AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Agreement; Cooperative Wildfire Protection

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Requesting approval and BOCC signature on the state co-op wildfire protection agreement

Fiscal Impact:

Submitted by: Liz Mense for Sheriff Gallowich **Submitter's Email Address:** jgallowich@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 10/5/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 10/9/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 10/9/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/9/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 10/15/2019

Revised April 2015

AGREEMENT
FOR
COOPERATIVE WILDFIRE PROTECTION

This Agreement is made by and between Gunnison County, Colorado acting through its Board of County Commissioners and John Gallowich, the Sheriff of the 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.

A. AUTHORITIES

C.R.S. § 24-33.5-707.	Local and Interjurisdictional Disaster Agencies and Services
C.R.S. § 24-33.5-709	Local Disaster Emergencies
C.R.S. § 24-33.5-1201.	Division of Fire Prevention and Control
C.R.S. § 24-33.5-1202.	Definitions
C.R.S. § 24-33.5-1203.	Duties of Division
C.R.S. § 24-33.5-1217.5.	Minimum Prescribed Burning Standards
C.R.S. § 24-33.5-1218.	Cooperation with Governmental Units
C.R.S. § 24-33.5-1219.	Wildland Fires – Duty of Sheriff to Report
C.R.S. § 24-33.5-1220.	Funds Available – Emergency Fire Fund
C.R.S. § 24-33.5-1221.	State Responsibility Determined
C.R.S. § 24-33.5-1222.	Cooperation by Counties
C.R.S. § 24-33.5-1223.	Sheriffs to Enforce
C.R.S. § 24-33.5-1224.	Limitation of State Responsibility
C.R.S. § 24-33.5-1225.	Emergencies
C.R.S. § 24-33.5-1226.	Wildfire Emergency Response Fund
C.R.S. § 24-33.5-1228.	Colorado Firefighting Air Corps
C.R.S. § 29-1-101, *et seq.*	Local Government Budget Law
C.R.S. § 29-22.5-101, *et seq.*	Wildland Fire Planning
C.R.S. § 30-10-512.	Sheriff to Act as Fire Warden
C.R.S. § 30-10-513.	Duties of Sheriff – Coordination of Fire Suppression Efforts for Forest, Prairie, or Wildland fire - expenses
C.R.S. § 30-10-516.	Sheriffs to Preserve Peace – Command Aid
C.R.S. § 30-11-107(1) (o).	Powers of the Board of County Commissioners

B. RECITALS

1. In accordance with C.R.S. § 29-22.5-103(3)(a), the DFPC is designated the lead Colorado State Agency for Wildland Fire suppression as identified in the Colorado State emergency operations plan.

2. In accordance with C.R.S. § 24-33.5-1203(1)(h), the DFPC provides technical assistance, upon request, to the County, the Sheriff, and Fire Departments on local fire safety matters such as fire prevention, fire protection, fire investigation, and emergency medical services.

3. In accordance with C.R.S. § 24-33.5-1203(1)(k) and (m), the DFPC, upon request, assists the County, the Sheriff, and Fire Departments' efforts to procure, inspect, and maintain Wildland Fire resources and equipment, and the County, the Sheriffs and Fire Departments' efforts to organize, train, and equip personnel to detect, contain, and extinguish Wildland Fires.

4. In accordance with the *Statewide Cooperative Wildland Fire Management and Stafford Act Response Agreement for the State of Colorado*, as amended, the DFPC facilitates input of eligible Fire Department, County, Sheriff and State Wildfire resources into the ROSS or successor system(s), from which those resources can be ordered when needed. DFPC also administers and manages the IQS program, which is used to track NWCG qualifications for Fire Department, County, Sheriff, and State personnel and enters such personnel into the ROSS or successor system(s).

5. In accordance with C.R.S. §§ 24-33.5-1203(1)(m), 24-33.5-1231, and other applicable statutes, the DFPC administers certain State and Federal programs related to the County, the Sheriff, and Fire Departments' Wildland Fire duties and responsibilities such as the FEPP Program, DFPC engine program, and other grant programs.

6. In accordance with C.R.S. § 24-33.5-1228, the DFPC manages the Colorado firefighting air corps.

7. In accordance with C.R.S. § 29-22.5-103(1)(a), the chief of the fire department in each fire protection district in the state is responsible for the management of Wildland Fires that occur within the boundaries of his or her district and that are within the capability of the fire district to control or extinguish.

8. In accordance with C.R.S. § 29-22.5-103(2)(a), the Sheriff is the fire warden of the county and is responsible for the planning for, and the coordination of, efforts to suppress County Responsibility Fires. Further, pursuant to C.R.S. § 29-22.5-103(2)(b), the Sheriff is responsible for appointing a Local Incident Management Team to provide the command and control infrastructure required to manage a County Responsibility Fire, and for assuming financial responsibility for the Wildland Firefighting efforts on behalf of the County in compliance with the terms of the Local Government Budget Law of Colorado, C.R.S. § 29-1-101, *et seq*.

9. In accordance with C.R.S. § 29-22.5-104(1), the Sheriff may develop and update as necessary a wildfire preparedness plan for the unincorporated areas of the county in cooperation with any fire district with jurisdiction over such unincorporated areas.

10. In accordance with C.R.S. § 30-10-516, the Sheriff is responsible for preserving the peace within the county.

11. In accordance with C.R.S. § 30-10-513(2), with the Sheriff's concurrence, the DFPC may assume any of the Sheriff's Wildland Fire duties or responsibilities.

12. In accordance with C.R.S. §§ 29-22.5-103(3)(c), in the case of a wildland fire that exceeds the capability of the county to control or extinguish, the division may assist the sheriff in controlling or extinguishing such fires, and may assume command of such incidents with the concurrence of the sheriff under a unified command structure.

13. In accordance with C.R.S. §§ 29-22.5-103(2)(c) and 30-10-513(1)(d), in the case of a State Responsibility Fire, the Sheriff and the DFPC are required to enter into an agreement concerning the transfer of authority and responsibility for fire suppression and the retention of responsibilities under a Unified Command Structure.

C. PURPOSE

The purpose of this agreement is to detail process and procedures on how the Parties work together to implement Statute, and prevent, prepare for, respond to, and bill for wildland fire in Colorado.

D. DEFINITIONS

"Agency Administrator The chief executive officer (or designee) of the agency or jurisdiction that has responsibility for the incident.

"Agency Representative." An individual assigned to an incident from an assisting or cooperating agency who has been delegated authority to make decisions on matters affecting that agency's participation at the incident.

"Agreement." This *Agreement for Cooperative Wildfire Protection*.

"Assumption of Fire Control Duty Agreement." A written agreement between the County, the Sheriff, and the DFPC concerning the scope of the transfer of authority and responsibility for fire management and the retention of responsibilities over a Wildland Fire between the County and the Sheriff to the DFPC. The Assumption of Fire Control Duty Agreement may allocate costs and shall articulate any authority delegated to the DFPC by the Sheriff and any authority and duties retained by the Sheriff. This definition also includes the agreement that addresses the return of duties from DFPC to the Sheriff.

"Colorado Cooperative Wildland Fire Management and Stafford Act Response." Agreement between the State and Federal Land Management Agencies that defines roles and responsibilities related to wildland fire.

"Colorado Emergency Operations Line." The Colorado Department of Public Safety's point of contact for the County and the Sheriff to report Wildland Fires or to request any all-hazard assistance. This number will connect the caller with the on-duty communications personnel of the Colorado Department of Public Safety who will then notify the appropriate DFPC Battalion Chief or CDPS personnel

"Colorado Prescribed Fire Planning and Implementation Policy Guide." The DFPC's annual guide that provides standardized procedures specifically associated with the planning and implementation of prescribed fire, accessible via DFPC Battalion Chiefs.

"County."Gunnison County, Colorado acting through its Board of County Commissioners.

"County AOP." The *County Annual Operating Plan* is a planning document between the County, the Sheriff, the DFPC, Federal land agencies, and other possible participants, adopted on an annual basis. The County AOP documents how interagency cooperation is to be implemented within the County. The County AOP shall be drafted by DFPC in cooperation with the County, but substantially in the form attached as Exhibit A.

"County Responsibility Fire." A Wildland Fire occurring on non-federal lands in the unincorporated area of the county outside the boundaries of a fire protection district or a Wildland Fire that exceeds the capabilities of a fire protection district to contain, control or extinguish.

"DFPC" or "Division." The Colorado Division of Fire Prevention and Control.

"DFPC Analysis Form." The analysis form used by the DFPC and the Sheriff to evaluate whether a Wildland Fire meets the criteria to be elevated to a State Responsibility Fire or may otherwise qualify for State coordinated financial assistance attached as Exhibit B

"DFPC Battalion Chief." DFPC regional field representative, or his or her designee. Formerly Regional Fire Management Officer.

"Disaster." Pursuant to C.R.S. § 24-33.5-703(3), the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to a Wildland Fire, existing in the state or in any county, city, town, or district in the state.

"EFF." Means the Emergency Fire Fund as defined in C.R.S. § 24-33.5-1202(3.8) and § 24-33.5-1220, *et seq*.

"FEPP Program." The Federal Excess Personal Property Program enacted by Congress under the Federal Property and Administrative Services Act of 1949 (June 30, 1949, Pub. L. 152, Ch. 288, 63 Stat. 377) and the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. § 2101 *et seq.*) through which DFPC is responsible for building and maintaining fire equipment in the State of Colorado.

"Fire Department." Pursuant to C.R.S. § 24-33.5-1202(3.9), the duly authorized fire protection organization of a town, city, county, or city and county, a fire protection district, or a metropolitan district or county improvement district that provides fire protection.

"Incident Commander." Pursuant to C.R.S. § 29-22.5-102(2), the individual responsible for the overall management of the incident including developing incident objectives and managing all incident operations, by virtue of explicit legal, agency, or delegated authority.

"IQS." The Incident Qualification System developed by the National Association of State Foresters. IQS is a software program that allows the user to track incident qualifications, experience, tasks books and fitness levels for organization/agency personnel.

"Local Incident Management Team." Pursuant to C.R.S. § 29-22.5-102(4), a single or multi-agency team of capable individuals formed and managed at the local or county level and created or activated when necessary to provide the command and control infrastructure required to manage a major or complex incident requiring a significant number of local and mutual aid resources.

"Mutual Aid Agreement." Pursuant to C.R.S. § 29-22.5-102(5), a written agreement between or among federal, state, and local agencies in which the agencies agree to assist one another upon request by furnishing such resources as personnel and equipment.

"NFIRS." The National Fire Incident Reporting System or its successor system.

"NIMS." Pursuant to C.R.S. § 29-22.5-102(6), the National Incident Management System is the national command and management system developed by the U.S. Department of Homeland Security to provide a unified approach to incident management.

"NWCG." The National Wildfire Coordinating Group.

"Party" or "Parties." "Party" means the County, or the Sheriff, or the DFPC and "Parties" means the County, the Sheriff and the DFPC.

"Prescribed Burning." Pursuant to C.R.S. § 24-33.5-1202(8.3), the application of fire, in accordance with a written prescription for vegetative fuels, under specified environmental conditions while following appropriate precautionary measures that ensure public safety and that is confined to a predetermined area to accomplish public safety or land management objectives. The term excludes controlled agricultural burns and controlled ditch burns.

"ROSS." The Resource Ordering and Status System chartered by the National Wildfire Coordinating Group and managed by the U.S. Forest Service. ROSS is a nationwide, web-based database system that tracks all tactical, logistical, service and support resources mobilized by the incident dispatch community.

"Sheriff." The Sheriff of the county, or his or her designee.

"State." The State of Colorado.

"State Responsibility Fire." A County Responsibility Fire that exceeds the County and the Sheriff's capability to control or extinguish as exhibited by the DFPC Analysis Form and for which DFPC has assumed fire control duty as provided in the Assumption of Fire Control Duty Agreement and determined that the fire meets the criteria for EFF, or for State-coordinated financial assistance.

"Unified Command" or "Unified Command Structure." Pursuant to C.R.S. § 29-22.5-102(8), the incident commanders representing agencies or jurisdictions that share responsibility for the incident manage the response from a single incident command post, allowing agencies with different legal, geographic, and functional authorities and responsibilities to work together effectively without affecting individual agency authority, responsibility, or accountability.

"Wildland Area." Pursuant to C.R.S. § 29-22.5-102(9), an area in which development is essentially nonexistent, except for roads, railroads, power lines, and similar infrastructure, and in which structures, if present, are widely scattered.

"Wildland Fire." Pursuant to C.R.S. § 29-22.5-102(10), an unplanned or unwanted fire in a Wildland Area, including unauthorized human-caused fires, out-of-control prescribed fires, and all other fires in Wildland Areas where the objective is to extinguish the fire. For purposes of this Agreement, Wildland Fire also includes fires in the Wildland Urban Interface area.

"Wildfire." For purposes of this Agreement, Wildfire has the same meaning as Wildland Fire.

E. ACKNOWLEDGEMENT OF SUPPLEMENTS TO THIS AGREEMENT

County AOPs, Assumption of Fire Control Duty Agreements, Cost Share Agreements, their successor documents, or other supplements to this Agreement further describe the working relationships, financial arrangements and joint activities not otherwise specified under the terms of this Agreement.

F. HIERARCHY AND PRECEDENCE FOR AGREEMENTS

The provisions of this Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Agreement and other agreements between the Parties, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. The Colorado Special Provisions;
2. The provisions of the main body of this Agreement, and any amendments thereto;

3. Executed EFF Agreement for EFF Counties;

The hierarchy of precedence for other agreements may be identified in the County AOP.

G. AGREEMENT

Section 1. PLANNING

1.1 ***County AOP.*** Prior to April 1 of each year, the Parties, along with other agencies having Wildland Fire responsibilities within the county, shall jointly prepare, review, update, execute, and distribute a new AOP or formally extend the current agreement by executing a new signature page. The DFPC Battalion Chief shall arrange the date and location of the County AOP meeting(s), and shall be the lead coordinator and facilitator of the County AOP process. The Parties acknowledge and agree that with the Sheriff's consent, Fire Departments may participate in County AOP meeting(s). However, the Parties may revise the County AOP to comport with the County's emergency operations plan, Mutual Aid Agreements, community wildfire protection plans, county wildfire preparedness plan, or any other agreements with Fire Departments or other governmental entities. Failure to execute a County AOP by the April 1 deadline will not result in a penalty to any Party pursuant to this agreement.

1.2 ***AOP Extension.*** If the Parties are unable to meet the requirements of 1.1, one or more 30-day extensions may be granted upon the mutual consent of the DFPC Battalion Chief and the County Sheriff and written notice sent to all the AOP Parties in the prior year's County AOP.

1.3 ***Intergovernmental Agreement Concerning Local Fires.*** County is encouraged to develop and execute an agreement between County and local fire protection districts to establish, at a minimum, a process to elevate a fire from local responsibility to a County Responsibility Fire. The Parties acknowledge that such local agreements may impact County's roles and responsibilities and may need to be addressed in other agreements between the Parties, including but not limited to cost share agreements and assumption of fire control duty agreements.

Section 2. ROLES AND RESPONSIBILITIES IN A COUNTY RESPONSIBILITY FIRE

2.1 ***County and Sheriff Responsibilities.*** The County and Sheriff are fiscally and operationally responsible, respectively, for a County Responsibility Fire as described in C.R.S. §§ 29-22.5-103 (2)(b) and 30-11-107(1)(o). Thereby, for the duration of a County Responsibility Fire and pursuant to any applicable emergency operations plan, Mutual Aid Agreements, community wildfire protection plans, county wildfire preparedness plans, cost share agreement, or other agreements between the County and Fire Departments or other governmental entities, the Sheriff shall appoint a Local Incident Management Team to provide the command and control infrastructure necessary to manage a County Responsibility Fire. The Local Incident Management Team may consist of a single individual serving as Incident Commander. On behalf of the County, the Sheriff shall assume financial responsibility for Wildland Fire

suppression efforts and the authority for the ordering, monitoring and tracking the costs of resources subject to compliance with State law. Nothing in this agreement authorizes any county fire warden, firefighter, or county officer to obligate the State for payment of any money without prior state approval.

2.2 ***DFPC Responsibilities.*** The State's principal role during a County Responsibility Fire is to support the County and the Sheriff in their response to the Wildland Fire. Thereby, for the duration of a County Responsibility Fire, the DFPC shall administer certain State programs related to the County and Sheriff's Wildland Fire duties and responsibilities, such as the Wildfire Emergency Response Fund program set forth in C.R.S. § 24-33.5-1226 and the Colorado Firefighting Air Corps program created pursuant to C.R.S. § 24-33.5-1228. If requested by the Sheriff, the DFPC shall appoint an Agency Representative who shall provide technical assistance to the Sheriff and the appointed Local Incident Management Team. Further, the DFPC shall reply to all requests for State personnel, resources, and equipment from the County, Sheriff, or the Local Incident Management Team, even if the DFPC cannot provide the requested personnel, resources, and/or equipment. DFPC may enter into separate agreements with the County and the Sheriff to provide the requested personnel, resources, and/or equipment. Nothing in this agreement authorizes any DFPC employee to obligate the County for payment of any money without prior County approval.

2.3 **Parties Mutual Responsibilities**. No Party shall delay suppression efforts while deciding jurisdictional responsibilities for fires in which suppression is the appropriate management response.

Section 3. ROLES AND RESPONSIBILITIES IN A STATE RESPONSIBILITY FIRE

3.1 ***Procedure for Elevating a County Responsibility Fire to a State Responsibility Fire.*** Pursuant to C.R.S. § 30-10-513, when the Sheriff determines that a County Responsibility Fire exceeds the County's capability to control or extinguish, the Sheriff shall request assistance from DFPC through the Colorado Emergency Operations Line or by any other available means of communication the Sheriff so chooses. Following such a request for assistance, the DFPC and the Sheriff will assess the fire situation utilizing the DFPC Analysis Form. The Wildland Fire shall be elevated to a State Responsibility Fire when both the DFPC Analysis threshold has been met and the Parties have entered into an Assumption of Fire Control Duty Agreement whereby the Parties will allocate responsibilities related to fire suppression responsibilities and financial responsibilities.

If the County participates in the Emergency Fire Fund program, the DFPC shall assess whether the Wildland Fire qualifies for Emergency Fire Fund assistance by following the procedures outlined in the County's Memorandum of Understanding: For Participation in the Colorado Emergency Fire Fund or successor agreement.

3.2 ***County and Sheriff Responsibilities.*** For the duration of a State Responsibility Fire, the Sheriff, at the Sheriff's discretion, may serve or appoint someone to serve as an Agency Administrator. The Sheriff's Agency Administrator shall, at the Sheriff's discretion, in consultation and cooperation with DFPC's Agency Administrator, appoint an Incident

Commander. The Sheriff's Agency Administrator shall work collaboratively with DFPC's Agency Administrator to identify objectives and concerns to share with the Incident Commander. If the Sheriff elects to not serve as or appoint an Agency Administrator, the Sheriff shall serve as or appoint an Agency Representative. Nothing in this agreement authorizes any county fire warden, firefighter, or county officer to obligate the State for payment of any money without prior state approval.

3.3 ***DFPC Responsibilities.*** For the duration of a State Responsibility Fire, the DFPC shall administer EFF and/or State funds for fire management costs and appoint an Agency Administrator who shall represent the State in accordance with the delegation of authority from the DFPC Director. The ordering, monitoring, and tracking of resources and costs will be performed by the Incident Commander, or whoever is delegated to do so by the Agency Administrator(s). DFPC's Agency Administrator shall, in consultation and cooperation with any appointed Sheriff's Agency Administrator, appoint an Incident Commander. The DFPC Agency Administrator shall work collaboratively with any appointed Sheriff Agency Administrator to identify objectives and concerns to share with the Incident Commander. Nothing in this agreement authorizes any DFPC employee to obligate the County for payment of any money without prior County approval.

3.4 ***Parties' Mutual Responsibilities.*** In the case of a State Responsibility Fire, the Parties shall enter into the following separate agreements specifically addressing, at a minimum, the bulleted subjects:

<u>Assumption of Fire Control Duty Agreement (County to State):</u>

- Transfer of authority and responsibility for fire suppression to DFPC;
- Specific limitations to the fire control duty assumed by DFPC;
- Description of the powers and responsibilities retained by the County and Sheriff and those transferred to the DFPC.

<u>Assumption of Fire Control Duty Agreement (State to County):</u>

- Criteria and procedures to be utilized by the Parties to determine when the County and the Sheriff will again be capable of containing, controlling or extinguishing the Wildfire allowing the State Responsibility Fire to be lowered to a County Responsibility Fire.

<u>Cost Share Agreements:</u>

- Outline of the Parties' various financial responsibilities and the authority for the ordering and monitoring of resources.

Because the Parties may maintain separate legal and functional authority and responsibility related to a State Responsibility Fire, responsibility for tasks beyond fire suppression may be included or excluded from the agreements described above upon agreement of the Parties. Both Parties agree that all incident-related activities, including non-suppression activities, shall, at a minimum, be communicated to the incident commander and to other coordinating entities.

No Party shall delay suppression efforts while deciding jurisdictional responsibilities for fires in

which suppression is the appropriate management response.

3.5 ***Appeal of Determination of State Responsibility Fire.*** Review of the DFPC Director's decision on whether or not to elevate a fire to a State Responsibility Fire will be in accordance with the provisions of C.R.S. § 24-4-106.

Section 4. WILDFIRE PREPAREDNESS

4.1 ***County and Sheriff Responsibilities.*** The County and the Sheriff shall comply with the Wildland fire planning responsibilities as set forth in C.R.S. § 29-22.5-101, *et seq.* and the provisions of C.R.S. §§ 30-10-513 and 30-10-513.5. The County and the Sheriff agree to identify for DFPC any designated individuals other than the Sheriff with the authority to make wildfire preparedness decisions. The County and Sheriff agree to work collaboratively with the DFPC's Battalion Chief in the coordination of DFPC resources and training. The County and Sheriff agree to cooperate in organizing, training, equipping, and maintaining of Wildland firefighting forces within the county. The County and Sheriff agree to communicate with local Fire Departments, as needed, to ensure relevant information is available to the County, the Sheriff, and local Fire Departments. The County and Sheriff may enter into agreements with local Fire Departments that identify the procedures necessary to transition financial and overall management of a Wildland Fire from the local Fire Department to the Sheriff, define control capabilities, and establish cost-share principles.

4.2 ***DFPC Responsibilities.*** The DFPC shall assist the County and the Sheriff, upon request, in organizing and training County, Sheriff, and cooperator forces to prevent, detect, contain, control, and extinguish Wildland Fires. Through administration of the FEPP program, the DFPC shall assist the County and the Sheriff in the procurement, inspection, and arrangement for maintenance of major Wildland Fire equipment. To the extent grant programs are available, the DFPC shall also administer grant programs to assist the County and the Sheriff in acquiring Wildland Fire equipment, training, and suppression support. The DFPC shall encourage and provide assistance in the development of County Wildland Fire plans pursuant to C.R.S. § 29-22.5-101(1)(d). The DFPC shall work with the County and the Sheriff in the coordination of the DFPC resources and training. The DFPC shall also manage and administer the IQS program and provide the County, the Sheriff, and Fire Departments with IQS access, training, program guidelines, and terms of use. The DFPC may inspect records for the purposes of verifying NWCG qualifications for Fire Department, County, and State personnel.

Section 5. WILDFIRE PREVENTION

5.1 ***County Responsibilities.*** Pursuant to C.R.S. § 30-15-401(1)(n.5)(I), the County may ban open fires within the county. In considering multi-county or statewide open burning restrictions that impact other counties pursuant to C.R.S. § 24-33.5-1225, the County will inform the DFPC so that the DFPC may aid the counties in advising the Governor in issuing a proclamation against open burning and/or public movements in any area of the State spanning multiple counties to avoid overbroad burn bans. The County shall, to the extent possible, include and follow the public use restrictions outlined in the County AOP. The County agrees to work cooperatively with the DFPC to coordinate public fire prevention messages provided to the

media as outlined in the County AOP.

5.2 ***DFPC Responsibilities.*** The DFPC shall confer with the County about the need for fire restrictions, and upon determining the need for restrictions on open burning and/or public movements affecting more than one county, recommend to the Governor the imposing or lifting of restrictions for burning and/or public movements, and inform affected counties of the Governor's decision. The DFPC, in cooperation with the County, shall coordinate public fire prevention messages provided to the media and public as outlined in the County AOP. To the extent that DFPC resources and funding are available, DFPC may assist the County in its wildfire prevention efforts, including, but not limited to, fuels reduction and public education activities.

Section 6. WILDFIRE DETECTION AND NOTIFICATION

6.1 ***Sheriff Responsibilities***. The Sheriff shall comply with the reporting provisions set forth in C.R.S. § 24-33.5-1219 and its notification responsibilities as outlined in the County AOP. The reporting requirements may be satisfied after the fact through the NFIRS or its successor system.

6.2 ***DFPC Responsibilities***. The DFPC shall immediately forward all notifications it receives of possible Wildland Fire within the county to the Sheriff, or the Sheriff's designee, for further action as outlined in the County AOP.

Section 7. INVESTIGATIONS

The Sheriff shall conduct, or cause to be conducted, an investigation as to the cause of all State Responsibility Fires in order for the DFPC to facilitate reimbursement of costs expended in fire suppression efforts. The Sheriff shall endeavor to provide the DFPC with a copy of a preliminary investigation report concerning the cause and origin of the fire within thirty (30) calendar days after the Wildland Fire is controlled, or as soon as practicable thereafter. The Sheriff shall provide a final report upon the conclusion of the investigation but not later than nine (9) months after the date the Wildland Fire is declared contained to aid the DFPC in meeting the one year reporting deadline for recovering federal grant monies or other reimbursements. If the Sheriff cannot provide the final report within nine (9) months, the Sheriff shall provide a written notice to the DFPC no later than nine (9) months after the date the Wildland Fire is declared contained regarding: 1) the status of the investigation; 2) when the final report will be complete; and 3) whether charges have been filed or an arrest has been made. The Sheriff shall also provide periodic updates to the DFPC, on the status of the investigation until the final report is provided if requested by the DFPC. If the Sheriff does not provide the final report or written notice to the DFPC as described above, the DFPC may not be able to recover grant monies or other reimbursements. Notwithstanding the foregoing, the Sheriff shall not be responsible for conducting investigations on any federally owned or managed lands. DFPC may provide technical assistance and qualified investigators to assist the Sheriff as needed.

Section 8. REPORTING

8.1 ***All Parties Agree.*** The Parties recognize that Wildland fire management funding is tied to accurate and complete statistical reporting, and will work together to encourage fire response agencies within the County to report statistical wildfire data to the DFPC via the NFIRS or its successor system.

8.2 ***Sheriff Responsibilities.*** The Sheriff shall report, or cause to be reported, to the DFPC all County Responsibility Fires utilizing the NFIRS or its successor system.

8.3 ***DFPC Responsibilities.*** The DFPC shall use the data obtained pursuant to Section 8.1 and 8.2 for required federal reporting and to apply for grant funding as available. DFPC shall maintain such data for at least two (2) years. Further, the DFPC shall assist the County and Sheriff with training regarding the NFIRS or its successor system.

Section 9. PRESCRIBED BURNING

Prior to performing any Prescribed Burning in the county, the Party undertaking such Prescribed Burning shall develop a prescribed fire plan. The Parties shall inform one another prior to performing Prescribed Burning. The Parties shall follow the *Colorado Prescribed Fire Planning and Implementation Policy Guide* for any Prescribed Burning in the county, unless the County has adopted guidelines or standards meeting or exceeding the standards enumerated in C.R.S. § 24-33.5-1217.5. DFPC may upon request, assist the County with personnel and resources for the purposes of prescribed burning planning, preparation, and/or implementation. The DFPC may enter into an agreement with the County and/or the Sheriff to provide Prescribed Burning services pursuant to C.R.S. § 24-33.5-1217(6)(a).

All notices of Prescribed Burning shall meet or exceed the current DFPC guidelines and standards. At a minimum, the DFPC Battalion Chief and County Sheriff's Office shall be notified.

Section 10. BILLING AND PAYMENT

10.1 ***General Provisions.*** The Parties shall ensure that the County and/or the Sheriff are parties to any Mutual Aid Agreements, cost share agreements, or other agreements that apportion any Wildland Fire expenses to the County and/or the Sheriff and those agreements shall comply with State law.

10.2 ***County Responsibility.*** It is the County's responsibility to pay costs incurred during an incident in accordance with any cost share agreements the County is a Party to. Regardless of whether or not a cost share has been negotiated on a County responsibility fire, County acknowledges that County shall encumber and pay all incident expenses that were authorized by the County, subject to agreements with other entities. County acknowledges that DFPC serves as coordinator for inter-jurisdictional wildfire billing in Colorado.

10.3 ***DFPC Responsibility.*** Upon request, DFPC may assist counties in gathering supporting documentation of incident costs. It is DFPC's responsibility to pay costs incurred during an incident in accordance with cost share agreements they are Party to. DFPC shall

encumber and pay all incident expenses that were authorized by DFPC. Any invoice from DFPC to the County and/or the Sheriff for any expense incurred by any agency for a Wildland Fire occurring in the county shall include appropriate supporting documentation. DFPC serves as the coordinator for all inter-jurisdictional Wildland fire billing in Colorado, and may charge the county and the sheriff a cost of overhead fee at a rate that adequately offsets the cost of providing the billing services. The rate will not exceed ten percent (10%) of the total amount billed to the County, based on actual costs.

Section 11. GENERAL PROVISIONS

11.1 ***Term.*** The Term of this Agreement shall commence on the date the last Party signs and shall remain in effect for five (5) years from that date. Any Party shall have the right to terminate its participation under this Agreement by providing one-year advance written notice to the other Parties to this Agreement.

11.2 ***Repeal of Prior Agreements.*** This Agreement, upon full execution, shall repeal and replace any other prior agreements between the Parties relating to cooperative Wildfire protection within the county.

11.3 ***Amendments or Extensions***. Amendments or extensions, save any subject to rulemaking, within the scope of this Agreement shall only be made by mutual consent of the Parties to this Agreement by issuance of a written modification, signed and dated by all Parties to this Agreement, prior to any changes taking effect. No Party is obligated to fund any changes not properly approved in advance.

11.4 ***Notices.*** All notices, requests, demands, or other communications under this Agreement shall be in writing and shall be deemed effective upon delivery, if delivered personally, or three (3) calendar days after mailing if deposited in the U.S. Mail, postage prepaid, and addressed to the respective parties as follows:

DFPC: Division Director
690 Kipling Street, #2000
Lakewood, Colorado 80215

County: Gunnison County
510 W. Bidwell
Gunnison, County, 81230

Sheriff: John Gallowich
510 W. Bidwell,
Gunnison, Colorado, 81230

11.5 **Entire Understanding**. This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or

contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

11.6 Digital Signatures. If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

11.7 Third Party Beneficiaries. Except for the Parties' respective successors and assigns described in **§ 17.A,** this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. 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 this Agreement, and do not create any rights for such third parties.

11.8 Waiver. A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

11.9 CORA Disclosure. To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

11.10 Colorado Special Provisions. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3). These Special Provisions apply to all contracts except where noted in italics.

(a) FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

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

(b) GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. 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, contained in these statutes.

(c) INDEPENDENT PARTY.

County shall perform its duties hereunder as an independent Party 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 shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as

expressly set forth herein. **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. County shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. County shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

(d) COMPLIANCE WITH LAW.

County shall 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.

(e) CHOICE OF LAW, JURISDICTION, AND VENUE.

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. 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.

(f) PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold County harmless; requires the State to agree to binding arbitration; limits County's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Agreement that limits County's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Agreement, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Agreement.

(g) SOFTWARE PIRACY PROHIBITION.

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.

(h) EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

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.

(i) VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's 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 by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and County, or by any other appropriate method for collecting debts owed to the State.

(j) PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[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 verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Agreement is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if County has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, **(iii)** 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 **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If County

participates in the Department 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 Department program. If County fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., 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.

(k) PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

County, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that County **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq*., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Gunnison **COUNTY, COLORADO:**

Board of County Commissioners:

By:_____
Chair

_____
Print Name & Title of
Authorized Officer

ATTEST:
(SEAL)

_____
County Clerk

County Sheriff:

By:_____
Sheriff

STATE OF COLORADO:
Jared Polis, GOVERNOR

Department of Public Safety, Division of Fire Prevention and Control

By:_____
Michael C. Morgan
DFPC Director