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RESOLUTION NO. 18- 341

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**RESOLUTION TO APPROVE AN INTERGOVERNMENTAL AGREEMENT FOR
FIRE PROTECTION AND INCIDENT RESPONSE SERVICES BETWEEN EL
PASO COUNTY, ON BEHALF OF THE EL PASO COUNTY SHERIFF'S
OFFICE, AND THE CITY OF COLORADO SPRINGS, ON BEHALF OF
COLORADO SPRINGS UTILITIES**

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1) and 30-11-107(1), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board") has the legislative authority to represent the County and manage the business and concerns of the County; and

WHEREAS, pursuant to C.R.S. § 29-1-201, *et seq.*, and Article XIV, Section 18 of the Colorado Constitution, political subdivisions of the State of Colorado are encouraged to make the most efficient and effective use of their powers by cooperating and contracting with each other; and specifically, C.R.S. § 29-1-203, authorizes governmental entities to enter into intergovernmental agreements with other governmental entities to provide any function or service that each, individually, is authorized to perform; and

WHEREAS, the Sheriff of El Paso County ("Sheriff"), pursuant to C.R.S. § 29-22.5-103, is the fire warden of El Paso County and is responsible for the planning and coordination of efforts to suppress wildfires occurring in the unincorporated area of El Paso County outside of the boundaries of a fire protection district or that exceed the capabilities of the applicable fire protection district to control or extinguish; and

WHEREAS, the Sheriff, pursuant to C.R.S. § 30-10-513.5, has authority to order and monitor resources for purposes of responding to wildfires under the Sheriff's responsibility and jurisdiction; and

WHEREAS, the City of Colorado Springs, in order to comply with the Cooperative Agreement for the Purpose of Conserving and Protecting the Water Supply of Colorado Springs and Manitou Springs, entered into various agreements, and established under its utility enterprise, Colorado Springs Utilities, the Catamount WFT, a volunteer wildland fire team to respond to wildfire incidents where such incidents place Colorado Springs Utilities' assets at risk or when such response is otherwise in the best interests of the City of Colorado Springs and Colorado Springs Utilities; and

WHEREAS, the parties recognize that the primary purpose of the Catamount WFT is to protect Colorado Springs Utilities' utility system assets and in support of this purpose have separately entered into or will enter into that certain Intergovernmental Agreement for Wildfire Mitigation and Suppression Planning in accordance with C.R.S. § 29-20-105.5(3)(a)(II); and

WHEREAS, the Parties have determined that it is in their respective best interests that the Catamount WFT be included as a resource that may be called by the Sheriff for purposes

providing fire protection and incident response services as set forth herein; and

WHEREAS, the Parties further acknowledge that depending on the location of a wildland fire and the availability of equipment and personnel resources and other duties of the Catamount WFT members, Utilities may deny a request for resources; and

WHEREAS, the Board deems that it is in the best interests of the public health, safety, and welfare of the citizens of El Paso County to enter into an Intergovernmental Agreement for Fire Protection and Incident Response Services (Attached hereto as Exhibit A) and hereby approves Intergovernmental Agreement between El Paso County and the City of Colorado Springs as identified above, to effectuate the hereinabove described transaction.

NOW THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby approves the Intergovernmental Agreement for Fire Protection and Incident Response Services.

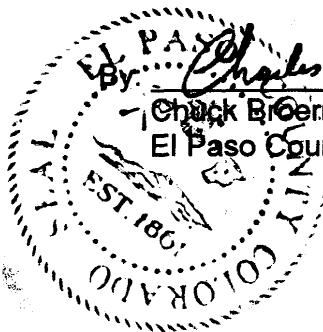
BE IT FURTHER RESOLVED, that Darryl Glenn, duly elected, qualified member and President of the Board of County Commissioners, or Mark Waller, duly elected, qualified member and President Pro Tempore of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 21st day of August 2018, at Colorado Springs, Colorado.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

By: Charles D Broerman
Chuck Broerman
El Paso County Clerk and Recorder



By: Darryl Glenn
Darryl Glenn, President

**INTERGOVERNMENTAL AGREEMENT FOR
FIRE PROTECTION AND INCIDENT RESPONSE SERVICES**

This Intergovernmental Agreement for Fire Protection and Incident Response Services (the "Agreement") is hereby entered into this ____ day of _____, 2018, by and between El Paso County (the "County"), on behalf of the El Paso County Sheriff's Office ("EPSO"), and the City of Colorado Springs (the "City"), on behalf of its utility enterprise Colorado Springs Utilities ("Utilities") and Utilities' Catamount Wildland Fire Team ("Catamount WFT") for the purposes described herein (each individually, a "Party" or collectively, the "Parties").

RECITALS

WHEREAS, the Parties to this Agreement are authorized pursuant to § 29-1-203, Colorado Revised Statutes, to enter into intergovernmental agreements with other governmental entities to provide any function or service that each, individually, is authorized to perform; and

WHEREAS, the Sheriff of the County, pursuant to § 29-22.5-103, C.R.S., is the fire warden of El Paso County and is responsible for the planning for, and the coordination of, efforts to suppress wildfires occurring in the unincorporated area of El Paso County outside of the boundaries of a fire protection district or that exceed the capabilities of the applicable fire protection district to control or extinguish; and

WHEREAS, the Sheriff of the County, pursuant to § 30-10-513.5, C.R.S., has authority to order and monitor resources for purposes of responding to wildfires under the Sheriff's responsibility and jurisdiction; and

WHEREAS, the City of Colorado Springs, in order to comply with that certain Cooperative Agreement for the Purpose of Conserving and Protecting the Water Supply of Colorado Springs and Manitou Springs, entered into between the United States Department of Agriculture, the City of Colorado Springs, and the Town of Manitou dated October 9, 1914 and that certain Cooperative Agreement for the Purpose of Conserving and Protecting the Water Supply of the City of Colorado Springs, Colorado, entered into between the United States Department of Agriculture and the City of Colorado Springs dated January 4, 1924, established under its utility enterprise the Catamount WFT, a volunteer wildland fire team to respond to wildfire incidents where such incidents place Utilities assets at risk or when such response is otherwise in the best interests of the City of Colorado Springs and Colorado Springs Utilities; and

WHEREAS, Colorado Springs Utilities has determined that it may better protect its utility system and assets by entering into this Agreement with the County and EPSO; and

WHEREAS, the Parties have determined that it is in their respective best interests that the Catamount WFT be included as a resource that may be called by the EPSO for purposes of providing fire protection and incident response services as set forth herein;



WHEREAS, the Parties recognize that the primary purpose of the Catamount WFT is to protect Colorado Springs Utilities' utility system assets and in support of this purpose have separately entered into or will enter into that certain Intergovernmental Agreement for Wildfire Mitigation and Suppression Planning in accordance with § 29-20-105.5(3)(a)(II), C.R.S.;

WHEREAS, the Parties further acknowledge that depending on the location of a wildland fire and the availability of equipment and personnel resources and other duties of the Catamount WFT members, Utilities may deny a request for resources.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals stated above are hereby incorporated into and made a part of this Agreement to the same extent as if fully stated herein.

Section 2. Purpose. The purpose of this Agreement is to establish terms under which the EPSO may request fire protection and incident response assistance and resources from Colorado Springs Utilities through its Catamount WFT.

Section 3. Fire Protection and Incident Response Services.

(A) Pursuant to its authority to order and monitor resources granted under § 29-22.5-103 and 30-10-512, *et seq.*, C.R.S., in the event of a fire occurring within an area for which the EPSO has jurisdictional authority, the EPSO may request that the Catamount WFT provide fire protection and incident response resources.

(B) All requests for fire protection and incident response services shall be effected through a request for resources from the EPSO to the Catamount WFT submitted by the EPSO dispatcher to the Colorado Springs Utilities dispatch.

(C) Upon receipt of a request for resources, the Catamount WFT may dispatch personnel and equipment which the Catamount WFT Chief determines, in his sole discretion, are available for providing fire protection and incident response services. Dispatch of equipment or personnel is voluntary and not required. In the event fire protection and incident response services are provided, any provision of equipment and personnel pursuant to this Section is subject to the following conditions:

(1) Any request for fire protection and incident response services or resources pursuant to this Agreement shall include a statement of the amount and type of equipment and personnel requested, and shall specify the location to which the equipment and personnel are to be dispatched. Notwithstanding the resources requested, the Catamount WFT Chief will determine the amount and type of equipment and the number of personnel to actually be dispatched.

(2) The Catamount WFT's personnel and equipment shall be released by the EPSO when the assistance of the Catamount WFT is no longer required, or when the Catamount

WFT Chief determines that the Catamount WFT's equipment or personnel are needed by Colorado Springs Utilities or the Catamount WFT.

(3) The Catamount WFT's personnel and equipment shall be and remain under the command and control of the Catamount WFT Chief or representative and may be subject to requirements pertaining to incident command following National Incident Management System and Incident Command Structure principles.

(4) Fire protection and incident response services provided under this Agreement by the Catamount WFT to EPSO shall be provided only within the territorial jurisdiction of the EPSO and shall not be provided to cover areas receiving fire response coverage outside of the territorial jurisdiction of EPSO under service or other contracts.

(5) Because the primary purpose of the Catamount WFT is the protection Colorado Springs Utilities' facilities and assets, including City-owned land used for utility purposes ("Utilities' Lands"), where a request for resources does not provide protection for such Utilities Lands, facilities, and assets, the request may be denied depending on the availability of such resources and the impact providing such resources would have to other Colorado Springs Utilities' business functions and operations, as determined in the sole discretion of Colorado Springs Utilities.

Section 4. Training and Supervision.

(A) In order to facilitate the provision of fire protection and incident response services as outlined in this Agreement, EPSO agrees to assist in the provision of training to Catamount WFT members by providing supervision of Catamount WFT members performing fire protection and incident response services pursuant to a request for resources from the EPSO; such supervision may include approval of training completed while providing such services.

(B) In order to ensure that any personnel resources provided by the Catamount WFT have the necessary training and skills, the Catamount WFT Chief shall work with the EPSO to ensure that the Catamount WFT members are appropriately trained.

(C) The Parties may work together to provide joint training opportunities to their respective wildland fire team members.

Section 5. Term. The term of this Agreement shall be from the effective date first stated above until a date that is five (5) years from such date, unless terminated early in accordance with Section 6. Upon written agreement of the Parties the Agreement may be extended for subsequent five (5) year terms.

Section 6. Termination. Either Party may terminate this Agreement for any reason upon provision of thirty (30) days prior written notice to the other Party at the address provided herein without compensation to the other Party. Any notice of termination shall state the effective date of such termination.

Section 7. Reimbursement and Billing.

(A) EPSO shall not be required to pay Colorado Springs Utilities or the Catamount WFT members any compensation for any services or equipment provided under this Agreement with respect to fire protection and incident response services for forest or wildland fires occurring on Utilities' Lands. In the event EPSO requests fire protection and incident response services for fires not occurring on Utilities' Lands, and if the period for such services exceeds the first operational period outlined in the County's annual operating plan, EPSO shall reimburse Utilities for costs incurred in providing fire protection and incident response services in accordance with the Colorado Department of Fire Prevention and Control's Colorado Resource Rate Form, unless otherwise agreed to by the Parties.

(B) All Utilities' personnel resources made available to EPSO under this Agreement shall remain Utilities employees under the control and supervision of Utilities for all purposes, including workers' compensation and other employers liability insurance, under this Agreement.

(C) In the event EPSO chooses not to utilize the resources made available pursuant to Section 6(A) of this Agreement, Utilities shall not be required to reimburse EPSO for any costs incurred in the event of a forest or wildland fire on Utilities' Lands in the unincorporated area of the County.

Section 8. No Duty. This Agreement shall not be construed to create a duty arising by law or contract for the provision of fire protection and incident response services or any other services whatsoever, nor shall it be construed as creating a benefit or enforceable right for any person. Except as otherwise stated herein, this Agreement shall not be construed as assuming or placing upon either Party any liability for injury, property damage, or any other damage that may occur by or as a result of any action or non-action taken, or service provided to the public or any person.

Section 9. Amendments. The Parties agree that this Agreement may only be modified in writing by written agreement approved by the governing bodies of each Party.

Section 10. Notice. Any notice required by this Agreement for each Party shall be addressed to the following persons:

EL PASO COUNTY SHERIFF'S OFFICE
EPSO Sheriff
27 East Vermijo Street
Colorado Springs, CO 80903
(719) 520-7202

COLORADO SPRINGS UTILITIES
Catamount Wildland Fire Team Chief
456 W. Fontanero Street, MC 1210
Colorado Springs, CO 80907
(719) 668-8766

The addresses above may be changed from time to time by written notice to the other Party. Notwithstanding the above notice address for Colorado Springs Utilities, all requests for resources shall be directed to the following, unless otherwise notified by Colorado Springs Utilities in writing:

COLORADO SPRINGS UTILITIES DISPATCH
701 N. Circle Drive
Colorado Springs, CO 80909
(719) 668-8800

Section 11. Assignment. Neither Party may assign or otherwise transfer this Agreement or any part hereof without prior written consent of the other Party.

Section 12. Governing Law. This Agreement is subject to and shall be interpreted in accordance with the laws of the State of Colorado, and the Charter for the City of Colorado Springs, and the Codes of Ordinances and Rules and Regulations of each Party. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado.

Section 13. Appropriation of Funds. Performance of each Party's obligations under this Agreement is expressly subject to the appropriation of funds by each Party's governing body. In the event that funds are not appropriated in whole or in part sufficient for the performance of the obligations set forth in this Agreement, then either Party may terminate this Agreement immediately without payment of compensation to the other Party upon provision of written notice to the other Party.

Section 14. Local Concern. The Parties agree and acknowledge that the activities governed by this Agreement are matters of local concern only, and that the Parties have mutually joined together for the performance of such matters of local concern, and that nothing in this Agreement shall be construed as making any such matters of local concern, matters of mixed concern or statewide concern.

Section 15. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto, and all other representations or statements made, verbal or written, are merged herein, and this Agreement may be amended only in a writing executed by the duly authorized representatives of the Parties hereto.

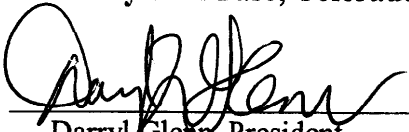
Section 16. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person or entity relating to this Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

Section 17. Waiver of Liability. The provision of services under this Agreement is for the benefit of the Parties only. Accordingly, the Parties do hereby waive, remise, and release any claim, right, or cause of action which either may have, or which may accrue in the future, against the other arising in whole or in part from this Agreement.

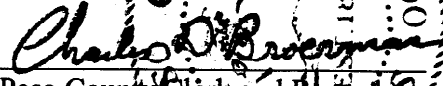
[SIGNATURES TO BE PROVIDED ON NEXT PAGES]

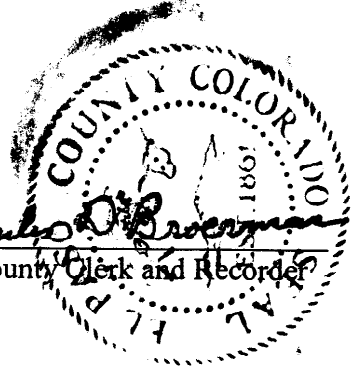
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement in the day, month, and year first above written.

**BOARD OF COUNTY COMMISSIONERS
of the County of El Paso, Colorado**

By: 
Darryl Glenn, President

ATTEST:

By: 
El Paso County Clerk and Recorder



SHERIFF OF EL PASO COUNTY

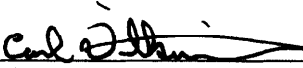
By: _____
Sheriff William D. Elder

Approved as to Form:

El Paso County Attorney's Office

**CITY OF COLORADO SPRINGS
ON BEHALF OF ITS ENTERPRISE
COLORADO SPRINGS UTILITIES**

By:



Earl Wilkinson
Chief Water Services Officer
Colorado Springs Utilities

Approved as to Form:



Colorado Springs City Attorney's Office – Utilities Division