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

Between

COUNTY OF ROUTT,
STATE OF COLORADO

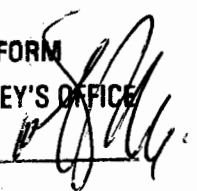
And

STATE OF COLORADO:
BILL OWENS, GOVERNOR
THE BOARD OF GOVERNORS OF THE
COLORADO STATE UNIVERSITY SYSTEM
COLORADO STATE FOREST SERVICE

IN ACCORDANCE WITH

2004 Colorado Revised Statutes, as amended: 23-30-101 Board of Governors of the Colorado University system; 23-30-111 Cooperation with other agencies; 23-30-202 Powers and duties of Board of Governors of the Colorado State University System; 23-30-203 Cooperation with governmental units; 23-30-204 Forest fires - duty of sheriff to report; 23-30-304 State responsibility determined; 23-30-305 Cooperation by counties; 23-30-306 Sheriffs to enforce; 23-30-307 Limitation of state responsibility; 30-10-512 Sheriff to act as fire warden; 30-10-513 Sheriff in charge of forest or prairie fire – expenses; 30-11-107(1)(o) Powers of the board.

APPROVED AS TO FORM
ROUTT COUNTY ATTORNEY'S OFFICE

Date: 12/11/2006 By: 

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, acting by and through Colorado State University ("University"), for the use and benefit of the COLORADO STATE FOREST SERVICE ("CSFS"); and the COUNTY COMMISSIONERS for the County of Routt, and for the Sheriff of said county (hereinafter referred to as "The County").

WITNESSETH: In consideration of the mutual benefits and promises contained herein, the Parties hereby agree as follows:

I. PURPOSE

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

II. EFFECTIVE DATE

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

III. WILDFIRE PROTECTION

A. Prior to entering into this Agreement, the County shall have entered into a valid and current Agreement for Cooperative Wildfire Protection (the "Cooperative Agreement"). A true and correct copy of the current Cooperative Agreement shall be attached hereto as "Attachment A" and is hereby incorporated and made a part of this Agreement.

B. As required in the Cooperative Agreement, the County and CSFS shall jointly develop, review, and sign an Annual Operating Plan (AOP) before May 1 of each year with all cooperating agencies having wildfire suppression responsibilities within the County. Failure to complete the AOP by May 1 of any year during the term of this Agreement shall result in the automatic suspension of the County from EFF participation unless the County has requested, in writing, and received approval by the State Forester, a 60 day extension of the May 1 date to complete the AOP, stating the specific reason(s) for the extension. The State Forester shall, in his or her sole discretion, approve or deny the request in writing. Once completed, the AOP shall be made a part of this agreement and attached as Attachment B.

IV. EMERGENCY FIRE FUND

A. The Emergency Fire Fund (EFF or "the Fund") has been established through the payments provided by participating Colorado counties and other entities entering into EFF agreements with the CSFS. The EFF is maintained as an account of Colorado State University, under the fiscal management of the State Forester. Payments from the EFF account shall be made only in compliance with applicable laws, rules and regulations pertaining to Colorado State University funds, including, but not limited to, the State Fiscal Rules. The State Forester is designated as the fiscal manager of all such monies received and all interest accrued in the EFF. No upper limit shall be placed on the amount of funds in the EFF, and funds may accumulate from year to year.

B. An estimate of the annual EFF assessment will be provided to the County for budget planning purposes in August of each year during the term of this Agreement. An invoice will be submitted to the County in December of each year for the following year's participation in the EFF. The County shall make payment to: Colorado State University Cashier, Attn: State Forest Service EFF Account, Colorado State Forest Service, 5060 Campus Delivery, Fort Collins, Colorado 80523-5060, on or before March 15 of each year. Current annual calculation of the County assessment is shown in Attachment C to this Agreement.

C. Administration of the EFF including annual reports will be reviewed annually by an advisory committee composed of the State Forester, three county commissioners, three county sheriffs and two Fire Chiefs each representing different participating counties in the EFF (the "EFF advisory committee"). County commissioner members will be designated by Colorado Counties, Inc.; sheriffs by County Sheriffs of Colorado; and Fire Chiefs by Colorado State Fire Chiefs Association. The EFF advisory committee shall make recommendations to the State Forester regarding matters relating to the Fund, including recommended annual assessments for subsequent years. Final decision making authority over fiscal management matters shall reside with the State Forester on behalf of the Counties collectively .

D. The CSFS shall make distribution of these funds only upon direction of the State Forester or his designee and will be subject to the "Emergencies" provisions of the State Fiscal Rules (Rule 2-2). Disbursements shall be limited to such expenditures incurred in controlling a designated wildfire as are within the then-current, unencumbered balance of the Fund.

E. All EFF participants shall pay annual assessments as invoiced. Any new participant entering into an EFF agreement with the CSFS shall become eligible to receive benefits from the EFF, after remitting its assessment, on a pro rata basis as follows:

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

F. If at any time during the term of this Agreement the EFF becomes depleted, or has insufficient funds to meet the expected needs of the Fund, the State Forester will make every reasonable effort to obtain additional funds by requesting the Governor to make additional funds available. Should the State Forester be unsuccessful in efforts to obtain additional funding, fire control costs will remain the County's responsibility.

G. Failure of the County to make payment into the EFF by March 15 of each year shall be a breach of this Agreement. In the event of a breach by a county, if such breach is not cured within 30 days after written notice by CSFS, then CSFS may immediately terminate this agreement. The County will not be eligible for EFF benefits arising from fires that occur while the county does not have a valid EFF agreement or is in breach. All funds deposited into the EFF will remain in the Fund until expended for eligible control costs on an EFF designated fire(s).

H. The State Forester will provide EFF participants an annual financial report identifying fund expenditures, encumbrances, and available balance. This report will be included with the annual invoice to participants.

I. The EFF shall be subject to various audits under current audit standards, rules and practices of the State of Colorado and the University.

J. The EFF Counties may terminate this Agreement effective at the end of an "agreement year" provided that 60 days notice of intent to terminate is provided to the State Forester in writing, as addressed in Section II "Effective Date" above. Such notice of intent to terminate must include a statement that the termination is the decision of the majority of the participating EFF Counties. In the event that the Agreement is terminated by the majority of the participating Counties, the EFF shall cease operations, and any un-obligated funds, including any accrued interest, remaining after all obligations of the fund have been paid will be returned to the participating counties and other entities, prorated on the sole basis of the payments made to the fund in the most recent year.

V. EFF IMPLEMENTATION

A. The County will make every effort to control fire(s) upon non-federal lands within the County with resources available within the County. In the event that the County and the CSFS mutually agree that the fire(s) threatens to spread, or has spread, beyond control capability of the firefighting resources within the County (as outlined in the County's Annual Operating Plan), the State Forester (or his authorized designee) and the authorized County representative shall sign a Delegation of Duty giving the State Forester command responsibility for the fire(s). Once command responsibility has been assumed by the CSFS, the County shall nevertheless continue to make its maximum effort to provide firefighting resources from within the County.

B. When a fire can again reasonably be managed by the County with resources available to it, command responsibility for incident management and for payment of all fire control costs will be returned by the State Forester to the County. No expenditures made by the

County prior to assumption by the State Forester or after return to the County, will be eligible for payment by the EFF, without express prior approval of the State Forester.

VI. FIRE CAUSE DETERMINATION

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

VII. ADDITIONAL PROVISIONS

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

B. Assignment. Neither 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 party, without the prior written approval of the other party.

C. Default; Termination.

1. A party will be considered in default of its obligations under this Agreement if such party should fail to observe, to comply with, or to perform any term, condition, or covenant contained herein and such failure continues for thirty (30) days after the non-defaulting party gives the defaulting party written notice thereof. A default not cured within such period shall be a material breach if it is substantial and significant and affects the rights of the non-breaching Party or its ability to perform any of its obligations. In the event of a material breach, the non-breaching Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

2. This agreement may be terminated by a participating EFF County, without cause, upon 30 days advance written notice. Such termination shall have no effect on participation by other parties, and the terminating County shall not be entitled to a refund of any funds it has paid into the EFF.

D. Binding Nature; Entire Agreement; Waiver. Except as herein provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. 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 CSFS or the County, receiving services or benefits under this Agreement or 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 and that there are no prior representations, warranties, or agreements, oral or written, relating hereto. The failure of either party to insist upon performance of any covenant or condition hereof upon one or more occasions shall not constitute a waiver thereof.

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

F. Notices. All notices required to be given under this Agreement shall be deemed given when delivered by certified mail, return receipt, or on the next business day following delivery by facsimile transmission if confirmation of the fax transmission is made by telephone, to the designated representatives of the Party to whom it is directed. A Party may change its designated representative or address at any time by written notice in the same manner as for any other notice. The initial representatives of the parties are as follows:

CSFS:

State Forester
5060 Campus Delivery
Colorado State University
Fort Collins, CO 80523-5060
Tele: (970) 491-6303
Fax: (970) 491-7736

COUNTY:

[Name] *Routt County*
[Title] *Board of County Commissioners*
[Address] *P.O. Box 773548*
[Address] *Steamboat Springs, CO 80477*
[Phone] *970-874-0108*
[Fax] *970-874-3442*

Office of the General Counsel
01 Administration Building
0006 Campus Delivery
Colorado State University
Fort Collins, CO 80523-0006
Tele: 970-491-6270
Fax: 970-491-2118

and: University Controller
Business & Financial Services
6003 Campus Delivery
Fort Collins, CO 80523-6003

G. Venue. Any legal action arising under this Agreement shall be filed and tried, if at all, in the Colorado District Court in and for the City and County of Denver, State of Colorado.

H. 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 contract provisions. If any portion, clause, paragraph, or section of this Agreement will be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act, then the remaining portions of this Agreement will remain in full force and effect.

I. No Beneficial Interest. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

J. Ability to Contract. Each party represents, to the other, that it is not subject to any restrictive obligations imposed by any other contract or agreement that would impair its ability to perform its obligations hereunder.

K. Resolution of Disagreements. Should disagreement arise on the interpretation of the provisions of this Agreement that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution, failing which, a party may seek legal or equitable relief under applicable law.

VIII. SPECIAL PROVISIONS

The following Special Provisions are required by law to be contained in every Intergovernmental Agreement of the State of Colorado. Any conflict between the Special Provisions and any other provision of this Agreement shall be resolved in favor of the applicable Special Provision.

SPECIAL PROVISIONS **(For Use Only with Inter-Governmental Contracts)**

1. **CONTROLLER'S APPROVAL**. CRS 24-30-202 (1). This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. **FUND AVAILABILITY**. CRS 24-30-202 (5.5). Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION**. To the extent authorized by law, the contractor shall indemnify, save, and hold harmless the State against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

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, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now or hereafter amended.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2 . THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION. The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution. At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

7. SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00. No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507. The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

Issued by the State Controller's Office Date Issued: 7/1/74 Rule 3-1 Date Revised: 8/1/05

IX. AGREEMENT EXECUTION

The parties hereto, as evidenced by their authorized signatures below, have executed, and hereby entered into, this agreement upon the last date of signatures below. Upon signature of the County and CSU, this agreement supersedes all prior agreements and understandings related to the subject matter hereof, including (but not limited to) the previous agreement entitled "Emergency Fund Contract Agreement For Forest And Watershed Fire Control" and subsequent amendments to that agreement, between the County and CSU.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENTAL AGREEMENT

ROUTT COUNTY, COLORADO:

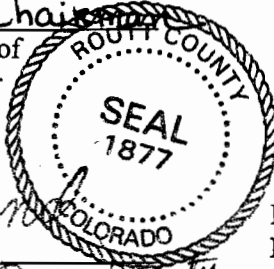
Board of County Commissioners:

By: [Signature]
Chairman

Douglas B. Monger, Chairman
Print Name & Title of Authorized Officer

ATTEST:

(SEAL)



Kay Weinland
County Clerk
By Jana Dry Deputy Clerk

County Sheriff:

By: [Signature]
Sheriff

STATE OF COLORADO:
BILL OWENS, GOVERNOR

Board of Governors of the Colorado State University System, acting by and through Colorado State University:

By: [Signature]
JEFF JAHNKE
State Forester

APPROVED:

LEGAL SUFFICIENCY:
DEPARTMENT OF LAW
John W. Suthers
Attorney General

By: [Signature]
Robert Schur
University Contracts Counsel

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER
CRS 24-30-202 requires that the State Controller approve all state contracts. This contract 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 contract 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:
LESLIE M. SHENEFELT

By: [Signature]

Date: 11/11/07

**INTERGOVERNMENTAL AGREEMENT
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EMERGENCY FIRE FUND**

ATTACHMENT C

Annual assessment to the County for participation in the EFF will be determined by the following factors:

2006

Target EFF income is \$750,000.

\$0.0000165 times the current assessed property valuation as published in the *State of Colorado Division of Property Taxation Annual Report*; plus

0.0075 times _____ acres within the County.

2007

Beginning in 2007, the multiplier to the assessed valuation will be adjusted to target EFF income of \$1,000,000. The acreage multiplier will remain constant.

\$0.xxxxxxx times the current assessed property valuation as published in the *State of Colorado Division of Property Taxation Annual Report*; plus

\$0.01 times _____ acres within the County.

1. 1964 Forest Inventory Acres per County as presented by CSFS will be used for the acres element of the equation.
2. Acres will account for 10% of the annual EFF target Revenue.
3. Assessment of real property will account for 90% of the annual EFF target revenue.
4. Non-County entities may contribute to the EFF fund.

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ATTACHMENT D

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

A. Costs excluded by the Emergency Fire Control Fund:

- Colorado State Forest Service regular time salaries and benefits.
- Host county regular time salaries and benefits.
- Host county equipment and repair due to normal wear and tear.
- Colorado State Forest Service equipment and repair due to normal wear and tear.
- Host county aircraft use, normal wear and tear, and repair.
- Costs covered by insurance.
- Fire Protection District resources when the fire is within their protection district.

B. Costs eligible under the Emergency Fire Control Fund:

- Host county employee overtime pay including benefits.
- Colorado State Forest Service supplemental/overtime pay including benefits.
- Colorado State Forest Service vehicle fuel and oil.
- Restock and/or replacement of supplies consumed, lost or destroyed in the fire control effort.
- Air tankers and helicopters except for those of host county.
- Refurbishing of tools and equipment used in control of declared fire(s).

C. Costs negotiable under the Emergency Fire Control Fund:

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

D. Cost Documentation

Cost documentation requirements are identified in the current Cooperator Resource Rate Form Guidelines.