AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Omnibus Mutual Aid Agreement; Hinsdale County; Aid and Assistance during Incidents

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison and Hinsdale County

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

Summary:
Mutual Aid Agreement between Gunnison & Hinsdale County to request aid & assistance (equipment or personnel) during an incident (man made or
natural) at no cost for the first operational period.

Fiscal Impact: TBD

Submitted by: B. Lucero for S. Morrill **Submitter's Email Address:** Smorrill@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/24/2015

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

Comments:

ok db 4/2/15

Reviewed by: GUNCOUNTY1\dBaumgarten Discharge Date: 4/2/2015 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 4/3/2015

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

Agenda Date: 4/7/2015 Follow Up Agenda Date:

Revised April 2013

OMNIBUS MUTUAL AID AGREEMENT

THIS OMNIBUS MUTUAL AID AGREEMENT is made and entered into by Hinsdale County and Gunnison County, hereafter referred to in this document as the "Participating Entities", the undersigned parties to enable them to provide emergency assistance to one another during times of emergency or the occurrence of a disaster.

I. RECITALS

A. Each of the governmental entities and interlocal public agencies ("Participating Entity(ies)") affixing their signature hereto have expressed a mutual interest in the establishment of an Omnibus Mutual Aid Agreement to facilitate and encourage cooperation and assistance amongst themselves in the event of a Local Emergency or Disaster, as defined herein.

B. Agreements to provide functions or services, including the sharing of costs of such services or functions, by political subdivisions of the State of Colorado and federally recognized Tribal Nations are specifically authorized by C.R.S. § 29-1-203 and other sections of the Colorado Revised Statute.

C. The Participating Entities and/or the constituents they serve face threats to public safety from (i) natural disasters including, but not limited to, flood, fire, windstorm and tornados; (ii) possible terrorist actions and weapons of mass destruction, be they conventional, chemical, biological or nuclear; and (iii) hazardous materials releases, civil disturbance or hostile military or paramilitary action.

D. The Participating Entities recognize that the resources of a Participating Entity might be strained or overwhelmed if forced to confront the realization of such threats in isolation and that additional resources, personnel and equipment, beyond those available to any single Participating Entity might be needed. Therefore, such threats to public safety can be best met and mitigated where an orderly plan for assistance has been developed prior to a sudden and immediate need.

E. The Participating Entities seek to have a mutual aid agreement that ensures eligibility of costs under the Emergency Management Assistance Compact and consistent with FEMA Disaster Assistance Policy DAP9523.6.

F. The Participating Entities have determined that it is in their best interest and the best interest of their constituents to create a plan to foster communications and the sharing of resources, personnel, and equipment in the event of such calamities.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between each of the Participating Entities as follows:

Section 1. Definitions.

Agreement. This Omnibus Mutual Aid Agreement

Assistance Costs. Any expenses that extend beyond the first twelve (12) hours (usual and customary costs) incurred by the Assisting Party in providing any asset requested. Unless agreed to otherwise by the Requesting Party and the Assisting Party, after twelve (12) hours, the Requesting Party shall be responsible for all costs associated with the borrowed asset(s). For this Agreement, the computation of time begins when the Assisting Party agrees to provide resources by mobilizing the same.

Assisting Party. The Participating Entity furnishing equipment, services and/or personnel to the Requesting Party under this Agreement.

Authorized Representative. The chief executive or his or her designee of a Participating Entity authorized in writing by such entity to request, offer or provide assistance under the terms of this Agreement. The list of titles of authorized representatives for the Participating Entities executing this Agreement shall be attached hereto as Exhibit A and shall be updated as needed by each participating Party by means of a written notification to the Director of Hinsdale County, Office of Emergency Management, P.O. Box 277, Lake City, Colorado 81235.

Disaster or Local Emergency. Any 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 fire, flood, earthquake, windstorm, snow storm, wave action, hazardous substance incident, oil spill or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air pollution, blight, drought, infestation, explosion, civil disturbance or hostile military or paramilitary action and any other form of occurrence or threat set forth in C.R.S. § 24-32- 2103(1.5), as the same may be amended from time to time or an emergency or major disaster as defined in 44 C.F.R. §206.2(a)(9) and (17), respectively.

Participating Entity(ies). Any county, municipality, township or other political subdivisions of the State of Colorado or federally recognized Tribal Nation or interlocal public agency of the State of Colorado, or political subdivision thereof, who is or may hereafter become a party to this Agreement by executing a copy of this Agreement and providing a copy with original signatures and the authorizing resolutions to every other Participating Entity.

Requesting Party. The Participating Entity requesting aid in the event of a Disaster or Local Emergency.

Section 2. <u>Procedures</u>.

A. *Request for Aid.* When a Participating Entity becomes affected by a Disaster or Local Emergency or requires assistance in preventing, mitigating or recovering from incidents, Local Emergencies or Disasters, an authorized representative may invoke emergency-related mutual aid assistance under this Agreement by orally communicating a request for mutual aid assistance to an Assisting Party, followed as soon as practicable or within thirty (30) days written confirmation of said request. A Participating Entity shall not request mutual aid unless the Requesting Party deems resources available within the jurisdiction of the Participating Entity inadequate.

B. *Assessment of Availability of Resources and Rendering of Assistance*. When contacted by a Requesting Party, a Participating Entity shall assess its situation to determine available personnel, equipment and other resources that might be available for purposes of rendering aid or assistance. A Participating Entity shall be excused from making its resources available or continuing to make its resources available to the Requesting Party if a need for the resources exists or arises within the territorial area or jurisdiction of the Participating Entity or any other jurisdiction. Such decision of availability shall be made by the Participating Entities, and such decision shall be conclusive and in the sole discretion of the Participating Entities. The Participating Entities recognize that time is critical during an emergency and diligent efforts shall be made to respond to a request for assistance as rapidly as possible, including any notification that requested assistance is not available.

C. *Supervision and Control*. The personnel, equipment and resources of any Assisting Party shall be and remain under operational control of the Requesting Party but all parties hereby adopt and agree to utilize a local incident management system incorporating the functions, principles and components of the Incident Command System (ICS). Direct supervision and control of said personnel, equipment and resources shall remain with the designated supervisory personnel of the Assisting Party. Representatives of the Requesting Party shall assign, through the unified command system, operational work tasks to the supervisory personnel of the Assisting Party for performance by the Assisting Party's personnel, equipment and resources. The designated supervisory personnel of the Assisting Party shall have the initial responsibility and authority for assigning work and establishing work schedules for the personnel of the Assisting Party, subject to consultation with the Requesting Party. The Assisting Party's personnel and other resources shall remain subject to recall by the Assisting Party at any time. The Requesting Party shall, at its own expense, provide consumable supplies needed to operate equipment unless mutually agreed upon otherwise. Participating Parties shall ensure that Equipment is used only by properly trained and supervised operators. All Equipment is provided "as is", with no representations or warranties as to its fitness for particular purpose.

Section 3. Personnel.

A. *Qualifications.* Assisting Parties shall ensure that loaned personnel have the ability, skill and certification necessary to perform the work required and may be obliged to disclose the qualification(s) and training level of personnel identified to provide assistance.

B. *Rights and Privileges*. Whenever the employees of a Participating Entity are rendering aid outside the area of their normal jurisdiction as an Assisting Party pursuant to this Agreement, such employees shall have the powers, duties, rights, privileges and immunities of and receive the compensation incidental to their employment by the Participating Entity regardless of where serving. Workers compensation coverage shall be as structured in C.R.S. § 29-5-109, if the request meets the requirements of C.R.S. § 29-5-103-108; otherwise each Party will maintain workers compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this Agreement. Each Participating Entity waives the right to sue any other Participating Entity for any workers compensation benefits paid to its own employees, volunteers or their dependents, even if the injuries were caused wholly or partially by the negligence of any other Participating Entity or its officers, employees or volunteers.

C. *Independent Contractor*. Employees of an Assisting Party shall, at all times while providing assistance, continue to be employees of the Assisting Party and shall not be deemed employees of a Requesting Party for any purposes. Wages, hours and other terms and conditions of employment of the Assisting Party shall remain applicable to all of its employees who provide assistance. An Assisting Party shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. The costs associated with borrowed personnel are subject to the reimbursement process outline in Section 6.

Section 4. Equipment.

A Requesting Party shall take proper precaution in its operation, storage and maintenance of an Assisting Party's equipment. An Assisting Party's costs related to the transportation, handling and loading/unloading of equipment shall be borne by the Requesting Party unless mutually agreed upon otherwise. The Assisting Party shall provide copies of invoices for such charges where provided by outside sources and shall provide hourly accounting of charges for the Assisting Party's employees who perform such services.

Section 5. Record Keeping.

Time sheets and/or daily logs showing hours worked and equipment and materials used or provided by an Assisting Party shall be recorded on a shift-by-shift basis by the Assisting Party and/or the loaned employee(s) and shall be provided to the Requesting Party as needed. If no personnel are loaned, the Assisting Party shall provide shipping records for materials and equipment and the Requesting Party shall be responsible for any

required documentation of use of material and equipment for state or federal reimbursement. Under all circumstances, the Requesting Party remains responsible for ensuring that the amount and quality of all documentation is adequate to enable reimbursement. However, each Assisting Party agrees to exercise its best effort to ensure that it provides the documentation necessary for the Requesting Party to obtain reimbursement under federal law and FEMA's Disaster Assistance Policy, if applicable.

Section 6. **Payment for Services and Assistance.**

When a request for assistance is made, the Requesting Party and the Assisting Party will determine if reimbursement for services or assets will be requested. Payment terms and conditions will be negotiated and agreed on at the time of the initial request, but if more time is necessary, any payment terms must be agreed upon within thirty (30) days of the request. In many cases, the Requesting Party and the Assisting Party will agree no reimbursement is necessary.

When reimbursement has been negotiated, the Requesting Party shall pay the Assisting Party for all valid and invoiced Assistance Costs within sixty (60) days of receipt of the Assisting Party's invoice. If such timing presents a hardship, the Requesting Party can make a request to the Assisting Party to revise the payment timeframe.

Section 7. Indemnification.

A. *Indemnification.* Except as otherwise provided herein, to the fullest extent permitted by applicable law, the Requesting Party releases and shall indemnify, hold harmless and defend each Assisting Party, its officers, employees and agents from and against any and all costs, including costs of defense, claims, judgment or awards of damages asserted or arising directly or indirectly from, on account of, or in connection with providing assistance to the Requesting Party, whether arising before, during or after performance of the assistance and whether suffered by any of the Participating Entities or any other person or entity.

B. *Activities in Bad Faith or Beyond Scope*. No Participating Entity shall be required under this Agreement to indemnify, hold harmless and defend any other Participating Entity from any claim, loss, harm, liability, damage or cost or expense caused by or resulting from the activities of any Participating Entity's officers, employees or agents acting in bad faith or performing activities beyond the scope of their training or duties.

C. *Governmental Immunity.* Notwithstanding any other provision of this Agreement, 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, § 24-10-101 *et seq.*, C.R.S., as now existing or hereafter amended (the "CGIA"). The parties understand and agree that liability for claims or injuries to persons or property arising out of negligence of a Participating Entity afforded protections by the CGIA, its departments, agencies, boards,

officials or employees is controlled and limited by the provisions of the CGIA, as now existing or hereafter amended.

Section 8. <u>Participation.</u>

A. *Voluntary Nature.* Participation in this Agreement is voluntary. Execution of this Agreement therefore is not legally binding on a Participating Entity until such Participating Entity agrees to become a Requesting Party or an Assisting Party in accordance with its terms. Once this Agreement is executed, Participating Entities are obliged to disclose the qualification(s) and training level of personnel identified to provide assistance. No Participating Entity shall be liable to another Participating Entity, or be considered to be in breach of or default under this Agreement on account of any delay in or failure to perform any obligation under this Agreement, except to make payment if applicable.

B. *Role of Authorized Representative.* The Authorized Representative of each Participating Entity shall:

i. Participate in any meetings convened on the implementation of this Agreement;

ii. Obtain and communicate to relevant departments of their entity the discussion items and decisions of the meeting as they bear on interoperability among Participating Entities.

iii. Maintain a copy of this Agreement (including amendments) and a list of the Participating Entities;

iv. Ensure that the Director of Hinsdale County, Office of Emergency Management has current emergency contact information for their respective entity;

v. Notify the Director of Hinsdale County, Office of Emergency Management in writing upon their entity's termination of participation in this Agreement.

Section 9. <u>Other Laws</u>. In the event that an emergency or Disaster impacts a large geographical area that activates either Federal or State emergency laws or is an event that is specifically otherwise addressed by applicable law such as C.R.S. § 29-22-101 *et seq.* relating to hazardous substance incidents, this Agreement shall remain in effect until or unless this Agreement conflicts with such Federal and State laws.

Section 10. <u>Approval</u>. The rendering of mutual aid response by any Assisting Party beyond the political boundary of the Assisting Party is hereby deemed to be approved by the respective executive and legislative governing bodies of the Assisting Party, and such response shall require no further approval by responsible officials of any jurisdiction.

Section 11. <u>Additional Parties</u>. Additional governmental jurisdictions may become parties to this Agreement by approval of their governing bodies and without further consent of those already signators to this Agreement. However, the joinder of non-

governmental entities to this Agreement shall require the consent and signature of each party to this Agreement.

Section 12. Term. This Agreement shall be in effect unless terminated by thirty (30) days' advance written notice by a Participating Entity. Notice by a Participating Entity of termination shall only terminate this Agreement as to that Participating Entity; this Agreement shall remain in full force and effect as to all other Participating Entities. Notice of such termination shall be made in writing and shall be served personally or by registered mail upon all other Participating Entities.

Section 13. Effective Date. This Agreement shall be in full force and effect upon its execution by the initial Participating Entity and shall be become effective as to each successive signator upon its execution by that Participating Entity, with no action being required of the current signatories.

Section 14. Amendments and Assignment . Amendments to this Agreement may be made only upon unanimous consent by all current Participating Entities. This Agreement shall be binding upon the successors and assigns of each Participating Entity except that no jurisdiction may assign any of its rights or obligations hereunder without the prior written consent of two thirds of the other Participating Entities.

Section 15. Severability; Effect on Other Agreements. Should any portion, section or subsection of this Agreement be held to be invalid by a court of competent jurisdiction that fact shall not effect or invalidate any other portion, section or subsection;and the remaining portions of this Agreement shall remain in full force and effect without regard to the section, portion, subsection or power invalidated. This Agreement is not intended to be exclusive among the Participating Entities. Any Participating Entity may enter into separate assistance agreements with any other entity. No such separate agreement shall terminate any responsibility under this Agreement.

Section 16. Counterparts. This Agreement shall be executed by each Participating Entity on a separate signature page. Copies of signature pages shall be provided by each signator to each prior Participating Entity, and such copies shall have the full force and effect as if they were originals.

Section 17. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Participating Entities or to impose any partnership obligation or liability upon any Participating Entity. Further, no Participating Entity shall have any authority to act on behalf of or as an agent for or to otherwise bind any other Participating Entity.

Section 18. No Third Party Beneficiary. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the Participating Entities.

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[SIGNATURE PAGE TO OMNIBUS MUTUAL AID AGREEMENT]

Hinsdale County Sheriff

_____

Ron Bruce Date

Hinsdale County, BoCC
Chairperson

_____

Susan Thompson Date

Hinsdale County
Emergency Manager

_____

Jerry Gray Date

Attest:

SEAL

_____

Clerk of the Board

Gunnison County Sheriff

_____

Rick Besecker Date

Gunnison County, BoCC
Chairperson

_____

Paula Swenson Date

Gunnison County
Emergency Manager

_____

Scott Morrill

Attest:

SEAL

_____

Clerk of the Board