilities obligations of the District and the City shall be governed by the Fire Services Agreement

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and Fire Operation Plan, attached and incorporated herein as Exhibits C and D. The District shall continue to have access to and the use of fire hydrants located within the Annexation Area and in areas immediately adjoining the Annexation Area.

3.8 Schedule or plan on the timing of the Annexation. The parties agree that the Annexation will have an effective date of January 1, 2012 (the "Effective Date of Annexation"). In the event there is any challenge which stays the effective date of the Annexation, the Effective Date of Annexation shall be extended until the stay is lifted.

3.9 The City's development regulations. Upon the Effective Date of Annexation, the City's Comprehensive Plan and implementing development regulations, as set forth in the Airway Heights Municipal Code, shall apply and be enforced within the Annexation Area.

#### **SECTION NO. 4: JOINT PLANNING**

4.1 Continued maintenance of infrastructure. The County shall continue to perform routine maintenance of County infrastructure, including streets, sewers, water, storm water, and similar public facilities within the Annexation Area until the Effective Date, as extended pursuant to Section 3.8 herein above.

4.2 Tax increment financing. The County shall obtain the written approval of the City, which the City may withhold for any reason, prior to creating any new or additional tax increment financing areas within the Annexation Area or any similar measures that result in the diversion of property and/or sales and use tax to finance public improvements.

4.3 Comprehensive Plan Amendments – Development Review.

4.3.1 Land Use Changes. The County shall not amend any use and/or zoning designations for properties within the boundaries of the AH Annexation Area without first providing written notice to the City and giving due consideration to written and verbal comments submitted timely by the City. Nor shall the County approve any text amendments to its comprehensive plan or related development regulations that would have the effect of allowing a change of use of property within the boundaries of the Annexation Area without first providing written notice to the City and giving due consideration to written and verbal comments timely submitted by the City.

4.3.2 Development Review Within Pending Annexation Area. The County shall process to completion any development for which it received a complete permit application and accompanying fee prior to the Effective Date of Annexation, except when early transfer of authority occurs as described in Subsection 4.3.5 below. "Completion" shall mean final administrative approvals and certifications to include extensions of time in the case of subdivisions, except in the case of legislative actions; in which case decisions will be made by the Board of County Commissioners or transferred to the City Council if annexation has occurred. Where the County continues to have jurisdiction, the County will

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confer with the City on all development review decisions affecting the pending Annexation Area.

4.3.3 Building Permits. Except when early transfer of authority occurs as described in Subsection 4.3.5 below, building, plumbing, mechanical, fuel gas residential, energy, and/or fire code permits issued by the County shall be processed by the County through final inspection and/or certificate of occupancy. Commercial building and residential permit applications, to include ancillary permits i.e. mechanical, plumbing, fire alarm, sprinkler, etc., such as where plan review fees have been paid shall be processed by the County through permit issuance, final inspection, and certificate of occupancy. The final inspection may be a joint City/County inspection, with the City being afforded the opportunity to be in attendance for information purposes. After the effective date of the annexation, the City and County may meet from time to time to review the status of all active projects in the annexation area remaining under review by the County and determine whether or not responsibility for continued processing should be transferred to the City. Any requested renewals of such applications shall be made to and administered by the City.

4.3.4 Code Enforcement. Upon request, the County will provide the City with information regarding any properties which are subject to pending County code enforcement action.

4.3.5 Early Transfer of Authority Authorized. It is the intent of the City and County to facilitate timely processing of development applications for properties that are located within the boundaries of the AH Annexation Area. When a property owner agrees, the County will, in writing, transfer review, permit-processing, and decision authority to the City for projects submitted prior to annexation. If annexation proceedings are delayed to such a degree that it is probable that development review would be completed prior to completion of the annexation, the City will return review and processing authority to the County to ensure continuous processing of development applications

4.3.6 Following Annexation. After January 1, 2012, the City Comprehensive Plan and Development Code, as amended, will govern the land use of the properties within the AH Annexation Area.

4.4 Outstanding bonds and special or improvement district assessments. All outstanding bonds will be due and payable by the issuing party. Special assessments remain the responsibility of the property owner.

4.5 Annexation procedures.

4.5.1 Boundary Review Board. Any time after the Effective Date of this Agreement, the City may file a notice of intention with the Spokane County Boundary Review Board ("BRB") indicating the City's intention to complete the Annexation. The

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parties acknowledge and agree that the jurisdiction of the BRB may not be invoked as described in RCW 36.93.100 for the Annexation described in this Agreement.

4.5.2 Notification of employees. To the extent required by RCW 35A.14.485, no later than 30 days after the Effective Date of this Agreement, the City and the District shall jointly inform District employees about hires, separations, terminations, and any other changes in employment that are a direct consequence of the Annexation, if any.

4.5.3 Ordinance. After providing the notices required in Sections 4.5.1 and 4.5.2 herein above, the City will adopt an ordinance annexing the Annexation Area. The ordinance shall make the Annexation effective on January 1, 2012.

4.5.4 Duty of Mutual Cooperation. None of the parties will attempt to invoke the jurisdiction of the BRB with respect to the Annexation. None of the parties shall protest, commence or maintain any action of any kind in any forum challenging the Annexation.

4.6 Financial and Administrative Services. Each party shall be responsible for its own financial and administrative services, except as otherwise set forth in the Fire Operational Plan.

4.7 Consultation with other service providers, including water-sewer districts, if applicable. See Section No. 5 below.

#### **SECTION NO. 5: PROVISION OF SERVICES**

Upon the Effective Date of Annexation, the City will provide a full range of urban governmental services to the AH Annexation Area supplemented by the District as provided in the Operational Plan, existing mutual aid agreements and state law. The City of Spokane will continue to provide water and sewer service unless agreed otherwise.

#### **SECTION NO. 6: DURATION OF AGREEMENT**

This Agreement shall be in effect for a period of five (5) years commencing on the Effective Date and terminating at midnight five years after the Effective Date, unless extended by mutual written agreement of the parties. The Duration of the Fire Services Agreement, Exhibit C and the Fire Operation Plan, Exhibit D shall be as defined in those documents and shall not be controlled or affected by the Duration of this Agreement.

#### **SECTION NO. 7: ADMINISTRATION**

The City hereby designates its City Manager as its representative for the purpose of implementing this Agreement. The District hereby designates its Fire Chief as its

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representative for the purpose of implementing this Agreement. The County hereby designates Chairperson of the Board of County Commissioners as its representative for purposes of implementing this Agreement.

## **SECTION NO. 8: DISPUTE RESOLUTION**

**MEDIATION AND ARBITRATION.** If any party has a claim or dispute under this Agreement, notice of the same shall be sent to the other party. The notice shall provide a brief description of the dispute.

Mediation. If the parties are unable to resolve the dispute within ten (10) business days, the parties shall engage a mediator to assist the parties in resolving the dispute. The mediator's fees and costs shall be equally shared by the parties.

Arbitration. If the parties cannot resolve their dispute through mediation, the exclusive remedy is binding arbitration in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that can be mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the parties and enforceable pursuant to RCW Chapter 7.04A. The prevailing party shall be entitled to payment of its attorney fees and costs.

For purposes of this Section 8, the terminology "parties" shall refer only to those parties actually involved in the dispute. Any party not involved in the dispute shall not be considered as one of the "parties".

## **SECTION NO. 9: DEFAULT**

The occurrence of the following event shall be an "Event of Default" under this Agreement:

Failure by the City, the District, or the County to perform, observe, or comply with the covenants, agreements, or conditions on its part contained in this Agreement where that failure continues for a period of thirty (30) days after written notice from the non-defaulting party.

## **SECTION NO. 10: REMEDIES**

Following an Event of Default, any party may commence the Dispute Resolution process set forth in Section 8.

## **SECTION NO. 11: NOTICE**

All notices shall be in writing and served on any of the parties either personally or by certified mail, return receipt requested, to the persons below designated as contact

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persons. Notices sent by certified mail shall be deemed served when deposited in the United State mail, postage prepaid.

CITY: City Manager  
1208 S. Lundstrom  
Airway Heights, Washington 99001

DISTRICT: Fire Chief, Spokane County Fire District 10  
929 South Garfield  
Airway Heights, WA 99001

COUNTY: Chairperson, Board of County Commissioners  
W. 1116 Broadway  
Spokane, Washington 99260

**SECTION NO. 12: AGREEMENT TO BE FILED**

The County shall file this Agreement with the County Auditor or, alternatively, list it on the County's website. The City shall file this Agreement with its City Clerk. The District shall file this Agreement the Secretary to the Board of Commissioners of the District.

**SECTION NO. 13: COMPLIANCE WITH LAWS**

The parties shall observe all applicable federal, state and local laws, ordinances and regulations in conjunction with meeting their respective obligations under the terms of this Agreement.

**SECTION NO. 14: VENUE STIPULATION**

The laws of the State of Washington shall be applicable to the construction and enforcement of this Agreement. Any action at law, suit in equity or judicial proceeding regarding this Agreement shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

**SECTION NO. 15: MODIFICATION**

No modification or amendment of this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as this present Agreement.

**SECTION NO. 16: WAIVER**

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No officer, employee, agent or otherwise of any party has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**SECTION NO. 17: ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties. The parties have read and understand all of this Agreement, and now state that no representation, promise or agreement not expressed in this Agreement has been made to induce any of them to execute it.

**SECTION NO. 18: HEADINGS**

The section headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections to which they pertain.

**SECTION NO. 19: SEVERABILITY**

In the event any portion of this Agreement should become invalid, or otherwise unenforceable, the rest of this Agreement shall remain in full force and effect.

**SECTION NO. 20: BINDING EFFECT**

The parties warrant that they have the full power and authority to execute and deliver this Agreement and to perform their respective obligations under this Agreement. This Agreement constitutes a valid and legally binding obligation of the parties and is enforceable in accordance with its provisions.

**SECTION NO. 21: TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement.

**SECTION NO. 22: RCW 39.34 REQUIRED CLAUSES.**

A. PURPOSE.

See Section No 1 above.

B. DURATION.

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See Section No. 6 above.

C. ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS.

No separate legal entity is necessary in conjunction with this Agreement.

D. RESPONSIBILITIES OF THE PARTIES.

See provisions above.

E. AGREEMENT TO BE FILED.

See Section No. 12 above.

F. FINANCING.

See Section No. 3 above.

G. TERMINATION.

See Section No. 6 above.

H. PROPERTY UPON TERMINATION.

Title to all property acquired by any party in the performance of this Agreement shall remain with the acquiring party upon termination of the Agreement.

**SECTION NO. 23: NO THIRD PARTY BENEFICIARIES**

Nothing in this Agreement is intended to give, or shall give, whether directly or indirectly, any benefit or right, greater than that enjoyed by the general public, to third persons.

**SECTION NO. 24: SURVIVAL**

Any Sections of this Agreement which by their sense and context are intended to survive shall survive any termination, expiration or determination of invalidity in whole or in part. The Fire Services Agreement, Exhibit C and Fire Operation Plan, Exhibit D, shall survive termination of this Agreement.

**SECTION NO. 25: COUNTERPARTS**

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This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

[Remainder of page initially left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on date and year opposite their respective signatures.

DATED: \_\_\_\_\_

CITY OF AIRWAY HEIGHTS

Albert Tripp  
Albert Tripp, City Manager

Attest:

Approved as to form:

Richard G. Cook  
Richard G. Cook, City Clerk

Stanley M. Schwartz  
Stanley M. Schwartz, City Attorney

SPOKANE COUNTY FIRE  
PROTECTION DISTRICT NO. 10

Attest:

Jean Krueger  
District Secretary

James M. McKeel  
Chair  
James M. McKeel  
Paul McBride  
Commissioner

absent  
Commissioner R.A. Foxworth



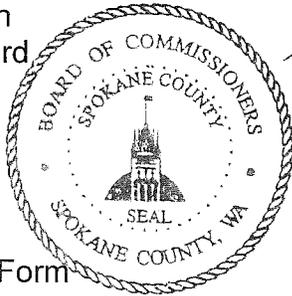
BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

Al French  
AL FRENCH, Chair

Attest:

*Daniela Erickson*

Daniela Erickson  
Clerk of the Board  
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*Mark Richard*  
MARK RICHARD, Commissioner

*Todd Mielke*

TODD MIELKE, Commissioner

Approved as to Form

*James Emacio*

James Emacio, Chief Civil Deputy  
Prosecuting Attorney



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Exhibit A

Interlocal Agreement Regarding Annexations of Portions of the West Plains Urban Growth Area Between the City of Spokane, the City of Airway Heights, and Spokane County

Return to: City of Spokane  
Attn: City Clerk  
808 W Spokane Falls Blvd  
Spokane, WA 99201

INTERLOCAL AGREEMENT REGARDING ANNEXATIONS  
OF PORTIONS OF THE WEST PLAINS URBAN GROWTH AREA  
BETWEEN THE CITY OF SPOKANE, THE CITY OF AIRWAY HEIGHTS,  
AND SPOKANE COUNTY. 2009-1093A

THIS AGREEMENT, made and entered into this 3rd day of December 2009 (the "Effective Date") by and between the City of Spokane, a Washington municipal corporation, hereinafter "Spokane", the City of Airway Heights, a Washington municipal corporation, hereinafter "Airway Heights," and Spokane County, a political subdivision of the State of Washington, hereinafter "County", jointly hereinafter referred to as the "parties."

WITNESSETH:

WHEREAS, Spokane and Airway Heights (hereinafter the "cities") previously entered into an agreement titled "City of Spokane and City of Airway Heights Memorandum of Understanding" (hereinafter the "MOU"), a copy of which (together with amendments thereto) is attached hereto as Exhibit A and the terms of which are incorporated into this Agreement; and

WHEREAS, the MOU contemplates the cities entering into an Interlocal Agreement providing for annexations by the cities within the West Plains Annexation Area, as shown in Exhibit B; and

WHEREAS, the MOU further anticipates that following the annexations contemplated therein, that the area depicted as the Spokane Annexation Area on Exhibit B shall be part of the City of Spokane and the area depicted as the Airway Heights Annexation Area on said exhibit shall be part of the City of Airway Heights; and

**WHEREAS**, the cities wish to further memorialize their intent as set forth in the MOU by entering into an interlocal agreement that requires both cities to engage in a cooperative annexation process that will ultimately result in the Spokane Annexation Area becoming part of the City of Spokane and the Airway Heights Annexation Area becoming part of the City of Airway Heights; and

**WHEREAS**, Washington's legislature, pursuant to Engrossed Substitute Senate Bill 5808 (codified in RCW 35.13.238), and consistent with the regional cooperation envisioned and anticipated as a result of implementation of the Growth Management Act, Chapter 36.70A RCW ("GMA"), has authorized a new method of annexation referred to as the interlocal method of annexation ("Interlocal Method of Annexation"); and

**WHEREAS**, in an effort to demonstrate regional cooperation and leadership, the parties have elected to pursue the respective annexations contemplated in this Agreement pursuant to the Interlocal Method of Annexation; and

**WHEREAS**, at the County's request, and in lieu of any type of annexation mitigation/revenue sharing between the cities and the County, the cities have agreed to postpone the effective date of the annexations contemplated herein until January 1, 2012; and

**NOW, THEREFORE**, in consideration of the facts and recitals set forth in the MOU and hereinabove, which are adopted herein and made a part of this Agreement and which the parties mutually agree constitute good and adequate consideration for the obligations of the parties set forth herein, the parties hereby agree as follows:

**SECTION NO. 1: PURPOSE**

The purpose of this Agreement is to set forth certain agreements between the parties relating to annexations by Spokane and Airway Heights within the West Plains Annexation Area.

**SECTION NO. 2: APPLICABILITY OF THIS AGREEMENT**

The parties agree that the provisions of this Agreement shall apply to annexations by the cities within the West Plains Annexation Area.

**SECTION NO. 3: ANNEXION PROCEDURES**

**3.1 Interlocal Method of Annexation.** Spokane and Airway Heights will pursue annexation of their respective annexation areas within the West Plains Annexation Area pursuant to the Interlocal Method of Annexation, as authorized by RCW 35.13.238 (the "Interlocal Method of Annexation"). Alternatively, the cities may jointly elect to pursue their respective annexations via the direct petition method of

annexation as authorized by RCW 35.13.125 *et seq* (the "Direct Petition Method of Annexation"). In either case, the County shall be bound by its commitments in this Agreement with respect to the annexations contemplated herein.

### **3.2 Annexation Process.**

**3.2.1 Notice.** The Interlocal Method of Annexation contemplates a city proposing to initiate an annexation of territory served by a fire protection district notifying the district and the county of its intentions and stating the city's interest in an interlocal agreement negotiation process. Within ten (10) days of the Effective Date, Spokane and Airway Heights will send notices that generally conform with Exhibit C. Spokane's notice shall be addressed to the Board of County Commissioners for Spokane County ("BOCC"), Spokane County Fire Protection District No. 10 ("District No. 10"), and Spokane County Fire Protection District No. 3, and shall state Spokane's interest to enter into an interlocal agreement negotiation process relating to Spokane's intention to annex the Spokane Annexation Area. Airway Heights' notice shall be addressed to the BOCC and District No. 10 and shall state Airway Heights' interest to enter into an interlocal agreement negotiation process relating to Airway Heights' intention to annex the Airway Heights Annexation Area.

**3.2.2 Fire District Response.** If any fire protection district having territory within the boundaries of the Spokane Annexation Area and/or Airway Heights Annexation Area timely objects or otherwise provides a negative response to either annexation proposal, the city receiving the negative response may abandon and terminate the Interlocal Method of Annexation with respect to its annexation and proceed to annex that city's respective annexation area (as identified in this Agreement) pursuant to the direct petition method of annexation under Chapter 35.13 RCW. A negative fire protection district response to one city's annexation shall not prejudice the right of the other city to proceed with its annexation pursuant to the Interlocal Method of Annexation. Once Spokane successfully annexes the Spokane Annexation Area, and if Airway Heights thereafter fails, for any reason, to complete its annexation of the Airway Heights Annexation Area with an effective date of January 1, 2012, Spokane shall, following its annexation of the Spokane Annexation Area, and following the exhaustion of any appeals relative to Airway Heights' annexation efforts, proceed to annex the Airway Heights Annexation Area pursuant to the direct petition method of annexation, subject to the requirements and limitation of Section 3.3 herein below regarding the parties adoption of companion resolutions providing for Airway Heights' annexation of the Airway Heights Annexation Area. The parties acknowledge and agree that Spokane may rely entirely on annexation covenants Spokane has collected over the years in exchange for providing sewer and water service to the West Plains Annexation Area.

**3.2.3 Interlocal Agreement.** Assuming no fire protection district has objected or otherwise provided a negative response to an annexation proposal, the city and/or cities (as the case may be depending upon whether one or both cities continue to

proceed under the Direct Petition Method of Annexation) and the County will negotiate interlocal agreements with the respective fire protection districts relating to the city's and/or cities' respective annexations, the terms of which shall be consistent with the requirements of RCW 35.13.238 and this Agreement ("Annexation Agreements"). The County hereby acknowledges and agrees to be a party to the Annexation Agreement(s) and will execute the same upon the request of either or both cities. Once the interlocal agreement negotiation process is complete, the city and/or cities shall thereafter submit a notice of intention to the Spokane County Boundary Review Board ("BRB"); provided, if all parties to the Annexation Agreements are in agreement regarding the boundaries of the territory proposed for annexation, the parties acknowledge and agree that the BRB may not invoke its jurisdiction with respect to the annexation contemplated in the Annexation Agreement(s). If, within ninety (90) days of the Effective Date of this Agreement, one or both of the cities is unable to finalize an Annexation Agreement that includes an agreement by the relevant fire protection district(s) regarding the enumerated goals as set forth in RCW 35.13.238(c)(2)(a); that city may abandon and terminate the Interlocal Method of Annexation and proceed to annex its respective annexation area as identified in this Agreement pursuant to the direct petition method.

**3.2.4 Fire District Employees.** Spokane and Airway Heights will seek fire district cooperation in providing the notification to fire district employees required by RCW 35.13.215(1).

**3.2.5 Annexation Ordinance.** Upon completion of the interlocal agreement negotiation process described in Section 3.2.3 above and execution of the Annexation Agreements, the city or cities shall prepare ordinances relating to each city's respective annexation and shall set public hearings on the ordinances as required by RCW 35.13.238. Each ordinance shall provide for an effective date of January 1, 2012.

**3.3 Direct Petition Method of Annexation.** Upon the abandonment of the Interlocal Method of Annexation by both cities per Section 3.2.2 and/or 3.2.3, Spokane will commence the annexation of the entire West Plains Annexation Area (including the Spokane Annexation Area and Airway Heights Annexation Area) as shown in Exhibit B pursuant to the Direct Petition Method of Annexation. The parties acknowledge and agree that Spokane may rely entirely on annexation covenants Spokane has collected over the years in exchange for providing sewer and water service to the West Plains Annexation Area. Following the successful completion of Spokane's annexation of the West Plains Annexation Area, Spokane and Airway Heights will execute companion resolutions, as authorized by RCW 35.10.217(2) and consistent with the process prescribed therein, providing for Airway Heights' annexation of the Airway Heights Annexation Area.

RCW 35.10.217(2) provides, in summary, the following: (a) the legislative body of a city may by resolution indicate its desire to be annexed to another city in whole or in part or the legislative body of a City proposing to annex part of another city may initiate the annexation by adopting a resolution stating that desire (the "First Resolution"); (b) the

annexation is effective if the other city adopts a resolution concurring in the annexation (the "Second Resolution"), unless owners of property in the area proposed to be annexed, equal in value to 60% or more of the assessed valuation of the property in the area, protest the proposed annexation in writing to the legislative body of the city proposing to annex the area, which terminates the process; with (c) the annexation potentially subject to review by the Boundary Review Board after adoption of the First Resolution. The Second Resolution may not be adopted until the proposed annexation has been approved by the BRB (if its jurisdiction is invoked). To further the purposes of this Agreement and to avoid frustration of the Parties' intent, and assuming Spokane has successfully annexed the entire West Plains Annexation Area, Spokane will within forty-five (45) days of successful annexation of the entire West Plains Annexation Area and exhaustion of appeal periods, adopt a First Resolution indicating its desire for Airway Heights to annex the Airway Heights Annexation Area. In the event Spokane fails to timely adopt said First Resolution, Spokane shall pay annually liquidated damages to the City of Airway Heights the greater of the stipulated sum of \$600,000.00 with such amount adjusted pursuant to the identified CPI index set forth in Section 4.2 or the total property and sale tax revenue received by Spokane from the Airway Heights Annexation Area less \$300,000, until such time as Airway Heights is able to annex the Airway Heights Annexation Area or for a period of seventeen (17) years, whichever shall first occur (the "Liquidated Damages Term"). If, following Spokane's adoption of a First Resolution, Airway Heights is thereafter unable to annex the Airway Heights Annexation Area, Spokane shall, following subsequent requests by Airway Heights initiated pursuant to RCW 35.10.217(2), concur with Airway Heights' efforts to annex the Airway Heights Annexation Area by adopting a Second Resolution within 45 days of receiving Airway Heights' request unless prevented from doing as a result of a BRB decision or a sufficient property owner protest pursuant to RCW 35.10.217(2); provided, Airway Heights shall bear all costs associated with providing required notices. A failure by Spokane to adopt a Second Resolution, unless prevented by law or order, shall result in the payment of liquidated damages to Airway Heights for the Liquidated Damages Term specified herein above. Provided; Spokane's obligation to adopt a Second Resolution shall expire upon its adoption of a total of five companion resolutions (including both First Resolutions and Second Resolutions) or seventeen (17) years from the Effective Date of this Agreement, whichever occurs first. Spokane and the County shall not protest the Airway Heights annexation commenced under RCW 35.10.217 or any other method. Spokane and Airway Heights agree that the above stipulated sum for liquidated damages is a reasonable amount with a precise measure of damages being difficult or incapable of precise computation.

The cities agree that, if Airway Heights is able to annex the Airway Heights Annexation Area, and if Spokane is unsuccessful in its efforts to annex the Spokane Annexation Area, the cities will cooperate to allow Spokane to leverage the annexation covenants that encumber property within the Airway Heights Annexation Area for a larger annexation of areas within the West Plains Urban Growth Area pursuant to the provisions of RCW 35.10.217(2)&(3) recognizing that the County's obligations under this Agreement are limited to annexations within the agreed upon West Plains Annexation Area.

**3.4 Duty of Mutual Cooperation.** None of the parties will invoke the jurisdiction of the BRB with respect to the annexations provided for in this Agreement. None of the parties shall commence or maintain any action of any kind in any forum challenging any of the annexations contemplated in this Agreement. Nor shall any party oppose or otherwise challenge Spokane's reliance on Annexation Covenants (and/or the validity of such covenants), whether before the Boundary Review Board, a Washington court, or any other forum, in the event the parties elect to proceed according to the Direct Petition Method of Annexation. The County's obligations under this Section 3.4 shall terminate on January 1, 2017.

**3.5 GMA Appeal.** Within ten (10) days of the Effective Date, Spokane and Airway Heights will enter a stipulated motion seeking dismissal of Case No. 09-1-0005 currently pending before the Growth Management Hearings Board for Eastern Washington.

#### **SECTION NO. 4: ALLOCATION OF SALES AND PROPERTY TAX REVENUE**

Spokane and Airway Heights have established a formula that will equitably compensate Spokane for revenue that will be lost due to Airway Heights' annexation of the Airway Heights Annexation Area.

**4.1 Term of Revenue Sharing.** The revenue sharing provisions of this Section 4 shall be in effect and continue for a term of seventeen (17) years, commencing on January 1, 2013 ("Commencement Date") and terminating on December 31, 2029 ("Termination Date"), unless otherwise agreed to by Spokane and Airway Heights according to the terms of this Agreement ("Term").

**4.2 Revenue Sharing Payment.** The annual revenue sharing payment by Airway Heights to Spokane shall be three hundred thousand dollars (\$300,000.00), adjusted annually as provided in this section ("Revenue Sharing Payment"). On January 1, 2013 and thereafter on or before January 30 of each year during the Term, Airway Heights shall pay to Spokane, without notice or demand, the Revenue Sharing Payment, addressed to the City Treasurer. Airway Heights shall make such payments to the City, without deduction or offset, no later than January 30 of each year of the Term. The Revenue Sharing Payment will be adjusted annually as of the anniversary date of the Commencement Date of this Agreement by using the Consumer Price Index for All Urban Consumers for the West urban area, 1982-84=100 (the "CPI"). If the stated index is discontinued, Spokane will use the index promulgated by the Department of Labor which in Spokane's opinion most closely approximates the above index, and the Revenue Sharing Payment will be adjusted accordingly. The latest available semi-annual CPI is 217.786 for the 1st half of 2009. Airway Heights shall be responsible for calculating the adjustment and shall, upon request, within thirty (30) days prior to each

anniversary date, provide Spokane with documentation pertaining to the calculated adjustment.

**4.3 Late Fee.** Airway Heights acknowledges that late payment by Airway Heights to Spokane of Revenue Sharing Payments due hereunder will cause Spokane to incur costs not contemplated by this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Those costs include, but are not limited to, processing expenses, and accounting expenses. In the event any amount so due is delinquent, Airway Heights shall pay Spokane a late charge, computed at the rate of the lesser of 1-1/2 % per month or the maximum rate permissible by law, upon the total amount so overdue and for each day following its due date that the payment is delinquent. Spokane's acceptance of less than the full amount of any payment due from Airway Heights shall not be deemed an accord and satisfaction or compromise of such payment unless Spokane specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Spokane claims.

**4.4 Contingencies.** The cities acknowledge and agree that the annexations contemplated under this Agreement may be subject to potential review by the Boundary Review Board ("BRB"), protest, and referendum.

4.4.1 Airway Heights' revenue sharing obligations hereunder are contingent upon Airway Heights' annexing all or any portion of the Airway Heights Annexation Area. If after exhausting all efforts to annex the Airway Heights Annexation Area as contemplated herein Airway Heights is prevented from annexing or otherwise unable to annex any portion thereof of the Airway Heights Annexation Area, its revenue sharing obligations under this Agreement shall terminate; provided, if Airway Heights thereafter annexes all or any portion of the Airway Heights Annexation Area within seventeen (17) years following the Effective Date of this Agreement, its revenue sharing obligations to Spokane hereunder shall apply with the seventeen- (17-) year revenue sharing Term commencing on the one-year anniversary of the effective date of such annexation.

4.4.2 Modification by the BRB of Airway Heights' proposal to annex the Airway Heights annexation area shall cause Spokane and Airway Heights to renegotiate, in good faith, the revenue sharing provisions of this Agreement which shall continue to apply during the Term – i.e., Airway Heights shall make the agreed upon Revenue Sharing Payment according to the terms of this Agreement unless and until the renegotiations result in a modification of said obligation.

4.4.3 If the cities pursue the Direct Petition Method of Annexation, and if, following Spokane's successful annexation of the West Plains Annexation Area, Airway Heights is unable to annex the Airway Heights Annexation

Area for any reason, the revenue sharing provisions of this Agreement shall terminate; provided, if Airway Heights thereafter annexes all or any portion of the Airway Heights Annexation Area within seventeen (17) years following the Effective Date of this Agreement, its revenue sharing obligations to Spokane hereunder shall apply with the seventeen- (17-) year revenue sharing Term commencing on the one-year anniversary of the effective date of such annexation.

4.4.4 Airway Heights' revenue sharing obligations under this Agreement are not contingent upon the outcome of Spokane's efforts to annex the Spokane Annexation Area or any portion thereof and shall continue regardless of the status of those efforts.

4.4.5 The parties acknowledge that until such time as the West Plains Annexation Area described in this Agreement (or a portion thereof) is annexed by one or both of the cities, the County will continue to provide the same services in said area or portion thereof that it provided prior to the initiation of the annexation(s) and will also continue to receive its regular share of revenues from said area.

**4.5 Fire District No. 10 Mitigation.** Under the Interlocal Method of Annexation, Spokane and Airway Heights will deal directly and independently with Fire District No. 10 with respect to the impacts of that annexation, if any. If it becomes necessary for Spokane to annex the Airway Heights Annexation Area (whether as part of a direct petition annexation of the entire West Plains Annexation Area as provided in Section 3.3 or in a subsequent direct petition annexation of the Airway Heights Annexation Area as provided in Section 3.2.2), and if the Airway Heights Annexation Area is subsequently annexed by Airway Heights pursuant to the process set forth in Section 3.3 above or otherwise, during the Term, Airway Heights shall also be responsible to reimburse Spokane for that portion of Spokane's mitigation payment to Spokane County Fire Protection District No. 10 (the "Fire District") attributable to the Airway Heights Annexation Area, if any, provided such payment to Spokane shall not exceed the amount nor extend beyond the term set forth in the "Spokane County Fire Protection District No. 10, City of Airway Heights, Fire Department Mitigation Services Agreement", dated March 21, 2008; provided further, a termination of said agreement and/or a determination that said agreement is invalid and/or unenforceable shall not excuse Airway Heights from its reimbursement obligations under this Section 4.5. No later than 30 days following the Commencement Date, and thereafter on or before the 30<sup>th</sup> day of each year during the Term, Airway Heights shall pay to Spokane, without notice or demand, such amounts as Spokane is obligated to pay to the Fire District due to Spokane's annexation of the Airway Heights Annexation Area, if any. Airway Heights shall make such payments to the City, without deduction or offset, no later than the 30<sup>th</sup> day of each year of the Term. If, for any reason, Airway Heights is unable to annex the Airway Heights Annexation Area, the reimbursement obligation in this Section 4.5 shall terminate;

provided, if following Spokane's annexation of the Airway Heights Annexation Area, Airway Heights is thereafter successful in annexing the area pursuant to the process set forth in RCW 35.10.217(2) within seventeen (17) years following the Effective Date of this Agreement, its reimbursement obligations under this Section 4.5 shall apply.

#### **SECTION NO. 5: PROVISION OF SERVICES**

If the cities pursue the Direct Petition Method of Annexation, upon approval of Spokane's annexation of the West Plains Annexation Area, Spokane will be responsible for providing full range of urban governmental services to entire annexation area pending Airway Heights' annexation of the Airway Heights Annexation Area. In this case, the cities will develop an interim agreement to allocate responsibility for service provision pending completion of Airway Heights' annexation of Airway Heights Annexation Area.

Both cities are committed to working with each other and with each city's respective bargaining units towards alternative models for providing essential services (and primarily fire protection) in a manner that is more cost effective for residents and tax payers.

#### **SECTION NO. 6: UTILITY SERVICE IN JOINT PLANNING AREA**

Spokane will continue to provide sewer and water service to the Airway Heights Annexation Area, subject to Spokane plans, ordinances, and resolutions. Without limiting the generality of the foregoing, the cities specifically acknowledge and agree that Spokane may impose its utility tax on services provided by Spokane to the Airway Heights Annexation Area. Unless expressly stated herein, nothing in this Agreement shall be deemed to modify the terms of any existing water or sewer service agreements between the parties. Nor shall this Agreement be deemed to impose a duty on Spokane to provide services, Spokane reserving the right to condition the provision of services consistent with Spokane's Comprehensive Plan, ordinances, policies, and municipal code provisions relating to the provision of services beyond Spokane's corporate limits.

#### **SECTION NO. 7: PROTECTION OF ESSENTIAL PUBLIC FACILITIES**

Spokane, Airway Heights and the County acknowledge and agree that the Spokane International Airport and Fairchild Air Force Base are two of the region's most essential public facilities and that the parties should discourage development adjacent to either facility that is incompatible with the facilities' operational needs and/or its ability to carry out its current and/or future missions ("incompatible development"). The term "incompatible development" means permitted land uses that are inconsistent with the Fairchild Air Force Base Joint Land Use Study ("JLUS"), WSDOT Aviation Division Regulations, FAA Regulations, state statutes or regulations. If any party discovers that

an existing comprehensive plan or development regulation does not discourage incompatible development, said party shall take action to amend its comprehensive plan and/or development regulation consistent with the requirements of RCW 36.70.547. Prior to amending its development regulations in a manner that may affect property in the vicinity of either facility, notice shall be provided to (i) the other parties; (ii) the Fairchild Air Force Base commander; and (iii) the Director of the Spokane International Airport. Said notice shall request written recommendations and supporting facts opposing the proposed development regulation or amendment. The notice shall provide sixty days for a response. If there is no response within said 60 days, the party may presume that implementation of the proposed development regulations or amendment will not have any adverse effect on the operation of the facility.

Following execution of the Agreement, the parties shall take action to adopt regulations that prevent incompatible development.

#### **SECTION NO. 8: ADMINISTRATION**

Spokane hereby designates its City Administrator as its representative for the purpose of implementing this Agreement. Airway Heights hereby designates its City Manager as its representative for the purpose of implementing this Agreement. The County hereby designates Chairperson of the Board of County Commissioners as its representative for purposes of implementing this Agreement.

#### **SECTION NO. 9: DISPUTE RESOLUTION**

**MEDIATION AND ARBITRATION.** If any party has a claim or dispute under this Agreement, notice of the same shall be sent to the other party. The notice shall provide a brief description of the dispute.

Mediation. If the parties are unable to resolve the dispute within ten (10) business days, the parties shall engage a mediator to assist the parties in resolving the dispute. The mediator's fees and costs shall be equally shared by the parties.

Arbitration. If the parties cannot resolve their dispute through mediation, the exclusive remedy is binding arbitration in accordance with the JAMS Arbitration Rules or by an Alternate Dispute Resolution Process that can be mutually agreed upon. The arbitrator's fees and costs shall be equally shared. The arbitrator's decision shall be final, binding on the parties and enforceable pursuant to RCW Chapter 7.04A. The prevailing party shall be entitled to payment of its attorney fees and costs.

For purposes of this Section 9, the terminology "parties" shall refer only to those parties actually involved in the dispute. Any party not involved in the dispute shall not be considered as one of the "parties".

**SECTION NO. 10: TERMINATION**

This Agreement may be terminated at any time by mutual written consent of the parties. The County's obligations under this Agreement shall terminate upon the earlier of successful completion of the annexations contemplated in this Agreement or January 1, 2017, except as extended by the provisions of Section 13 herein below.

**SECTION NO. 11: CONTINUED MAINTENANCE OF INFRASTRUCTURE**

The County shall continue to perform routine maintenance of County infrastructure, including streets, sewers, water, storm water, and similar public facilities within the West Plains Annexation Area until the effective date of the annexations contemplated herein.

**SECTION NO. 12: TAX INCREMENT FINANCING**

The County shall obtain the written approval of Spokane and Airway Heights, which either city may withhold for any reason, prior to creating any new or additional tax increment financing areas within the West Plains Annexation Area or any similar measures that result in the diversion of property and/or sales and use tax to finance public improvements.

**SECTION NO. 13: COMPREHENSIVE PLAN AMENDMENTS – DEVELOPMENT REVIEW**

In the event there is any challenge of which stays the effective date of the annexations contemplated by either or both cities, then the January 1, 2012 date referenced in subsections 13.2, 13.3, and 13.4 shall be extended until the stay is lifted. Provided further if there is any challenge in court to either or both of the annexations which is successful, then the obligation under this Section shall be null and void as to any successful legal challenge.

**13.1 Land Use Changes.** The County shall not amend any use and/or zoning designations for properties within the boundaries of the West Plains Annexation Area without first providing written notice to both cities and giving due consideration to written and verbal comments submitted timely by the cities. Nor shall the County approve any text amendments to its comprehensive plan or related development regulations that would have the effect of allowing a change of use of property within the boundaries of the West Plains Annexation Area without first providing written notice to both cities and giving due consideration to written and verbal comments timely submitted by the cities.

**13.2 Development Review Within Pending Annexation Areas.** The County shall process to completion any development for which it received a complete permit application and accompanying fee prior to January 1, 2012, except when early transfer of authority occurs as described in Subsection 13.5 below. "Completion" shall mean final

administrative approvals and certifications to include extensions of time in the case of subdivisions, except in the case of legislative actions; in which case decisions will be made by the Board of County Commissioners or transferred to the City Council if annexation has occurred. Where the County continues to have jurisdiction, the County will confer with the cities on all development review decisions affecting the pending annexation area(s).

**13.3 Building Permits.** Except when early transfer of authority occurs as described in Subsection 13.5 below, building, plumbing, mechanical, fuel gas residential, energy, and/or fire code permits issued by the County shall be processed by the County through final inspection and/or certificate of occupancy. Commercial building and residential permit applications, to include ancillary permits i.e. mechanical, plumbing, fire alarm, sprinkler, etc., such as where plan review fees have been paid shall be processed by the County through permit issuance, final inspection, and certificate of occupancy. The final inspection may be a joint City/County inspection, with the city being afforded the opportunity to be in attendance for information purposes. After the effective date of the annexation, the cities and County may meet from time to time to review the status of all active projects in the annexation area remaining under review by the County and determine whether or not responsibility for continued processing should be transferred to the city. Any requested renewals of such applications shall be made to and administered by the city.

**13.4 Code Enforcement.** Upon request, the County will provide the cities with information regarding any properties which are subject to pending County code enforcement action.

**13.5 Early Transfer of Authority Authorized.** It is the intent of the parties to facilitate timely processing of development applications for properties that are located within the boundaries of the West Plains Annexation Area. When a property owner agrees, the County will, in writing, transfer review, permit—processing, and decision authority to the city for projects submitted prior to annexation. If annexation proceedings are delayed to such a degree that it is probable that development review would be completed prior to completion of the annexation, the city will return review and processing authority to the County to ensure continuous processing of development applications

#### **SECTION NO. 14: DEFAULT**

The occurrence of any one or more of the following events shall be an "Event of Default" under this Agreement:

14.1 Failure by either Spokane, Airway Heights, or the County to perform, observe, or comply with the covenants, agreements, or conditions on its part contained in this Agreement, other than the making of any payment required hereunder, where that failure continues for a period of thirty (30) days after written notice from the non-defaulting party; or

14.2 Failure by Airway Heights to make any Revenue Sharing Payment when due.

**SECTION NO. 15: REMEDIES**

Following an Event of Default, other than the making of or failure to make any payment required hereunder, any party may commence the Dispute Resolution process set forth in Section 9. Following an Event of Default involving the making of or failure to make any payment required hereunder, the non-defaulting party may at any time, without waiving or limiting any other right or remedy, pursue any remedy allowed by law including, by way of example and without limitation, specific performance, declaratory judgment, and other equitable remedies, and recovery of attorneys' fees and other costs for such enforcement action.

**SECTION NO. 16: NOTICE**

All notices shall be in writing and served on any of the PARTIES either personally or by certified mail, return receipt requested, to the persons below designated as contact persons. Notices sent by certified mail shall be deemed served when deposited in the United State mail, postage prepaid.

SPOKANE: City Administrator or his/her authorized representative  
808 West Spokane Falls Blvd  
Spokane, Washington 99201

AIRWAY HEIGHTS: City Manager or his/her authorized representative  
1208 Lundstrom  
Airway Heights, Washington 99001

COUNTY: Chairperson, Board of County Commissioners  
W. 1116 Broadway  
Spokane, Washington 99260

**SECTION NO. 17: AGREEMENT TO BE FILED**

The County shall file this Agreement with the County Auditor. Spokane shall file this Agreement with its City Clerk. Airway Heights shall file this Agreement with its City Clerk.

**SECTION NO. 18: COMPLIANCE WITH LAWS**

The parties shall observe all applicable federal, state and local laws, ordinances and regulations in conjunction with meeting their respective obligations under the terms of this Agreement.

**SECTION NO. 19: VENUE STIPULATION**

The laws of the State of Washington shall be applicable to the construction and enforcement of this Agreement. Any action at law, suit in equity or judicial proceeding regarding this Agreement shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

**SECTION NO. 20: MODIFICATION**

No modification or amendment of this Agreement shall be valid until the same is reduced to writing and executed with the same formalities as this present Agreement; provided, upon termination of the County's obligations as provided in Section 10 above, the County's signature shall not be required to amend this Agreement.

**SECTION NO. 21: WAIVER**

No officer, employee, agent or otherwise of any party has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**SECTION NO. 22: ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties. The parties have read and understand all of this Agreement, and now state that no representation, promise or agreement not expressed in this Agreement has been made to induce any of them to execute it.

**SECTION NO. 23: HEADINGS**

The section headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, define, limit or extend the scope or intent of the sections to which they pertain.

**SECTION NO. 24: SEVERABILITY**

In the event any portion of this Agreement should become invalid, or otherwise unenforceable, the rest of this Agreement shall remain in full force and effect.

**SECTION NO. 25: BINDING EFFECT**

Both parties warrant that they have the full power and authority to execute and deliver this Agreement and to perform their respective obligations under this Agreement. This Agreement constitutes a valid and legally binding obligation of both parties and is enforceable in accordance with its provisions.

**SECTION NO. 26: TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement.

**SECTION NO. 27: RCW 39.34 REQUIRED CLAUSES.**

A. PURPOSE.

See Section No 1 above.

B. DURATION.

See Section No. 10 above.

C. ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS.

No separate legal entity is necessary in conjunction with this Agreement.

D. RESPONSIBILITIES OF THE PARTIES.

See provisions above.

E. AGREEMENT TO BE FILED.

See Section No. 17 above.

F. FINANCING.

See Section No. 4 above.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on date and year opposite their respective signatures.

DATED: \_\_\_\_\_



CITY OF SPOKANE

By: [Signature]  
Its: Thomas E. Danel, Jr.

City Administrator  
City of Spokane

Approved as to form.

Attest:

[Signature]  
City Clerk

[Signature]  
Assistant City Attorney

CITY OF AIRWAY HEIGHTS

By: Allen Tapp  
Its: City Manager

Approved as to form:

Attest:

Richard G Cook  
City Clerk

[Signature]  
City Attorney



BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

Todd Mielke  
TODD MIELKE, Chair

ATTEST:

Daniela Erickson  
Daniela Erickson  
Clerk of the Board

1/5/2010

[Signature]  
MARK RICHARD, Vice Chair

[Signature]  
BONNIE MAGER, Commissioner

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Exhibit A

Memorandum of Understanding

Exhibit B

Map of West Plains Annexation Area,  
Spokane Annexation Area, & Airway Heights Annexation Area

Exhibit C

Form of Notice to County and Fire Protection Districts

Re: NOTICE OF REQUEST TO ENTER INTO ANNEXATION INTERLOCAL AGREEMENT NEGOTIATION PROCESS

Dear \_\_\_\_\_:

The elected leaders of the City of Spokane, City of Airway Heights, and Spokane County recently completed negotiations regarding the cities' plans to annex certain territory located within the West Plains Urban Growth Area. A copy of an agreement approved by all three governments is enclosed ("Revenue Sharing Agreement").

Please be advised that, pursuant to RCW 35.13.238, the City of [Spokane or Airway Heights] hereby requests Spokane County's and Spokane County Fire Protection District No. [10's and 3's] participation in an interlocal agreement negotiation process relating to the City of [Spokane's or Airway Heights'] intention to annex certain portions of the West Plains Urban Growth Area, identified as the ["Spokane Annexation Area" or "Airway Heights Annexation Area"] in the enclosed map. Pursuant to RCW 35.13.238, you have forty-five (45) days to respond to this request in the affirmative or negative. A negative response must state the reasons you do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period will be deemed an affirmative response and the interlocal negotiation process will proceed.

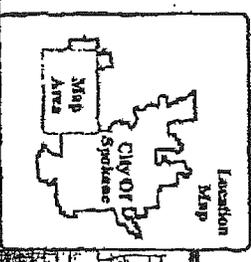
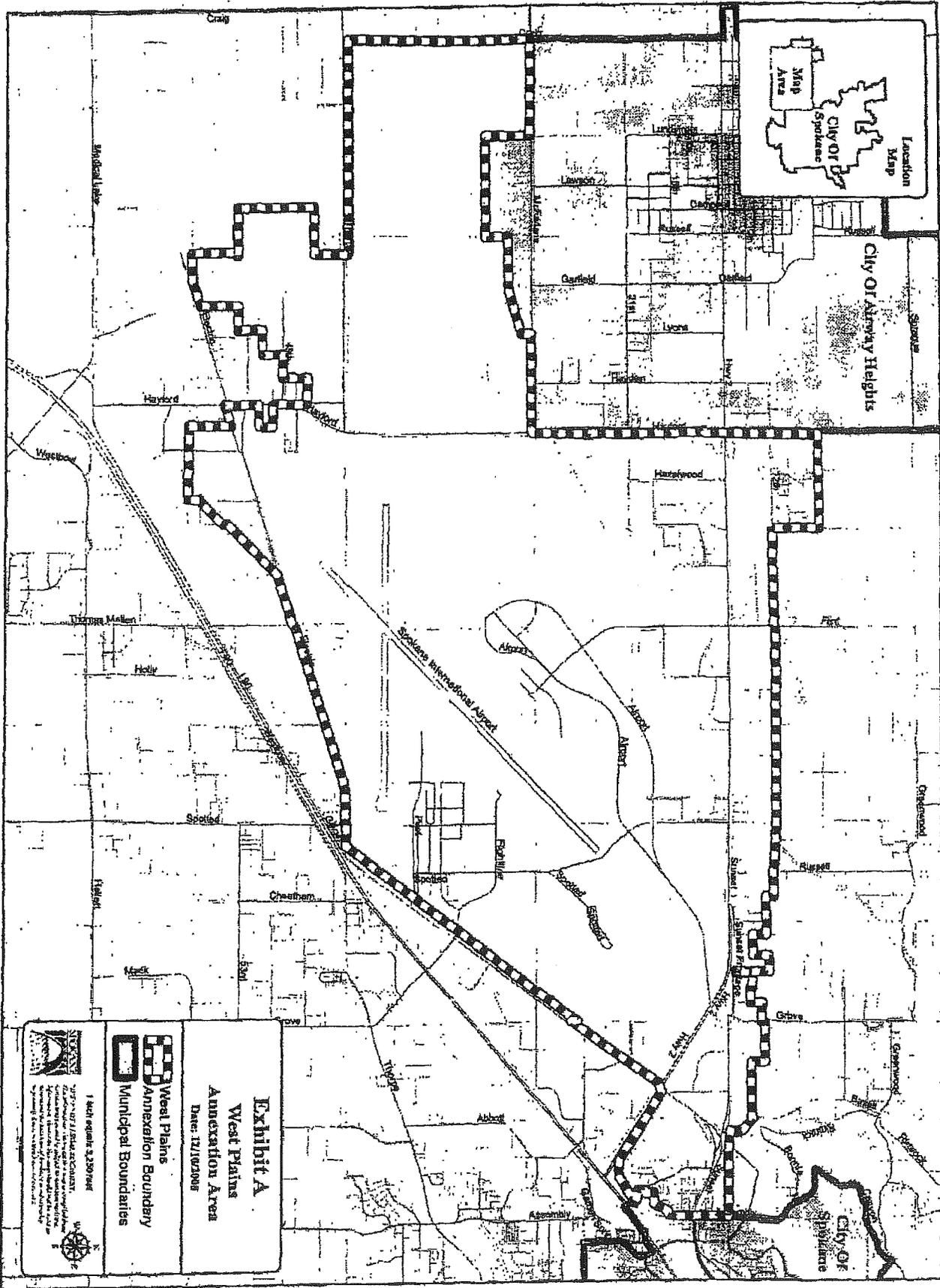
Thank you for your attention to this notice. Please feel free to call if you have any questions or concerns. We look forward to a productive negotiation resulting in a mutually agreeable interlocal agreement that is consistent with the provisions of RCW 35.13.238.

Very truly yours,

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Exhibit A

Map of West Plains Annexation Area



**Exhibit A**  
**West Plains**  
**Annexation Area**  
 Date: 12/10/2015

West Plains  
 Annexation Boundary  
 Municipal Boundaries

1 inch equals 3,200 feet

NOV 2015

75% AUSTIN AREA ASSOCIATES, L.P.  
 10000 N. Highway 100, Suite 100, Alton, MO 64601  
 Phone: 660-222-1111  
 Fax: 660-222-1112  
 www.austinasociates.com

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Exhibit B

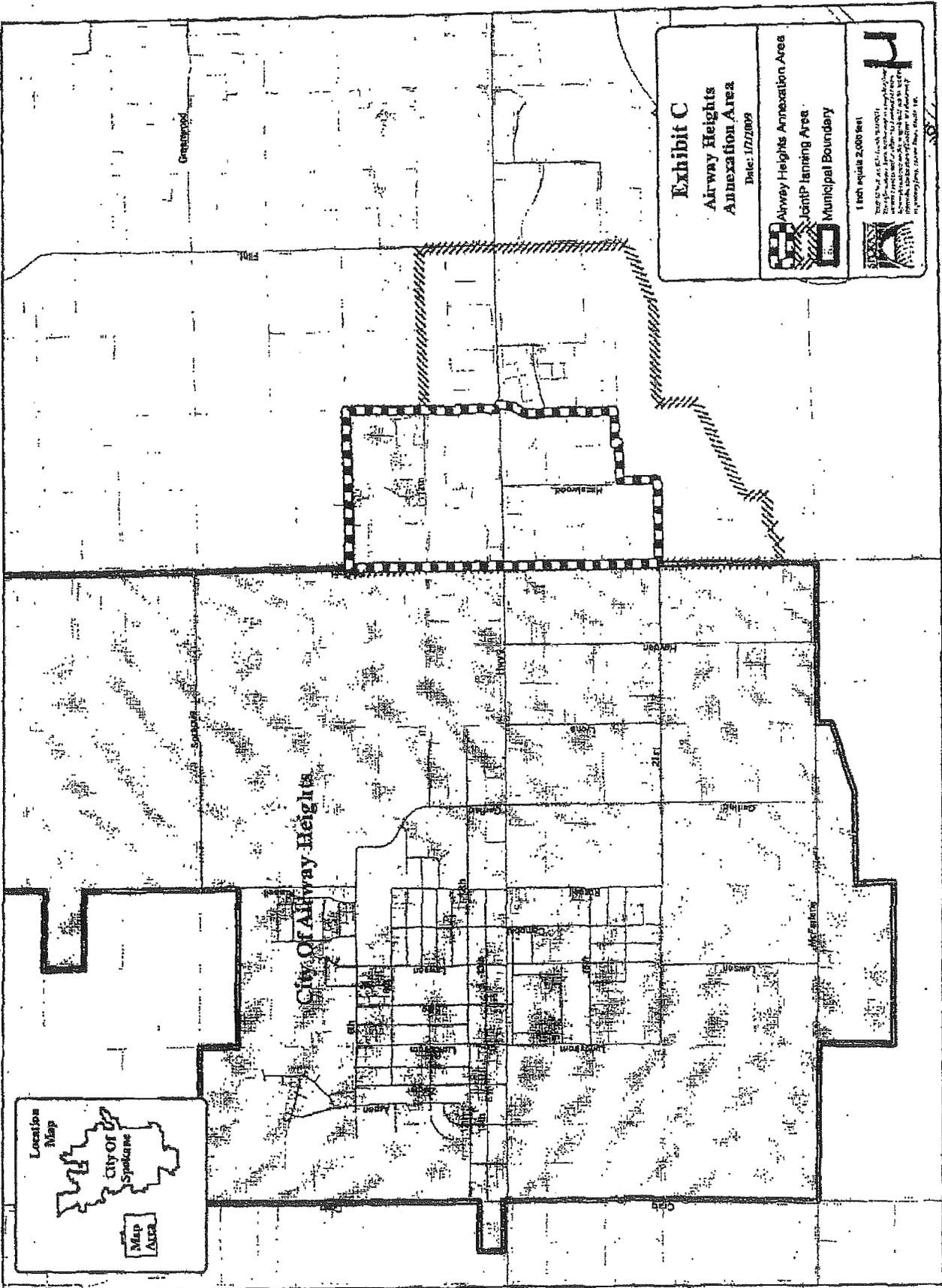
Map of Joint Planning Area



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Exhibit C

Map of AH Annexation Area



**Exhibit C**  
**Airway Heights Annexation Area**  
 Date: 1/7/2009

**Airway Heights Annexation Area**  
**Joint Planning Area**  
**Municipal Boundary**

1 inch equals 2,000 feet

THIS IS NOT AN OFFICIAL MAP. IT IS A PRELIMINARY MAP. IT IS NOT TO BE USED FOR ANY PURPOSES WITHOUT THE APPROVAL OF THE CITY OF AIRWAY HEIGHTS. THE CITY OF AIRWAY HEIGHTS IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL SURVEYOR. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL ENGINEER. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL ARCHITECT. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL LANDSCAPE ARCHITECT. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL PLANNING PROFESSIONAL. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL HISTORIC PRESERVATION PROFESSIONAL. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL ENVIRONMENTAL PROFESSIONAL. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL SOCIAL SCIENCE PROFESSIONAL. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL POLITICAL SCIENCE PROFESSIONAL. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL ECONOMICS PROFESSIONAL. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL LAWYER. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL JUDGE. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL JURY MEMBER. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL WITNESS. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL JUROR. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL VOTER. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL CANDIDATE. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL OFFICER. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL MEMBER OF A POLITICAL PARTY. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL MEMBER OF A LABOR UNION. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL MEMBER OF A TRADE ASSOCIATION. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL MEMBER OF A PROFESSIONAL ASSOCIATION. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL MEMBER OF A RELIGIOUS ORGANIZATION. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL MEMBER OF A SOCIAL CLUB. THE CITY OF AIRWAY HEIGHTS IS NOT A PROFESSIONAL MEMBER OF A SPORTS TEAM. 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Location Map  
 City of Airway Heights  
 Spokane  
 Map Area

Exhibit B

Map of AH Annexation Area

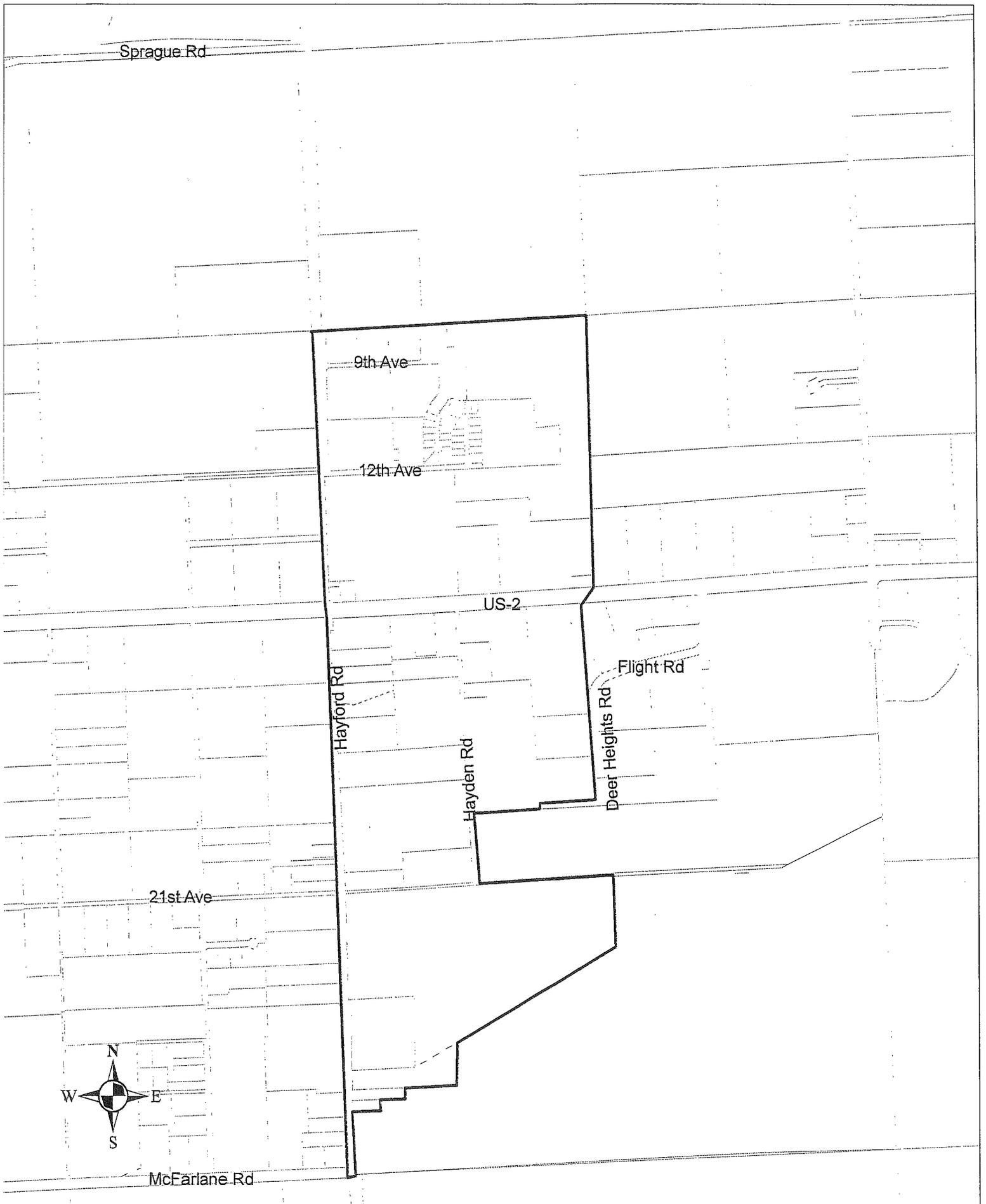


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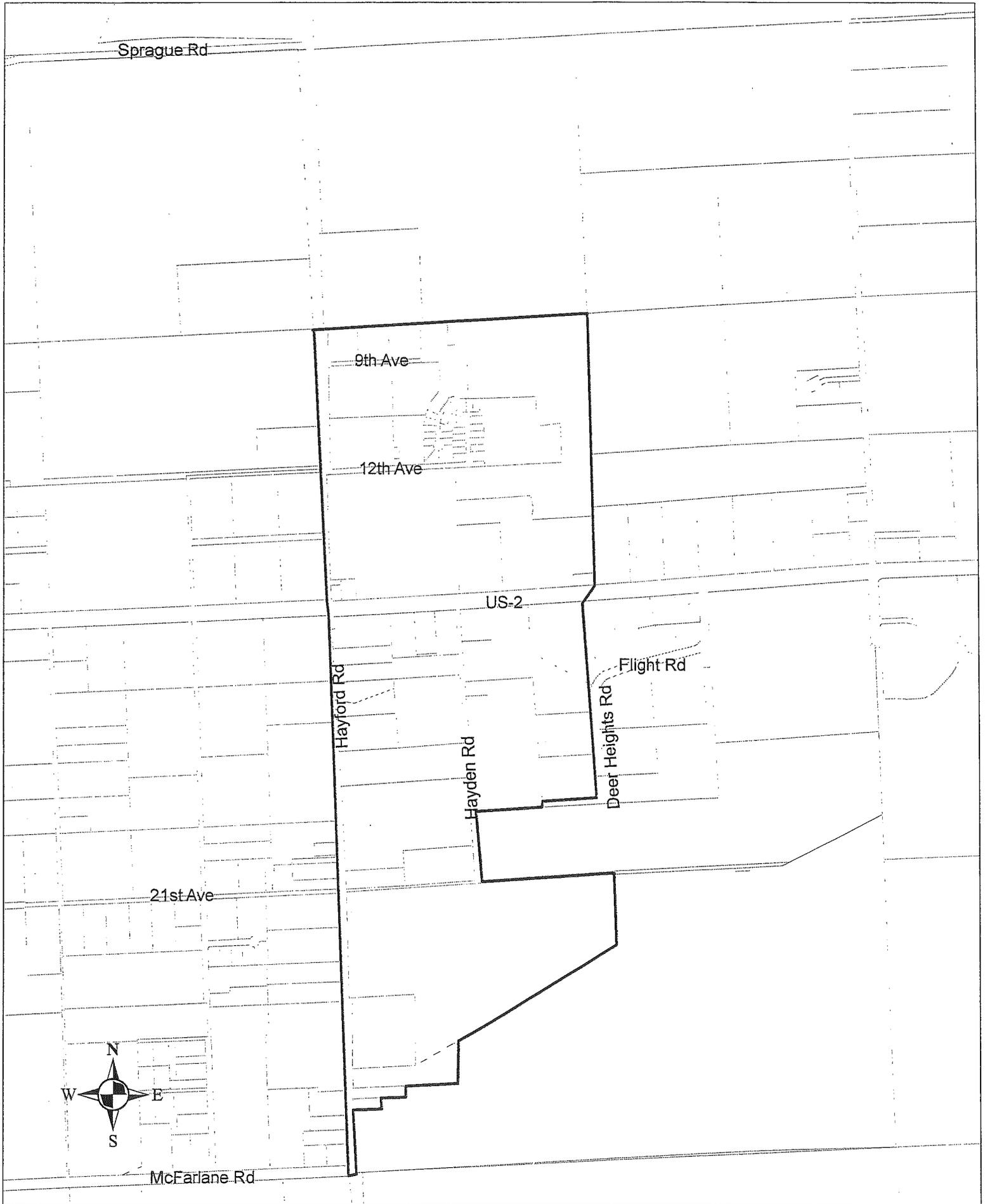


Exhibit C

Spokane County Fire Protection District No. 10  
City of Airway Heights Fire Department Mitigation Services Agreement

**SPOKANE COUNTY FIRE PROTECTION DISTRICT NO. 10**

**CITY OF AIRWAY HEIGHTS**

**FIRE DEPARTMENT MITIGATION SERVICES AGREEMENT**

This Agreement is entered into between SPOKANE COUNTY FIRE PROTECTION DISTRICT NO. 10, a municipal corporation, referred to as "District", and the CITY OF AIRWAY HEIGHTS, a municipal corporation, referred to as "City".

This Agreement is entered into by the City and the District (under the authority of RCW 52.12.031), in conformity with chapter 39.34 RCW, the Interlocal Cooperation Act and in compliance with chapter 36.115 RCW, the Service Agreement Act. The Agreement will be filed with the Spokane County Board of Commissioners pursuant to RCW 36.115.040(3).

The District and the City currently maintain and operate their own fire departments to provide fire protection, fire suppression and emergency medical services in their respective jurisdictions.

The County has adopted urban growth areas, designated as Joint Planning Areas/Urban Growth Areas (JPA/UGA), that encompass portions of the District, its service area and financial base. The City may annex the areas within the JPA/UGA. Both the City and the District have the ability to provide fire protection, fire suppression and emergency medical services in the JPA/UGA located within the District boundaries.

The parties recognize that annexations of the District territory by the City will result in the reduction of the tax base of the District and may result in the transfer of District assets to the City.

The parties are of the opinion that it is in the best interests of the parties, their taxpayers, property owners and residents to provide by negotiation for the transfer of the responsibility to provide Fire Department services by the District to the City under terms and conditions that will ensure the highest level of emergency and public services in both the District and the City.

The District has previously entered into an agreement with the City of Spokane to cover proposed annexations by Spokane in the District. The District has provided a copy of the agreement to Airway Heights.

To carry out the purposes of this Agreement and in consideration of the benefits to be received by each party, it is agreed as follows:

## I. GENERAL TERMS

1. **Definitions.** The following definitions shall apply to terms used in this Agreement unless expressly stated to the contrary.

1.1. "District" means Spokane County Fire Protection District No. 10.

1.2. "District Board of Commissioners" means Spokane County Fire Protection District No. 10 Board of Commissioners.

1.3. "City" means the City of Airway Heights.

1.4. "Fire Department" means the Fire Department of the City of Airway Heights.

1.5. "Fire Chief" means the Chief of the Fire Department of the City of Airway Heights.

2. **Term.** This Agreement shall be effective on execution by both parties and shall continue until the District no longer provides fire department services within the District. The parties understand that the implementation of the Agreement may be phased in over a period of time

3. **Hold Harmless.** 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 Agreement by its personnel only and to save and hold the other party and its personnel and officials harmless from all costs, 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 Agreement.

4. **Notices.** All notices, requests, demands and other communications required by this Agreement shall be in writing and, except as expressly provided elsewhere in this Agreement, shall be deemed to have been given at the time of delivery if personally delivered or at the time of mailing if mailed by first class, postage pre-paid and addressed to the party at its address as stated in this Agreement or at such address as any party may designate at any time in writing.

5. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

6. **Modification.** This Agreement represents the entire Agreement between the parties. 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 both of the parties. The Agreement shall not be modified, supplemented, or otherwise affected by the course of dealing between the parties.

7. **Benefits.** 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.

8. **Dispute Resolution.** Any controversy that shall arise between the City and the District regarding the rights, duties, or liabilities of either party under this Agreement shall be submitted to non-binding arbitration. The arbitration shall be before one disinterested arbitrator agreed upon by the parties. The arbitrator shall render an opinion in accordance with the laws of the state of Washington as applied to the facts found by the arbitrator or arbitrators. The arbitrator will render his decision to the appropriate governing agencies. In the event the parties are unable to agree on the selection of the arbitrator or in the event the opinion of the arbitrator is not acceptable to either of the parties, the matter shall be submitted to the Spokane County Superior Court for decision.

9. **Other Service Agreements.** Nothing in this Agreement shall preclude the parties from entering into separate agreements beyond the comprehensive service plan prior to annexation, including, but not limited to, separate agreements for maintenance, training and supplemental responses.

10. **Merger/Annexation.** In the event any portion of the district shall be merged into and become a part of another fire protection district or in the event any portion shall be annexed to the City of Spokane, the provisions of this Agreement shall no longer apply to the merged or annexed portion.

## II. PRE-ANNEXATION TERMS

11. **City Annexations.** Except for annexations under the petition method, the City agrees that it shall provide written notice for any proposed annexation of the JPA/UGA located in the District at least twelve months prior to the annexation initiated by the City pursuant to resolution under the election method of annexation. The City shall provide to the District notice of annexation by petition within fourteen days from the date a letter of intent or annexation petitions are received from property owners.

12. **Operational Planning.** The parties agree to complete joint operational plans for services to the JPA/UGA covering mutual responses, training, and other operational issues. The adoption of a joint operational plan shall not give the City any right to provide services in the District prior to the effective date of an annexation without the District's agreement.

### III. POST-ANNEXATION TERMS

13. **Annexations.** In the event the City annexes areas of the District, the City agrees that it will not invoke the asset transfer provisions of RCW 35.02.190, 35.02.200, 35.02.205, 35A14.380 and 35A.14.400, as presently existing or as may be amended for any annexation during the term of this Agreement. The term "asset transfer" refers to and is specifically limited to the personal or real property owned by the District and does not include the taxes, fees or revenue received by the District.
14. **Service Terms.** In the event the City annexes portions of the District, the District may continue to serve the annexed areas, on request by the City for a negotiated fee.
15. **Mitigation Terms.** Regardless of whether the District continues to provide services, the City shall for a period of Twenty (20) years from the effective date of each annexation pay to the District each year, in semi-annual installments, an amount equal to the District's legally permissible annual real property tax levy rate at the effective date of annexation (including regular, EMS and excess levies) multiplied by the annual assessed value of the annexed areas together with an amount necessary to replace any contract revenue lost by the District as a result of an annexation ("Mitigation Payment"). The Mitigation Payment for each annexation shall not increase over its term.
16. **Non-Transferable/ Assignable.** The parties recognize and acknowledge that the District and the City of Spokane have entered into an agreement filed in the Office of the Spokane City Clerk under No. OPR 99-849 ("Spokane Agreement") that provides, in part, upon annexation of 60% of the District's assessed valuation, the City of Spokane shall furnish Fire Department services as set forth in the Spokane Agreement. The determination of what constitutes 60% of assessed valuation is set forth in the Spokane Agreement at Paragraph 9.
- This agreement shall automatically terminate without further action of the parties upon the City of Spokane, pursuant to the Spokane Agreement; annexing 60% of the Fire District's assessed valuation, and voter approval of a proposition directing City of Spokane to provide fire protection services to the remaining unincorporated area of the District.
17. **Property.** The property, which is the subject of this agreement is depicted on Exhibit A (the "Property") and described as the Urban Growth Area which is adjacent to the City of Airway Heights. It is recognized and understood that the Property may be modified through action of the Spokane County Board of County Commissioners, under the Growth Management Act, RCW Chapter 36.70A.

18. City Annexation.

A. The parties acknowledge annexation proceedings taken by the City must be consistent with RCW 36.70A (The Growth Management Act) and local adopted Comprehensive Plans, and the terms of this agreement.

B. The District agrees not to challenge any City annexation and agrees to waive any right to protest, bring suit or intervene in any proceeding relating to said City annexation of territory within the UGA or JPA. This does not limit the Districts right to seek resolution, of sections 1-15 herein, as outlined in paragraph 8 of this agreement, Dispute Resolution.

Dated: 3-21-08

Dated: 03/17/2008

SPOKANE COUNTY FIRE PROTECTION  
DISTRICT NO. 10

CITY OF AIRWAY HEIGHTS

*Paul M. Pade*  
Chair

By: *Paul G. Bennett*  
City Manager

*R.D. Jarwath*  
Commissioner

Attest: *Richard G. Cook*  
City Clerk

*Jerry McCaughey*  
Commissioner

Approved as to form:

Attest: *[Signature]*  
District Secretary

*[Signature]*  
City Attorney

929 S. Garfield Rd.  
P.O. Box 2199  
Airway Heights, WA 99001  
509-244-2425

S. 1208 Lundstrom  
Airway Heights, WA 99001  
509-244-5578

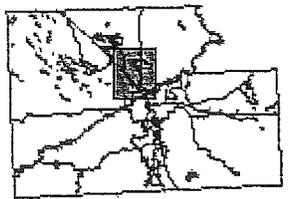
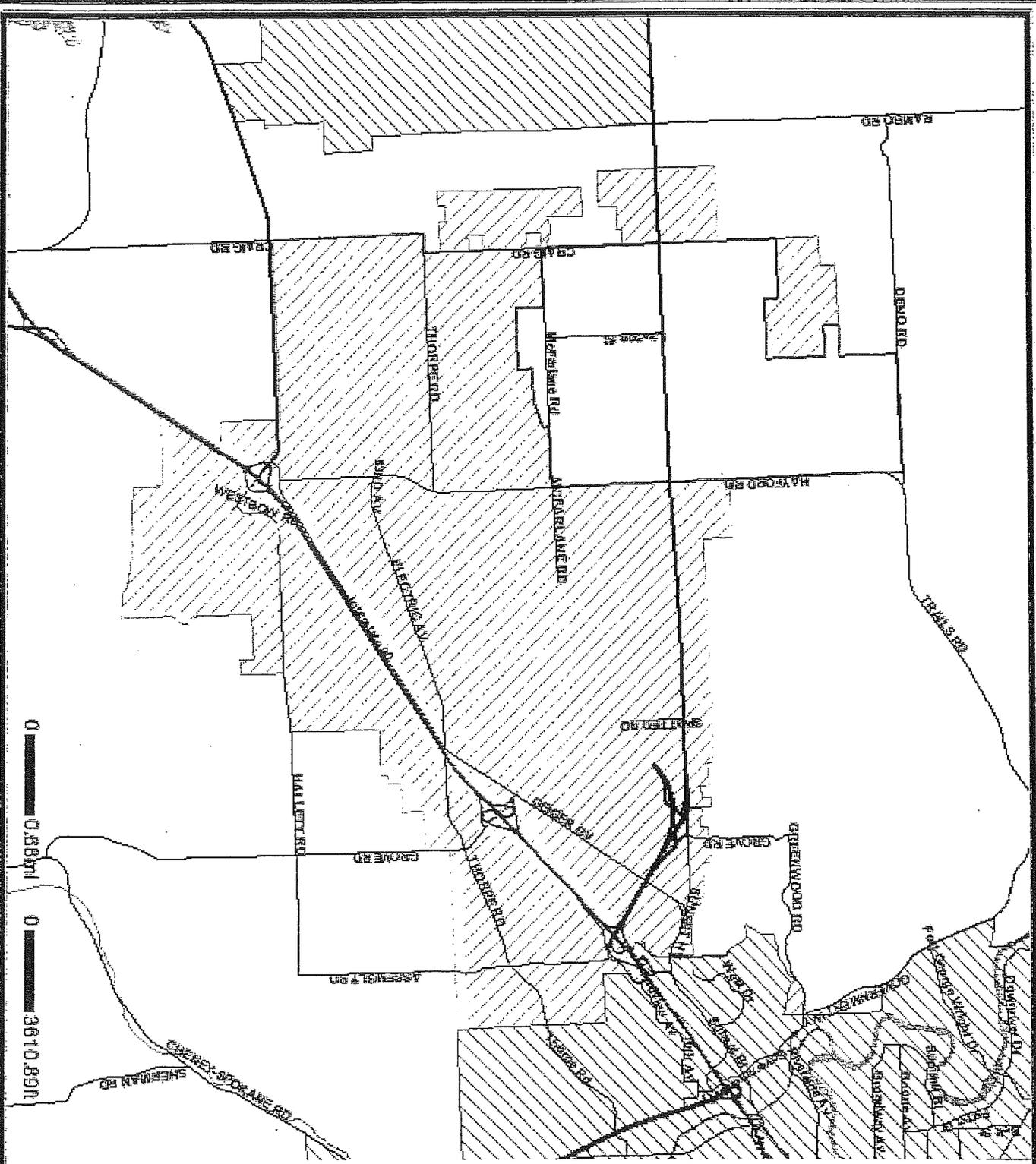


Exhibit A

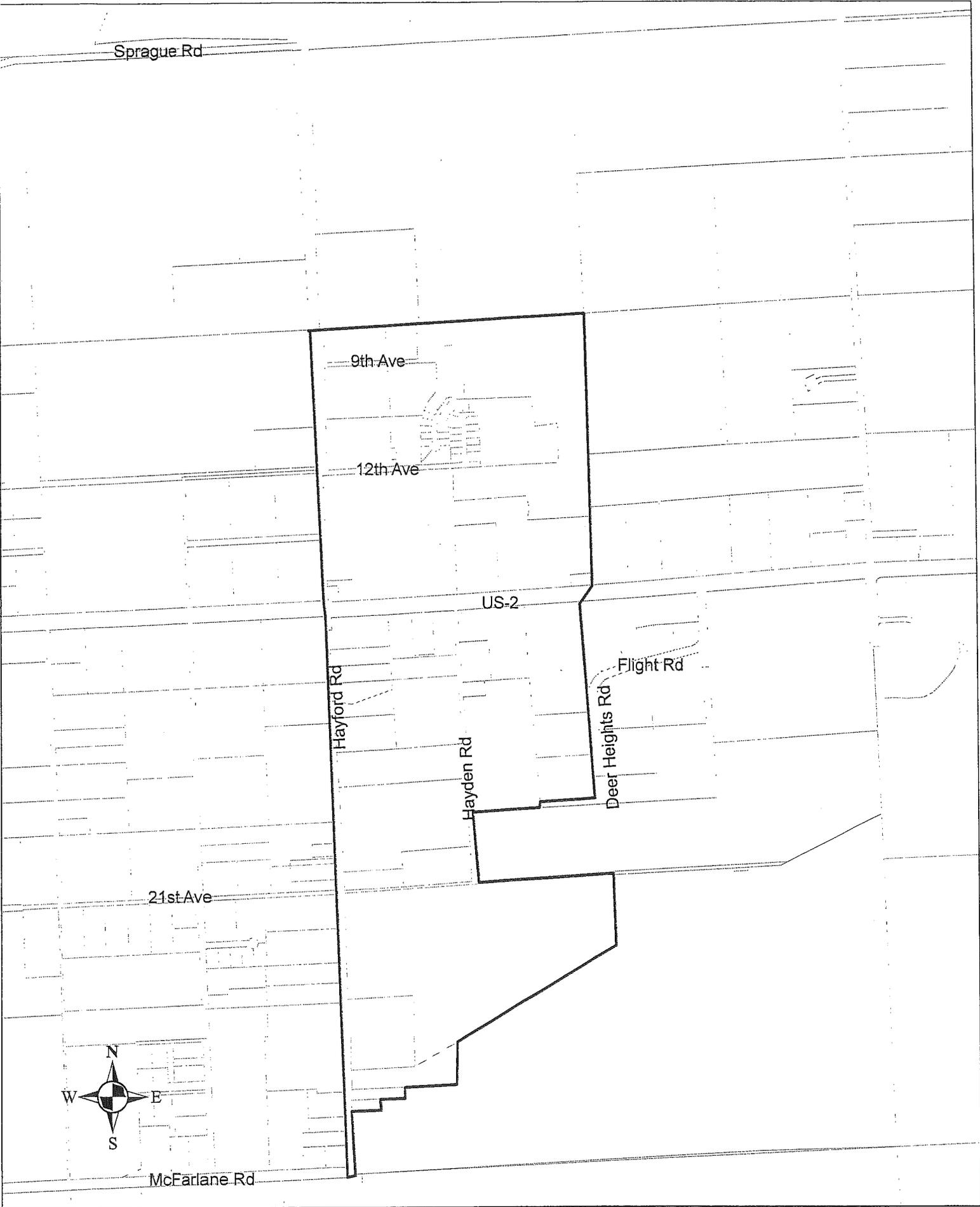
LHM 3-21-08  
 R07 3-21-08  
 DAN 3-21-08

Legend

- UGA
- Joint Planning Area
- Urban Growth Area

Exhibit B

Map of AH Annexation Area



Sprague Rd

9th Ave

12th Ave

US-2

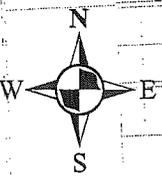
Hayford Rd

Hayden Rd

Deer Heights Rd

Flight Rd

21st Ave



McFarlane Rd

Exhibit C

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City of Airway Heights Fire Department Mitigation Services Agreement

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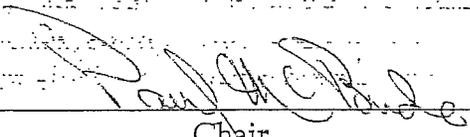
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Dated: 3-21-08

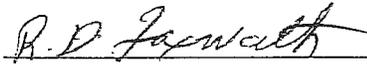
Dated: 03/17/2008

SPOKANE COUNTY FIRE PROTECTION  
DISTRICT NO. 10

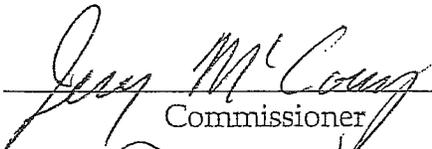
CITY OF AIRWAY HEIGHTS

  
\_\_\_\_\_  
Chair

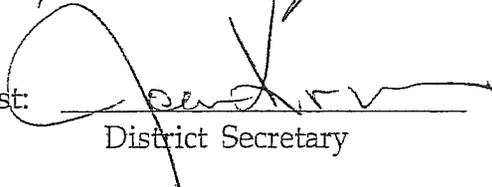
By:   
\_\_\_\_\_  
City Manager

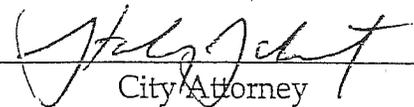
  
\_\_\_\_\_  
Commissioner

Attest:   
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Commissioner

Approved as to form:

Attest:   
\_\_\_\_\_  
District Secretary

  
\_\_\_\_\_  
City Attorney

929 S. Garfield Rd.  
P.O. Box 2199  
Airway Heights, WA 99001  
509-244-2425

S. 1208 Lundstrom  
Airway Heights, WA 99001  
509-244-5578

Exhibit D

Fire Protection Service Operational Plan

**CITY OF AIRWAY HEIGHTS  
SPOKANE COUNTY, WASHINGTON**

**RESOLUTION 2010-015**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF AIRWAY HEIGHTS, WASHINGTON, ACCEPTING THE WEST PLAINS ANNEXATION AREA FIRE OPERATIONAL PLAN WITH SPOKANE COUNTY FIRE DISTRICT 10.**

WHEREAS, the City of Airway Heights and Spokane County Fire District 10 "SCFD 10") entered into a "Fire Department Mitigation Services Agreement" on or about March 21, 2008;

WHEREAS, the Mitigation Agreement requires the City and SCFD 10 to complete joint operational plans for services to the JPA/UGA covering mutual responses, training and other operational issues; and

WHEREAS, the Parties have met and agreed upon a joint operational plan for the JPA/UGA to be annexed by the City;

**NOW THEREFORE**, be it resolved by the Airway Heights City Council the following:

1. The attached "West Plains Annexation Area Operational Plan" by and between the City and Spokane County Fire District 10 is hereby approved and accepted pursuant to the Fire Department Mitigation Services Agreement existing between the Parties.

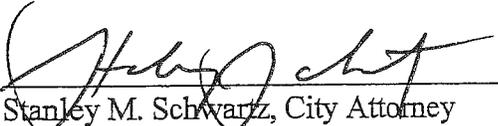
**PASSED** by the City Council of Airway Heights this 21st day of June 2010.

  
Patrick D. Rushing, Mayor

ATTEST:

  
Richard G. Cook, Clerk/Treasurer

Approved as to form

  
Stanley M. Schwartz, City Attorney



Draft

## West Plains Annexation Area

### Operational Plan

Now

1. Continue operational plan meetings
2. Airway Heights Fire Dept.(AHFD) staff and Spokane County Fire District 10 (SCFD10) staff meet for operational procedures in implementing “Operational Plan”
3. SCFD 10 provide AHFD with orientation to SCFD10 unique geography and target hazards
4. SCFD 10 and AHFD exchange pre-plans, map books, etc.
5. Company drills for both departments, with or without formal lesson plans. SCFD 10 shares training schedule/calendar with AHFD.

During 2010-2011 up until Annexation occurs

1. Operations
  - a. SCFD10 stations operate as they do today
  - b. AHFD supplement responses in annexation area 31C-E, 35F, 37F 11F, 14 M-E, 40I-F, 46A-D, incidents.
  - c. SCFD supplement responses in City of Airway Heights 31C-E, 35F, 37F 11F, 14 M-E, 40I-F, 46A-D, incidents.
  - d. Exchange “Run Card” information.
  - e. Communication issues (Tactical, primary, Procedures....
  - f. RIT procedures and equipment
  - g. Incident support (exchanging air bottles, refilling bottles.....)
  - h. Establish Rehab procedures.
  - i. AHFD and SCFD10 exchange Knox keys. Both jurisdictions keys will be attached together with permanent ring, and one key will be secured in a key box that allows key accountability i.e. Knox’s “Key Secure”.
2. Training

- a. SCFD10 and AHFD schedule joint Multiple Company Drills.
3. Prevention
    - a. SCFD10 share Fire and Life Safety inspection records of annexation area with AH Fire Marshal.
    - b. AH Fire Marshal accompany SCFD10 inspector on inspections of major/large business.
    - c. SCFD 10 share preplanning information on annexation area.
    - d. AHFD share preplanning information on City of Airway Heights commercial structures with SCFD 10
  4. Investigation
    - a. AHFD and SCFD 10 respond a fire investigator (as available) to each other's fires that need investigating. This is to provide a learning tool for the investigator and for him/her to gain experience.
  5. Notify ambulance service of annexation plan.
  6. Arrange CCC billing of calls in annexation area to AHFD.

At time of Annexation and thereafter

1. AHFD will take over primary fire and EMS service delivery at the same level of service that was provided prior to the annexation.
2. SCFD10 would supplement responses in City of Airway Heights and in annexation area for 31C-E, 35F, 37F 11F, 14 M-E, 40I-F, 46A-D, incidents.
3. AHFD assumes Prevention and Investigation responsibilities.
4. Training-consider level of combined training with AHFD/SCFD10 (increase, decrease?)
5. Continue "Chief Staff" meetings of both departments to discuss operational
6. Exchange "Run Card" information

This plan meets the requirements of the Mitigation Agreement between City of Airway Heights and Spokane County Fire District 10 for operational planning. It is not intended to alter the Mitigation agreement in any way.

Approved this \_\_\_\_ day of \_\_\_\_\_, 2010.  
Spokane County Fire District No. 10

City of Airway Heights

By: \_\_\_\_\_  
Chair

By: \_\_\_\_\_  
Commissioner

By: \_\_\_\_\_  
Commissioner

Attest:

\_\_\_\_\_  
District Secretary

By: \_\_\_\_\_  
Mayor, Patrick Rushing

Attest:

City Clerk, Richard Cook