

RESOLUTION NO. R-014- 063

THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS, COLORADO

A RESOLUTION APPROVING THE ADOPTION OF THE  
EMERGENCY FIRE FUND (EFF) IGA

**WHEREAS**, the Board of County Commissioners of the County of Douglas (the "County"), acknowledges the need to prepare for disasters;

**WHEREAS**, the County acknowledges the risk of Wildfire as a significant hazard that must be addressed through proper planning with appropriate responding agencies and that the response to wildfires will require extensive expenditures;

**WHEREAS**, the EFF IGA is an agreement reviewed annually, updated periodically (but not less than every five years) by the Colorado Division of Fire Prevention and Control, Douglas County Sheriff's Office, and the Board of County Commissioners of the County of Douglas,

**WHEREAS**, this IGA establishes the County's basis for participation in the Emergency Fire Fund which is to provide payments from the County to the fund, payments from the fund to the County and to describe the conditions under which the fund will be managed.

**WHEREAS**, the IGA will be effective on the dates shown through May 1, 2019, subject to annual approval unless any party elects to terminate the agreement.

**BE IT RESOLVED**, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the Emergency Fire Fund IGA is adopted which sets forth procedures establishing the basis for participation in the EFF, and agreed procedures and responsibilities in order to access the EFF.

**PASSED AND ADOPTED** this 27th day of May, 2014, in Castle Rock, Douglas County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS, COLORADO

By: Roger Partridge  
ROGER PARTRIDGE, CHAIR

ATTEST:

Melissa Pelletier  
Melissa Pelletier, Deputy Clerk



**STATE OF COLORADO**  
**Colorado Department of Public Safety**  
**Intergovernmental Agreement**  
**with**  
**The Board of County Commissioners**  
**for the County of Douglas**

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**1. PARTIES**

This Intergovernmental Agreement (hereinafter called "IGA" or "Agreement") is entered into by and between **The Board of County Commissioners for the County of Douglas** and for the Sheriff of said county (hereinafter called "County") and the STATE OF COLORADO acting by and through the **Department of Public Safety, for the benefit of the Division of Fire Prevention and Control** (hereinafter called the "State" or "CDPS" or "CDFPC"). County and the State hereby agree to the following terms and conditions.

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse County for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS**

**A. Authority, Appropriation, and Approval**

Authority to enter into this Agreement exists in the following Colorado Revised Statutes, as amended:

- 24-33.5-1201 – Transfer CSFS Board of Agriculture to CDFPC
- 24-33.5-1202 – Definitions
- 24-33.5-1218 - Cooperation with governmental units
- 24-33.5-1219 - Forest fires - duty of sheriff to report
- 24-33.5-1220 – Funds available – emergency fire fund – wildland fire equipment repair fund – wildland fire cost recovery fund – creation – gifts, grants, and donations authorized.
- 24-33.5-1221 (2012), TITLE 24; Government - State, Principal Departments, Article 33.5; Public Safety, Part 12; Division of Fire Prevention and Control
- 24-33.5-1221 - State responsibility determined
- 24-33.5-1222 - Cooperation by counties
- 24-33.5-1223 - Sheriffs to enforce
- 24-33.5-1224 - Limitation of state responsibility
- 24-72-402 – Cash funds – limit on uncommitted reserves – reduction in amount of fees - exclusions
- 30-10-512 - Sheriff to act as fire warden
- 30-10-513 - Sheriff in charge of forest or prairie fire – expenses
- 30-11-107(1) (o) - Powers of the Board

and funds have been budgeted, appropriated and otherwise made available pursuant to law and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

**B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

**C. Purpose**

The purpose of this Agreement is for Participation in the Colorado Emergency Fire Fund (EFF) and to: establish the County's basis for participation in the Emergency Fire Fund to provide for payments from the County to the Fund; and describe the conditions under which the Emergency Fire Fund will be managed.

**D. References**

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**4. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

**A. Agreement**

"Agreement" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

**B. Agreement Funds**

"Agreement Funds" means funds available for payment by the State to County pursuant to this Agreement.

**C. Emergency Fire Fund**

The Emergency Fire Fund ("EFF" or "the Fund") has been established through the payments provided by participating Colorado counties and other entities entering into EFF agreements with the CDFPC.

**D. Exhibits and other Attachments**

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work & EFF Procedures), **Exhibit B** (Agreement for Cooperative Wildfire Protection), **Exhibit C** (Annual Operating Plan) and **Exhibit D** (Current Annual Calculation of the County Assessment).

**E. Intergovernmental Agreement**

"Intergovernmental Agreement" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

**F. Party or Parties**

"Party" means the State or County and "Parties" means both the State and County.

**G. Services**

"Services" means the required services to be performed by County pursuant to this Agreement.

**H. Subcontractor**

"Subcontractor" means third-parties, if any, engaged by County to aid in performance of its obligations.

**I. Work**

"Work" means the tasks and activities County is required to perform to fulfill its obligations under this Agreement and Exhibit A., including the performance of the Services.

**5. TERM**

**A. Initial Term-Work Commencement**

The Parties' respective performances under this Agreement shall commence on the later of either the Effective Date or **May 1, 2013**. This Agreement shall terminate on **April 30, 2018** unless sooner terminated or further extended as specified elsewhere herein.

This Agreement shall be effective as of the date that it has been fully executed by all Parties herein ("Effective Date"), but in any event, the County shall have no right to submit any claim to the Division Director for EFF funding until: the County has timely paid to the CDFPC the full amount of its contribution to the EFF as set forth in **Exhibit D** for the agreement year in which the claim arises; and has updated and signed a county Annual Operating Plan by May 1 of each year. This Agreement shall continue for a term of five (5) agreement years unless either party elects to terminate the Agreement at the end of any agreement year, with such termination to be conditioned upon 60 days prior notice to the other party. An "agreement year" is May 1 through April 30 of each year.

**B. Two Month Extension**

The State, at its sole discretion upon written notice to County as provided in **§16**, may unilaterally extend the term of this Agreement for a period not to exceed two months if the Parties are negotiating a replacement Agreement (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Agreement in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two month extension shall immediately terminate when and if a replacement Agreement is approved and signed by the Colorado State Controller.

**6. STATEMENT OF WORK**

**A. Completion**

County shall complete the Work and its other obligations as described herein and in **Exhibit A**. The State shall not be liable to compensate County for any Work performed prior to the Effective Date or after the termination of this Agreement.

**B. Goods and Services**

County shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Agreement Funds and shall not increase the maximum amount payable hereunder by the State.

**C. Employees**

All persons employed by County or Subcontractors to perform Work under this Agreement shall be County's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Agreement.

**7. PAYMENTS TO COUNTY**

The State shall, in accordance with the provisions of this **§7**, pay County in the amounts and using the methods set forth below:

**A. Maximum Amount**

The maximum amount payable under this Agreement to County by the State is determined by payments by participating counties, as determined by the State from available funds. No upper limit shall be placed on the amount of funds in the EFF, and funds may accumulate from year to year. Payments shall be made in

accordance with **Exhibit A**. The maximum amount payable by the State to County during each year of this Agreement shall be:

- Year 1 of participation in EFF 50% of eligible control costs
- Year 2 of participation in EFF 75% of eligible control costs
- Year 3 of participation in EFF 100% of eligible control costs

**B. Payment**

**i. Advance, Interim and Final Payments**

Any advance payment allowed under this Agreement or in **Exhibit A** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement or such Exhibit. County shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

**ii. Interest**

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by County previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. County shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

**iii. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, County's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Agreement, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Agreement shall be made only from available funds encumbered for this Agreement and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may terminate this Agreement immediately, in whole or in part, without further liability in accordance with the provisions hereof.

**iv. Erroneous Payments**

At the State's sole discretion, payments made to County in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by County, may be recovered from County by deduction from subsequent payments under this Agreement or other agreements, grants or agreements between the State and County or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

**C. Use of Funds**

Agreement Funds shall be used only for eligible costs identified herein and/or in the Budget.

**8. REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

**A. Performance, Progress, Personnel, and Funds**

County shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of County's performance and the final status of County's obligations hereunder. In addition, County shall comply with all reporting requirements, if any, set forth in **Exhibit A**.

**B. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Agreement or which may affect County's ability to perform its obligations hereunder, County shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of Department of Public Safety.

**C. Noncompliance**

County's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Agreement.

**D. Subcontracts**

Copies of any and all subcontracts entered into by County to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by County related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

**9. COUNTY RECORDS**

**A. Maintenance**

County shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. County shall maintain such records until the last to occur of: (i) a period of three years after the date this Agreement expires or is sooner terminated, or (ii) final payment is made hereunder, or (iii) the resolution of any pending Agreement matters, or (iv) if an audit is occurring, or County has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

**B. Inspection**

County shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe County's records related to this Agreement during the Record Retention Period for a period of three years following termination of this Agreement or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extensions or renewals. If the Work fails to conform to the requirements of this Agreement, the State may require County promptly to bring the Work into conformity with Agreement requirements, at County's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require County to take necessary action to ensure that future performance conforms to Agreement requirements and exercise the remedies available under this Agreement, at law or in equity, in lieu of or in conjunction with such corrective measures.

**C. Monitoring**

County shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by County pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with County's performance hereunder.

**D. Final Audit Report**

If an audit is performed on County's records for any fiscal year covering a portion of the term of this Agreement, County shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

**10. CONFIDENTIAL INFORMATION-STATE RECORDS**

County shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

**A. Confidentiality**

County shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State

records and information in the possession of County shall be immediately forwarded to the State's principal representative.

**B. Notification**

County shall notify its agent, employees, Subcontractors and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

**C. Use, Security, and Retention**

Confidential information of any kind shall not be distributed or sold to any third party or used by County or its agents in any way, except as authorized by this Agreement or approved in writing by the State. County shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by County or its agents, except as permitted in this Agreement or approved in writing by the State.

**D. Disclosure-Liability**

Disclosure of State records or other confidential information by County for any reason may be cause for legal action by third parties against County, the State or their respective agents. County shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by County, or its employees, agents, Subcontractors, or assignees pursuant to this §10.

**11. CONFLICTS OF INTEREST**

County shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of County's obligations hereunder. County acknowledges that with respect to this Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, County shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of County's obligations to the State hereunder. If a conflict or appearance exists, or if County is uncertain whether a conflict or the appearance of a conflict of interest exists, County shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

**12. REPRESENTATIONS AND WARRANTIES**

County makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

**A. Standard and Manner of Performance**

County shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in County's industry, trade, or profession and in the sequence and manner set forth in this Agreement.

**B. Legal Authority – County Signatory**

County warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind County to its terms. If requested by the State, County shall provide the State with proof of County's authority to enter into this Agreement within 15 days of receiving such request.

**C. Licenses, Permits, Etc.**

County represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. County warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees, agents, and Subcontractors of County performing Services under this Agreement shall hold all required licenses or certifications, if any, to

perform their responsibilities. County, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for County to properly perform the terms of this Agreement is a material breach by County and constitutes grounds for termination of this Agreement.

### 13. INSURANCE

County and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to County and the State.

#### A. County

##### i. Public Entities

If County is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then County shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. County shall show proof of such insurance satisfactory to the State, if requested by the State. County shall require each Agreement with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

##### ii. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subcontractors that are not "public entities".

#### B. Counties - Subcontractors

County shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

##### i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of County or Subcontractor employees acting within the course and scope of their employment.

##### ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to County a certificate or other document satisfactory to County showing compliance with this provision.

##### iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

##### iv. Additional Insured

The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of County and any Subcontractors hereunder.

##### v. Primacy of Coverage

Coverage required of County and Subcontractor shall be primary over any insurance or self-insurance program carried by County or the State.



**vi. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to County and County shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of County's receipt of such notice.

**vii. Subrogation Waiver**

All insurance policies in any way related to this Agreement and secured and maintained by County or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against County or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**C. Certificates**

County and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, County and each Subcontractor shall deliver to the State or County certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any subcontract, County and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

**14. BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against County, or the appointment of a receiver or similar officer for County or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

**B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**15. REMEDIES**

If County is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Termination for Cause and/or Breach**

The State may terminate this entire Agreement or any part of this Agreement. Exercise by the State of this right shall not be a breach of its obligations hereunder. County shall continue performance of this Agreement to the extent not terminated, if any.

**i. Obligations and Rights**

To the extent specified in any termination notice, County shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, County shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, County shall assign to the State all of County's right, title, and interest under such terminated orders or subcontracts. Upon termination, County shall take timely, reasonable and necessary action to protect and preserve property in the possession of County in which the State has an interest. All materials owned by the

State in the possession of County shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by County to the State and shall become the State's property.

**ii. Payments**

The State shall reimburse County only for accepted performance up to the date of termination. If, after termination by the State, it is determined that County was not in breach or that County's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the State, County shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by County and the State may withhold any payment to County for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from County is determined. The State may withhold any amount that may be due County as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. County shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination in the Public Interest**

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by County, which shall be governed by §15(A) or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify County of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

**ii. Obligations and Rights**

Upon receipt of a termination notice, County shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

**iii. Payments**

If this Agreement is terminated by the State pursuant to this §15(B), County shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as County's obligations that were satisfactorily performed bear to the total obligations set forth in this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse County for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by County which are directly attributable to the uncompleted portion of County's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to County hereunder.

**C. Remedies Not Involving Termination**

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend County's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling County to an adjustment in price/cost or performance schedule. County shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by County after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to County until corrections in County's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed, that due to County's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**iv. Removal**

Notwithstanding any other provision herein, the State may demand immediate removal of any of County's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or the State's best interest.

**v. Intellectual Property**

If County infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, County shall, at the State's option (a) obtain for the State or County the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

**16. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Paul L. Cooke
CDPS/Division of Fire Prevention and Control
690 Kipling Street, #2000
Lakewood, CO 80215
paul.cooke@state.co.us

**B. County:**

Sheriff David Weaver
Douglas County
4000 Justice Way, Ste 3625
Castle Rock, CO 80109
dweaver@dcsheriff.net

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by County in the performance of its obligations under this Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by County upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. County shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of County's obligations hereunder without the prior written consent of the State.

**18. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

**19. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to County under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

County agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Agreements and inclusion of Agreement performance information in a statewide contract management system.

County's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of County's performance shall be part of the normal contract administration process and County's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of County's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of County's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. County shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that County demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CDPS, and showing of good cause, may debar County and prohibit County from bidding on future contracts. County may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of County, by the Executive Director, upon a showing of good cause.

**20. GENERAL PROVISIONS**

**A. Assignment and Subcontracts**

County's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by County or the State are subject to all of the provisions hereof. County shall be solely responsible for all aspects of subcontracting arrangements and performance.

**B. Binding Effect**

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

**C. Captions**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

**D. Counterparts**

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

**E. Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

**F. Jurisdiction and Venue**

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. Modification**

**By the Parties**

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by the Parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall be conform the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

**vi. By Operation of Law**

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

**H. Order of Precedence**

The provisions of this Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, including, but not limited to, those provided by County, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Agreement,
- iii. **Exhibit A (Statement of Work & EFF Procedures),**
- iv. **Exhibit B (Agreement for Cooperative Wildfire Protection),**
- v. **Exhibit C (Annual Operating Plan),**
- vi. **Exhibit D (Current Annual Calculation of the County Assessment),**
- vii. **Exhibit E (Eligible Costs)**

**I. Severability**

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

**J. Survival of Certain Agreement Terms**

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if County fails to perform or comply as required.

**K. Taxes**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. County shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing County for such taxes.

**L. Third Party Beneficiaries**

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

**M. Waiver**

Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**N. CORA Disclosure**

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

**21. COLORADO SPECIAL PROVISIONS**

These Special Provisions apply to all Agreements except where noted in italics.

**A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee.

**B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. 3. GOVERNMENTAL IMMUNITY.**

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**D. 4. INDEPENDENT CONTRACTOR**

County shall perform its duties hereunder as an independent contractor and not as an employee. Neither County nor any agent or employee of County shall be deemed to be an agent or employee of the State. County and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for County or any of its agents or employees. Unemployment insurance benefits will be available to County and its employees and agents only if such coverage is made available by County or a third party. County shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. County shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. County shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

**E. 5. COMPLIANCE WITH LAW.**

County shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. 6. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

**G. 7. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

**H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. County hereby certifies and warrants that, during the term of this Agreement and any extensions, County has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that County is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. County has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of County's services and County shall not employ any person having such known interests.

**J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

*[Not applicable to intergovernmental agreements]* Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**K. 11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.**

*[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* County certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), County shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to County that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. County (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the Subcontractor and the contracting State agency within three days if County has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If County participates in the State program, County shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that County has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If County fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, County shall be liable for damages.

**L. 12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

County, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**



**22. SIGNATURE PAGE**

Contract Routing Number 66302

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

**\* Persons signing for County hereby swear and affirm that they are authorized to act on County's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;"><b>COUNTY</b> The Board of County Commissioners For the County of Douglas</p> <p>By: <u>Roger A. Partridge</u></p> <p>Title: <u>Douglas County Commissioner</u></p> <p> *Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> John W. Hickenlooper, Governor Colorado Department of Public Safety James H. Davis, Executive Director</p> <hr/> <p>By: Paul L. Cooke, Director Division of Fire Prevention and Control Signatory avers to the State Controller or delegate that County has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: _____</p>
<p style="text-align: center;">2nd County Signature if Needed</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. County is not authorized to begin performance until such time. If County begins performing prior thereto, the State of Colorado is not obligated to pay County for such performance or for any goods and/or services provided hereunder.**

**STATE CONTROLLER**  
Robert Jaros, CPA, MBA, JD

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

Colorado Department of Public Safety

Date: \_\_\_\_\_

Invoice No. 2014EFF11

TO: Sheriff David Weaver  
Douglas County  
4000 Justice Way, Ste 3625  
Castle Rock, CO 80109



DATE: January 10, 2014

*Item:* *Total:* \$76,223.77

Assessment for Calendar Year 2014 per the Intergovernmental Agreement for Participation in the Colorado Emergency Fire Fund (EFF).

**TOTAL AMOUNT DUE** \$76,223.77  
**CK-MO Amount Paid** \$

Janell Ray, Incident Business Specialist

**Office Use Only**

**PAYMENT DUE UPON RECEIPT, NLT 3/10/2014**

**Ck#:** **Dated:**  
**Rcvd By:** **F.Y.:**

REMIT TO:

**Funding** **Amount**  
26Z-RAA-FEFF-3EF \$76,223.77

Colorado Division of Fire Prevention & Control  
5060 Campus Delivery, Building 1049  
Fort Collins, CO 80523  
(970) 491-1063

**Deposit No.:** **Date:**

## EXHIBIT A

### STATEMENT OF WORK & EFF PROCEDURES

#### 1. WILDFIRE PROTECTION

- A. Prior to entering into this Agreement, the County shall have entered into a valid and current Agreement for Cooperative Wildfire Protection (the "Cooperative Agreement"). A true and correct copy of the current Cooperative Agreement shall be attached hereto as "**Exhibit B**" and is hereby incorporated and made a part of this Agreement.
- B. As required in the Cooperative Agreement, the County and CDFPC shall jointly develop, review, and sign an Annual Operating Plan (AOP) before May 1 of each year with all cooperating agencies having wildfire suppression responsibilities within the County. Failure to complete the AOP by May 1 of any year during the term of this Agreement shall result in the automatic suspension of the County from EFF participation unless the County has requested, in writing, and received approval by the Division Director, a 60 day extension of the May 1 date to complete the AOP, stating the specific reason(s) for the extension. The Division of Fire Prevention and Control Director shall, in his or her sole discretion, approve or deny the request in writing. Once completed, the AOP shall be made a part of this agreement and attached as "**Exhibit C**".

#### 2. EMERGENCY FIRE FUND

- A. The Emergency Fire Fund (EFF or "the Fund") has been established through the payments provided by participating Colorado counties and other entities entering into EFF agreements with the CDFPC. The EFF is maintained as an account of Colorado Division of Fire Prevention and Control, under the fiscal management of the Division Director. Payments from the EFF account shall be made only in compliance with applicable laws, rules and regulations pertaining to Colorado Division of Fire Prevention and Control funds, including, but not limited to, the State Fiscal Rules. The Division Director is designated as the fiscal manager of all such monies received and all interest accrued in the EFF. No upper limit shall be placed on the amount of funds in the EFF, and funds may accumulate from year to year.
- B. An estimate of the annual EFF assessment will be provided to the County for budget planning purposes in August of each year during the term of this Agreement. An invoice will be submitted to the County in December of each year for the following year's participation in the EFF. The County shall make payment to: Colorado Division of Fire Prevention and Control, Attn: EFF Account, Building 1049, 5060 Campus Delivery, Fort Collins, Colorado 80523-5060, on or before March 15 of each year. Current Annual Calculation of the County Assessment is shown in **Attachment D** to this Agreement.
- C. Administration of the EFF including annual reports will be reviewed annually by an advisory committee composed of the Division Director, three county commissioners, three county sheriffs and two Fire Chiefs each representing different participating counties in the EFF (the "EFF advisory committee"). County commissioner members will be designated by Colorado Counties, Inc.; sheriffs by County Sheriffs of Colorado; and Fire Chiefs by Colorado State Fire Chiefs Association. The EFF advisory committee shall make recommendations to the Division Director regarding matters relating to the Fund, including recommended annual assessments for subsequent years. Final decision making authority over fiscal management matters shall reside with the Division Director

on behalf of the Counties collectively.

- D. The CDFPC shall make distribution of these funds only upon direction of the Division Director or his designee and will be subject to the "Emergencies" provisions of the State Fiscal Rules (Rule 2-2). Disbursements shall be limited to such expenditures incurred in controlling a designated wildfire as are within the then-current, unencumbered balance of the Fund.
- E. All EFF participants shall pay annual assessments as invoiced. Any new participant entering into an EFF agreement with the CDFPC shall become eligible to receive benefits from the EFF, after remitting its assessment, on a pro rata basis as follows:
  - Year 1 of participation in EFF 50% of eligible control costs
  - Year 2 of participation in EFF 75% of eligible control costs
  - Year 3 of participation in EFF 100% of eligible control costs
- F. If at any time during the term of this Agreement the EFF becomes depleted, or has insufficient funds to meet the expected needs of the Fund, the Division Director will make every reasonable effort to obtain additional funds by requesting the Governor to make additional funds available. Should the Division Director be unsuccessful in efforts to obtain additional funding, fire control costs will remain the County's responsibility.
- G. Failure of the County to make payment into the EFF by March 15 of each year shall be a breach of this Agreement. In the event of a breach by a county, if such breach is not cured within 30 days after written notice by CDFPC, then CDFPC may immediately terminate this agreement. The County will not be eligible for EFF benefits arising from fires that occur while the county does not have a valid EFF agreement or is in breach. All funds deposited into the EFF will remain in the Fund until expended for eligible control costs on an EFF designated fire(s).
- H. The Division Director will provide EFF participants an annual financial report identifying fund expenditures, encumbrances, and available balance. This report will be included with the annual invoice to participants.
- I. The EFF shall be subject to various audits under current audit standards, rules and practices of the State of Colorado and the Colorado Division of Fire Prevention and Control.
- J. The EFF Counties may terminate this Agreement effective at the end of an "agreement year" provided that 60 days notice of intent to terminate is provided to the Division Director in writing, as addressed in Section II "Effective Date" above. Such notice of intent to terminate must include a statement that the termination is the decision of the majority of the participating EFF Counties. In the event that the Agreement is terminated by the majority of the participating Counties, the EFF shall cease operations, and any un-obligated funds, including any accrued interest, remaining after all obligations of the fund have been paid will be returned to the participating counties and other entities, prorated on the sole basis of the payments made to the fund in the most recent year.

### 3. EFF IMPLEMENTATION

- A. The County will make every effort to control fire(s) upon non-federal lands within the County with resources available within the County. In the event that the County and

the CDFPC mutually agree that the fire(s) threatens to spread, or has spread, beyond control capability of the firefighting resources within the County (as outlined in the County's Annual Operating Plan), the Division Director (or his authorized designee) and the authorized County representative shall sign a Delegation of Duty giving the Division Director command responsibility for the fire(s). Once command responsibility has been assumed by the CDFPC, the County shall nevertheless continue to make its maximum effort to provide firefighting resources from within the County.

- B. When a fire can again reasonably be managed by the County with resources available to it, command responsibility for incident management and for payment of all fire control costs will be returned by the Division Director to the County. No expenditures made by the County prior to assumption by the Division Director or after return to the County, will be eligible for payment by the EFF, without express prior approval of the Division Director.

#### **4. FIRE CAUSE DETERMINATION**

- A. As a condition precedent to entering into this Agreement, and to eligibility for continuing participation in the EFF throughout the term hereof, the County agrees that, in the event of a human-caused fire, the Sheriff of said County shall conduct an investigation as to cause of such fire and will provide the Division Director a copy of the preliminary investigation report within 30 days of control of the fire, and a final report upon the conclusion of that investigation consistent with State Law. The County Sheriff shall have administrative and financial responsibility with respect to the conduct of the investigation.

**INTERGOVERNMENTAL AGREEMENT  
FOR PARTICIPATION IN THE COLORADO EMERGENCY FIRE FUND  
EXHIBIT E**

To be considered eligible, costs must be within designated EFF time period and supported by proper documentation.

**A. Costs excluded by the Emergency Fire Fund:**

- Host County<sup>1</sup> permanent employee regular/base salaries and benefits
- Host County equipment repair due to normal wear and tear
- Host County owned and managed aircraft use, normal wear and tear, and repair
- Host Fire Protection District<sup>2</sup> permanent employee regular/base salaries and benefits
- Host Fire Protection District equipment repair due to normal wear and tear
- State of Colorado permanent employee regular/base salaries and benefits
- State of Colorado equipment repair due to normal wear and tear
- Costs covered by insurance

**B. Costs eligible under the Emergency Fire Fund:**

- Host County permanent employees overtime pay including benefits
- Host County temporary/seasonal employee regular and overtime pay including benefits
- Host Fire Protection District permanent employees overtime pay including benefits and backfill<sup>3</sup>
- Host Fire Protection District temporary/seasonal employee regular and overtime pay including benefits
- Host Volunteer Fire Department volunteer employees regular and overtime pay including benefits
- State of Colorado employee project and overtime pay including benefits, and travel expenses
- State of Colorado temporary/seasonal employee regular and overtime pay including benefits
- State of Colorado, Host County, and Host Fire Protection District equipment use
- Restock and/or replacement of supplies consumed, lost or destroyed in the fire control effort
- Refurbishing of tools and equipment used in control of declared fire(s)

**C. Costs negotiable under the Emergency Fire Fund:**

- Damages to fire equipment resulting from a declared fire
- Claims
- All other costs not outlined above

**D. Cost Documentation**

Cost documentation requirements are identified in the current DFPC Cooperator Reimbursement Guidelines.

<sup>1</sup> Host County is defined as the county(s) in which the EFF incident is occurring.

<sup>2</sup> Host Fire Protection District is defined as the fire department(s), fire protection district(s), or volunteer fire department(s) in which the EFF incident is occurring.

<sup>3</sup> Refer to the current DFPC Reimbursement Guidelines for backfill costs eligible for reimbursement.

# cdps

Division of Fire Prevention and Control  
Paul L. Cooke, Director  
690 Kipling Street, Suite 2000  
Denver, CO 80215  
(303) 239-4600  
FAX (303) 239-5887

March 3, 2014

Sheriffs, County Commissioners, and Emergency Managers:

The purpose of this letter is to present the new Emergency Fire Fund agreement for 2014. The 2012 transfer of the Wildland Fire Management Section from the Colorado State Forest Service to the Colorado Division of Fire Prevention and Control has necessitated some changes in how the State and Counties enter into agreements and what those agreements must contain. The enclosed template was developed with the assistance of stakeholders and approved by the Emergency Fire Fund Committee.

EFF money is transmitted to the state treasurer before it is committed to the EFF pursuant to CRS 24-33.5-1220. Because the money goes through the state treasurer, every county that participates in the Emergency Fire Fund will need to sign this new standard EFF agreement that meets the requirements of the Colorado Attorney General's Office and the Office of the State Controller.

Please send a signed copy of this EFF Agreement by June 1, 2014 to:

Colorado Division of Fire Prevention and Control  
c/o Policy Analyst  
690 Kipling St. Suite 2000  
Denver, CO 80215

If you have questions or concerns, please contact Melissa Lineberger, the Division's Policy Analyst, at (303) 239-5879. Thank you for your continued participation in the EFF.

Best,



Paul L. Cooke  
Director

John W. Hickenlooper  
GOVERNOR

James H. Davis  
EXECUTIVE DIRECTOR

Colorado State Patrol

Colorado Bureau  
of Investigation

Division of  
Criminal Justice

Division of Fire  
Prevention and Control

Division of Homeland Security  
and Emergency Management



**STATE OF COLORADO**  
**Colorado Department of Public Safety**  
**Intergovernmental Agreement**  
**with**  
**The Board of County Commissioners**  
**for the County of Douglas**

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**1. PARTIES**

This Intergovernmental Agreement (hereinafter called "IGA" or "Agreement") is entered into by and between **The Board of County Commissioners for the County of Douglas** and for the Sheriff of said county (hereinafter called "County") and the STATE OF COLORADO acting by and through the **Department of Public Safety, for the benefit of the Division of Fire Prevention and Control** (hereinafter called the "State" or "CDPS" or "CDFPC"). County and the State hereby agree to the following terms and conditions.

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse County for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS**

**A. Authority, Appropriation, and Approval**

Authority to enter into this Agreement exists in the following Colorado Revised Statutes, as amended: