AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: MOU; CO Emergency Fire Fund

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

Memorandum of Understanding for participation in the Colorado Emergency Fire Fund

Fiscal Impact:

Submitted by: Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, ongoing arrangement. We paid $11,255 in 2019 and have $13,000 for this line item in the 2020 adopted budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 2/6/2020

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

Comments:
ok db 2/10/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 2/10/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 2/13/2020

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

Agenda Date: 2/18/2020

Revised April 2015

MEMORANDUM OF UNDERSTANDING
For Participation in the Colorado Emergency Fire Fund

THIS Memorandum of Understanding (hereinafter "MOU" or "Agreement") is entered into by and between the Board of County Commissioners for the County of _____ (hereinafter the "County"), the _____ County Sheriff (hereinafter "Sheriff"), and the 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 the "State" or "CDPS" or "DFPC").

WHEREAS, in 1965, various Colorado counties initiated the first Emergency Fire Fund through an intergovernmental agreement executed in 1966, with voluntary contributions that were to be used for costs incurred in controlling wildfires by any of the parties contributing moneys to the fund; and

WHEREAS, House Bill 12-1283, effective July 1, 2012, designated the Colorado Department of Public Safety Division of Fire Prevention and Control as the state's manager and coordinator of wildland fire preparedness, response and suppression. The bill also gave the DFPC responsibility for administering a fund known as "the Emergency Fire Fund" to provide funding or reimbursement for wildfires to participating counties; and

WHEREAS, pursuant to §24-33.5-1220, C.R.S., the DFPC shall use the moneys in the Emergency Fire Fund to provide funding or reimbursement for wildfires in accordance with memoranda of understanding with participating public entities; and

WHEREAS, the parties find it to be in the best interests of the public health safety and welfare to enter into this MOU setting forth their mutual and respective duties regarding collection, administration, and disbursement of monies in the Emergency Fire Fund, pursuant to §24-33.5-1220(2)(b), C.R.S.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein, the parties hereby agree as follows:

A. AUTHORITIES

C.R.S. § 24-4-106,	Judicial Review
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. § 24-33.5-1218.	Cooperation with Governmental Units
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. § 24-33.5-1226.	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
C.R.S. § 30-10-513.5.	Authority of sheriff relating to fires within unincorporated areas of county - liability for expenses
C.R.S. § 30-11-107(1)(o).	Powers of the Board of County Commissioners

B. PURPOSE

The purpose of this Agreement is to (1) establish the County's participation in the Emergency Fire Fund program ("EFF Program" or "EFF" or "Fund," depending on the context); (2) establish the methodology and process for payments from the County to the EFF; (3) establish the methodology and process for eligible payments from the Fund to the County; and (4) describe the conditions under which the EFF will be managed.

C. REPEAL OF PRIOR AGREEMENT

This Agreement, upon full execution, shall repeal and replace any other prior EFF agreements.

D. SUMMARY OF KEY DATES ESTABLISHED HEREIN:

Initial Term	Effective Date through 1/31/2021
Assessment for Renewal Term 1	Effective Date or shortly thereafter
Renewal Term 1	2/1/2021 – 1/31/2022
Annual Contribution for Renewal Term 1	2/1/2021 or before
AOP Executed	4/1/2021 or before
Assessment for Renewal Term 2	7/1/2021
Renewal Term 2	2/1/2022 – 1/31/2023
Annual Contribution for Renewal Term 2	2/1/2022 or before
AOP Executed	4/1/2022 or before
Assessment for Renewal Term 3	7/1/2022
Renewal Term 3	2/1/2023 – 1/31/2024
Annual Contribution for Renewal Term 3	2/1/2023 or before
AOP Executed	4/1/2023 or before
Assessment for Renewal Term 4	7/1/2023
Renewal Term 4	2/1/2024 – 1/31/2025
Annual Contribution for Renewal Term 4	2/1/2024 or before
AOP Executed	4/1/2024 or before
Contract Expiration	1/31/2025

E. TERM

1. Initial Term. This Agreement shall be effective as of the date that it has been fully executed by all parties and the State Controller, and continue in effect for an initial term that ends on January 31, 2021 (the "Initial Term").

2. Renewal Terms. This Agreement shall continue in effect for up to four (4) additional terms of one 12-month-period each, beginning on February 1 of each year and ending on January 31 of the following calendar year (each being a "Renewal Term"), so long as (1) the County has paid the Annual Contribution for the Renewal Term by the later of February 1 of that calendar year or on the 75th day after the County received the Assessment invoice for that Renewal Term, and (2) no party is in default of any terms of this Agreement.

F. RELATED DOCUMENTS CONCERNING WILDLAND FIRE PROTECTION

1. Cooperative Agreement. The parties agree they will at all times during the term of this Agreement be party to the Agreement for Cooperative Wildfire Protection.

2. Annual Operating Plan. The parties shall develop, review, and execute, along with other participants, an Annual Operating Plan ("AOP") before April 1 of each year that this Agreement is in effect. The AOP will establish specific operational procedures intended to ensure prompt and effective response to and suppression of wildland fires. So long as the County has paid its Annual Contribution for the current Initial Term or Renewal Term, failure to execute an AOP by the April 1 deadline will not result in a penalty to any party pursuant to this Agreement. Instead, failure to execute an AOP by the April 1 deadline may cause a party to be in default of this Agreement pursuant to section H(1), thereby preventing an automatic subsequent Renewal Term pursuant to section E(2).

G. EMERGENCY FIRE FUND CONTRIBUTIONS, MANAGEMENT, AND DISBURSEMENTS

1. Emergency Fire Fund. The EFF is created in accordance with statute and exists through the payments made by participating Colorado counties and other entities that enter into EFF agreements with the DFPC. The DFPC maintains the EFF as an account under the fiscal management of the Division Director. Payments from the EFF shall be made in compliance with the provisions herein and all applicable laws, rules and regulations pertaining to DFPC funds, including but not limited to the State Fiscal Rules, §24-33.5-1202(3.8), C.R.S., and §24-33.5-1221(2)(b), C.R.S. There is no upper limit on the amount of funds that can accumulate in the EFF, and funds may accumulate from year to year.

2. Assessments and County Contributions to the Fund. Each Term, the County shall make its annual contribution to the EFF in the amount assessed by DFPC for the County for such Term in accordance with this section. To the extent not already paid, the County shall pay the assessment for the Initial Term simultaneously with the execution of this Agreement in the amount invoiced for 2020 by the Division. Subject to annual appropriation by the County, assessments and payments for Renewal Terms shall be as follows:

i. The DFPC shall calculate assessments in accordance with the following formula:

Annual EFF Assessment= Acreage Cost + Valuation Cost.

Acreage Cost= (fixed cost/acre * number of non-federal forested acres in the county) where the fixed cost per acre is set to $0.0075.

Valuation Cost= (annual valuation * normalization value) where the annual valuation is the total taxable assessed value of all acres in the county, and the normalization value reduces the sum of the assessments of all counties each year to $1M.

ii. On or before August 1 of the Initial Term and each subsequent Renewal Term, the DFPC shall send a letter advising the counties of their actual assessment for the Renewal Term. This notice shall match the invoice reference in item iii below.

iii. On or before October 1 of the Initial Term and each subsequent Renewal Term, the DFPC shall send an invoice to the County for the actual assessment for the next Renewal Term.

iv. The County shall pay the invoiced amount no later than February 1 of each Renewal Term, except that under no circumstances shall the County have less than 75 days from its receipt of the invoice from DFPC to pay such invoice. All payments to the EFF are final and non-refundable except as provided in section H(3)(iv) of this Agreement.

3. Reporting, Management, and EFF Advisory Committee.

i. The Division shall provide written financial reports ("EFF Financial Report") to the EFF Committee and to all participants in the EFF Program prior to the Fall Committee meeting, identifying fund income, expenditures and encumbrances, and available balance. Pursuant to §24-33.5-1220(2)(a), C.R.S., the EFF may hold funds received from sources outside the scope of this Agreement, therefore DFPC shall account for such contributions separately from any other moneys in the EFF.

ii. The Division Director shall make the EFF Financial Report available for review to an advisory committee (the "EFF Advisory Committee") composed of the Division Director; three county commissioners designated by Colorado Counties, Inc.; three county sheriffs designated by County Sheriffs of Colorado; and two fire chiefs designated by Colorado State Fire Chiefs, pursuant to §24-33.5-1202 (3.8), C.R.S., and shall receive from the EFF Advisory Committee recommendations on matters relating to the Fund, including, without limitation, whether or not the Fund should be increased. Final decision making authority over fiscal management matters shall reside with the Division Director on behalf of the participant Counties, and shall constitute final agency action subject to review in accordance with the provision of § 24-4-106, C.R.S.

iii. The DFPC shall at all times administer the EFF in accordance with all applicable laws, rules, and regulations, including but not limited to §24-33.5-1220(2)(b), C.R.S., which states:

> "The division shall use the moneys in the emergency fire fund to provide funding or reimbursement for wildfires in accordance with memoranda of understanding with participating public entities."

In doing so, the DFPC shall consider the role of the EFF Advisory Committee as contemplated by §24-33.5-1202(3.8), C.R.S., which states:

> "'Emergency fire fund' means the emergency fire fund created in section 24-33.5-1220 that was first established in 1967 with voluntary contributions from counties and the Denver water board; administered by a nine-person committee composed of county commissioners, sheriffs, fire chiefs, and the director; and used for the purpose of paying costs incurred as a result of controlling a wildfire by any of the parties contributing moneys to the fund, in accordance with the intergovernmental agreement for participation in the emergency fire fund."

4. Disbursements from the Fund. The provisions of this sub-section shall control the eligibility of costs for reimbursement or payment from the EFF. The DFPC shall make distribution from the EFF only upon direction of the Division Director or his/her designee, and is subject to the "Emergencies" provisions of the State Fiscal Rules (Rule 2). Disbursements shall be limited to reimburse or pay for Eligible Costs incurred in controlling a wildfire that is

determined to be eligible for EFF assistance pursuant to section G(6) below and are incurred during the designated EFF Period. The designated EFF Period is defined as the time after the State assumes financial responsibility for the fire from the County until the County reassumes financial responsibility for the fire. During each Term, the DFPC will use EFF moneys to reimburse the County and the Sheriff for Eligible Costs incurred in connection with the County's and the Sheriff's wildland fire suppression efforts on fires within their jurisdiction, which are EFF approved as set forth in this Agreement during such Term.

i. Costs eligible for reimbursement by the EFF unless contrary to local agreements ("Eligible Costs"):

a. DFPC approved costs for fire suppression activities as outlined in the CDPS Cooperator Incident Reimbursement Guidelines.

b. Host County permanent employees overtime pay including benefits.

c. Host County temporary/seasonal employee regular and overtime pay including benefits.

d. Host Fire Protection District permanent employees overtime pay including benefits.

e. Host Fire Protection District temporary/seasonal employee regular and overtime pay including benefits.

f. Host Volunteer Fire Department volunteer employees regular and overtime pay including benefits.

g. State of Colorado employee project and overtime pay including benefits and travel expenses.

h. State of Colorado temporary/seasonal employee regular and overtime pay including benefits and travel expenses.

i. State of Colorado, Host County, and Host Fire Protection District equipment use.

j. Restock and/or replacement of supplies consumed, lost or destroyed in the fire control effort.

ii. Costs NOT eligible for reimbursement under the EFF:

a. Host County permanent employee regular/base salaries and benefits.

b. Host County equipment repair due to normal wear and tear.

c. Host County owned and managed aircraft use, normal wear and tear, and repair.

d. Host Fire Protection District permanent employee regular/base salaries and benefits.

e. Host Fire Protection District equipment repair due to normal wear and tear.

f. State of Colorado permanent employee regular/base salaries and benefits.

g. State of Colorado equipment repair due to normal wear and tear.

h. Costs covered by insurance.

i. County Sheriff's costs of performing the investigation of all human caused fires, except for overtime and benefits that occur during the designated EFF Period.

iii. Costs that the Division Director may determine to be reimbursable as Eligible Costs on a case-by-case basis by the EFF:

a. Damages to fire equipment resulting from a declared fire;

b. Other costs not outlined in this Agreement.

iv. For purposes of this sub-section G(5), "Host County" is defined as the county or counties in which the EFF incident is occurring, and "County" includes the Sheriff.

v. 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 within the organization's legal boundaries.

vi. Nothing in this Agreement shall prevent the Sheriff or County from seeking reimbursement for expenses and costs they incur during an EFF Fire for aid given on land under federal jurisdiction. Arrangements for these expenses and costs must be negotiated with federal agencies by the County or Sheriff and are outside of the scope of this Agreement.

5. Procedure for Obtaining EFF Assistance. To obtain EFF assistance, the Sheriff shall follow the procedure outlined in the Agreement for Cooperative Wildfire Protection for elevating a County Responsibility Fire to a State Responsibility Fire. Provided that EFF funds are available, the County shall be eligible for EFF assistance when the DFPC Analysis threshold for EFF assistance has been met and the parties have entered into an Assumption of Fire Control Duty Agreement. Any disagreements between the parties regarding eligibility for EFF assistance shall be addressed through the appeals process in accordance with the provision of § 24-4-106, C.R.S.

6. Benefits for Participants.

i. Counties that timely pay their invoiced contribution to the EFF upon execution of this Agreement are immediately eligible for 100% of EFF benefits for Eligible Costs. Any County that does not pay its annual contribution but chooses to participate in the EFF in a subsequent year will be eligible for EFF benefits on a pro-rata basis as follows: during the first year, 50% of Eligible Costs; during the second year, 75% of Eligible Costs; during the third and each subsequent year, 100% of Eligible Costs.

ii. A County's participation in the EFF shall not disqualify or otherwise limit its eligibility for other financial assistance that may be available for Counties that are not participants in the EFF.

7. Fund Depletion. If at any time during the term of this Agreement the EFF becomes depleted or has insufficient funds to meet the obligations of the Fund, the County shall have no claim against the Fund, the Division, or the State.

8. Escaped Prescribed Fire Reimbursement. In the event that EFF monies are used to pay expenses for a fire which was determined to be the result of an escaped prescribed fire, the County, or its delegated representative, shall seek compensation from the party determined to be responsible for the escape within 180 days from the cause and origin determination. Funds recovered, up to the same amount expended by the EFF for this incident, by shall be placed into the EFF.

H. DEFAULT AND TERMINATION

1. Default and Notice. Any party that fails to comply with any obligation of this Agreement shall be in default. In the event the DFPC is in default, the County and/or Sheriff shall send written notice, pursuant to section I(5), to the Division describing the nature of the default, the actions required to cure the default, if any, and offer a minimum of ten (10) business days from the date the notice is delivered to the DFPC to cure the default. In the event either the County or Sheriff, or both, are in default, the DFPC shall send the written notice to the County and Sheriff, describing the nature of the default, the action required to cure the default, if any, and offer a minimum of ten (10) business days from the date the notice is delivered to the County and Sheriff to cure the default. In the event both the County and the Sheriff are in default and the notice is delivered to the County and the Sheriff on different days, the cure period begins from the later date.

2. Remedies for Default. If a defaulting party fails to timely cure its default pursuant to the terms of the default notice as described above, or if the default is of a nature that cannot be cured, any other party may terminate this Agreement by sending written notice, pursuant to

section I(5), to the defaulting party advising that this Agreement is terminated and setting forth a date of termination, which date shall be no earlier than the date the termination notice is delivered to the defaulting party.

3. Termination. In addition to termination of this Agreement for an uncured default as set forth above, this Agreement may be terminated as follows:

i. *In the Public Interest*. The Division 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 of Colorado, the Division, 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 Division's obligations hereunder. The State shall notify the County and Sheriff of such termination in writing, pursuant to section I(5), and specify the effective date of the termination.

ii. *Dissolution of the EFF*. If the EFF is dissolved, terminated, or cancelled for any reason, the Division shall terminate this Agreement by sending written notice to the County and Sheriff.

iii. *Termination by County or Sheriff.* The County or Sheriff may terminate this Agreement at will by providing written notice to the Division of its intent to terminate. The termination shall be effective as of the end of the then existing Term.

iv. *Refund in the Event of Termination.*

a. In the event of a default by the County or Sheriff, or both, for any reason OTHER than its or their failure to timely enter into an AOP, the County and Sheriff may not be eligible to receive any EFF funds for any Eligible Costs that are incurred after the date of termination set forth in the default notice. Furthermore, the County shall refund to the State any sums the State paid or is obligated to pay for Eligible Costs incurred by the County for that Term prior to the date of termination.

b. In the event the Division terminates this Agreement for default due to the failure of the County or Sheriff to enter into an AOP for any reason by April 1 of each Renewal Term, the County and Sheriff shall not be eligible to receive any EFF funds for any Eligible Costs that are incurred for that Term after the date of termination set forth in the default notice. Furthermore, the Division shall repay to the County all sums the County paid for that Term, less (1) any sums the State paid or is obligated to pay to the County for Eligible Costs incurred by the County during that term prior to the date of termination; and (2) EFF funds committed during that Term prior to termination for any other fire in jurisdictions covered by the EFF in reliance on the Annual Contribution by the County and Sheriff for that Term.

c. If the Division terminates this Agreement in the public interest, the State shall refund to the County all funds the County paid to the EFF for the Term in which the termination occurs, less any sums the State paid or is obligated to pay for Eligible Costs incurred by the County prior to the date of termination.

d. Notwithstanding anything to the contrary in this Agreement, and unless otherwise required by future law, neither party shall be entitled to any refund of EFF contributions made in any prior Terms.

I. ADDITIONAL PROVISIONS AND COLORADO SPECIAL PROVISIONS

1. Compliance with Laws, Regulations, and Requirements. Each party agrees to comply with all applicable federal, state and local laws, codes, regulations, rules, and orders.

2. Assignment. No party shall assign or transfer any interest in this Agreement, nor delegate any of its obligations, nor assign any claims for money due or to become due to a third person not a party to this Agreement, without the prior written approval of the other parties.

3. Binding Nature; Entire Agreement; Waiver. Except as herein provided, this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors. None of the terms or conditions in this Agreement shall give rise to any claim, benefit, or right of action by any third person not a party hereto. Any person or entity, other than the Division, County, or Sheriff receiving services or benefits under this Agreement shall be deemed only an incidental beneficiary. This Agreement is executed and delivered with the understanding that it constitutes the entire agreement between the parties with respect to the subject matter hereof. The failure of any party to insist upon performance of any covenant or condition hereof upon one or more occasions shall not constitute a waiver thereof.

4. Changes and Amendments. No modification or amendment to this Agreement, including all exhibits, shall be effective unless made in writing and signed by the authorized representatives of all parties hereto.

5. 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: Michael Morgan, Director, 690 Kipling Street, #2000, Lakewood, CO 80215

County: _____
Name, Title, Address

Sheriff: _____
Name, Title, Address

Copies of EFF Financial Reports shall also be sent to:

County: _____
Name, Title, Address

Sheriff: _____
Name, Title, Address

Copies of Annual Assessments shall also be sent to:

County: _____
Name, Title, Address

Sheriff: _____
Name, Title, Address

6. Captions, Construction, and Agreement Effect; Severability. The captions and headings used in the Agreement are for identification only, and will be disregarded in any construction of the Agreement provisions. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision

hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

7. Ability to Contract. Each party represents that it is not subject to any restrictive obligations imposed by any other Agreement or agreement that would impair its ability to perform its obligations hereunder. The individual or individuals signing on behalf of each party represent that they are fully authorized by law, statute, delegation, or otherwise to execute this Agreement and make it binding and enforceable against the party on whose behalf the individual or individuals is or are signing.

8. Order of Precedence. The provisions of State law, this Agreement, the Cooperative Agreement and the AOP shall govern the relationship of the parties. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, as now exist or may exist in the future, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Colorado Revised Statutes;
ii. Special Provisions set forth in section I(11);
iii. The provisions in the main body of this Agreement;
iv. The exhibits attached to and incorporated into this Agreement

9. Signatures. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall together constitute one and the same document. Facsimile machine copies or scanned versions of an original signature by any party shall be binding as if they were original signatures.

10. Appropriations. Because this Agreement involves the expenditure of public funds, all obligations under this Agreement are contingent upon appropriation and continued availability of funds for such obligations. The obligations described herein shall not constitute a general obligation, indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or the laws of the State of Colorado.

11. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

i. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

ii. 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.

iii. 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 Contract 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.

iv. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor 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 Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor 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.

v. COMPLIANCE WITH LAW.

Contractor 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.

vi. 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 Contract. 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 Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

vii. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor'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 Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

viii. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the

State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

ix. 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 Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

x. 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 Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

xi. 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] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (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 Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (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 Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor 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 Contract for breach and, if so terminated, Contractor shall be liable for damages.

xii. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (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 Contract.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

_____ COUNTY, COLORADO:

Board of County Commissioners:

By:_____
Chair

_____
Print Name & Title of
Authorized Officer

ATTEST:

(SEAL)

_____
County Clerk

County Sheriff:

By:_____
Sheriff

EFF ADVISORY COMMITTEE:

Approved as to Form

By: _____
Chair

STATE OF COLORADO:
Jared Polis, GOVERNOR

Department of Public Safety: Division of Fire Prevention and Control

By:_____
Michael Morgan
Director

ALL CONTRACTS MUST BE APPROVED
BY THE STATE CONTROLLER
CRS 24-30-202 requires that the State Controller approve all state contracts. This MOU is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the MOU is signed and dated below. If the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
ROBERT JAROS

By:_____

Printed Name: _____

Date:_____