

AGREEMENT
FOR
COOPERATIVE WILDFIRE PROTECTION
IN
CHEYENNE COUNTY

COOPERATIVE WILDFIRE PROTECTION
AGREEMENT IN CHEYENNE COUNTY

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AGREEMENT

for

COOPERATIVE WILDFIRE PROTECTION

This Agreement is made by and between CHEYENNE County, Colorado acting through the Board of County Commissioners and the County Sheriff of said County, hereinafter referred to as the County, and the Board of Governors of the Colorado State University System, acting through the Colorado State Forest Service of Colorado State University, hereinafter referred to as the State.

A. AUTHORITIES:

County:

1. 1973 C.R.S. as amended:

23-30-305	Cooperation by counties
30-10-512	Sheriff to act as fire warden
30-10-513	Sheriff in charge
30-11-107(o)	Powers of the Board
30-28-136	Planning referral and review

State:

1. 1973 C.R.S. as amended:

23-30-202	Powers and duties of State Board of Agriculture
23-30-203	Cooperation with governmental units
23-30-204	Forest fires—sheriff to report
23-30-301	Legislative declaration
23-30-304	State responsibility
23-30-307	Limitation of state responsibility
23-30-308	Emergencies

2. 42 U.S.C. 5187. Federal Disaster Relief Act, Section 417 of 1974 (P.L. 93-288).

3. 16 U.S.C. 2101-2111. Cooperative Forestry Assistance Act of 1978 (P.L. 95-313)

B. PURPOSE:

WITNESSETH:

WHEREAS, the County is responsible for controlling and extinguishing wildfires in the County, and

WHEREAS, the County is authorized to cooperate in the organizing, training, and equipping of rural firefighting groups and is responsible for controlling and extinguishing wildfires, and

WHEREAS, the State has responsibility to provide for protection from wildfires, assist and aid the County in extinguishing fires, and may assume County fire control duties with concurrence of the Sheriff, and

WHEREAS, the State may maintain or have access to additional specialized wildfire expertise and suppression resources, and

WHEREAS, it is to the mutual advantage of the County and State to work closely together to build and maintain effective wildfire defenses without duplication, and to coordinate efforts with federal cooperators, and

WHEREAS, the County and State desire to define their roles, responsibilities, and relationships to achieve the most effective protection of forested, prairie, and or brush-covered watershed lands, and

WHEREAS, it is desirable for County and State resources to be able to assist in suppressing wildfires on federal lands, and for federal resources to assist in the suppression of wildfires on state, county, and private lands which the County and State are committed to protect, and

WHEREAS, the State is able to expedite the coordination of County-State-Federal wildfire protection efforts.

NOW, THEREFORE, in consideration of the above premises, the County and the State agree as follows:

C. DEFINITIONS:

1. Definitions of special terms used in this Agreement are shown in Attachment 1 which is part of this Agreement.

D. PLANNING

1. Annually, prior to the initiation of wildfire season, representatives of the County, State, Federal agencies, and other deemed necessary shall jointly prepare, review, update, and distribute the Annual Fire Operating Plan. The State will arrange the date and location for the first meeting each year. The plan shall be approved, dated, and signed by authorized agency representatives of the County, State and other applicable cooperators, by no later than May 1st, and shall be considered a part of this Agreement as Attachment 2.
2. The County and the State will maintain a working relationship to assure that long range planning, training, and equipment needs are adequately addressed.

E. ORGANIZING, EQUIPPING, AND TRAINING:

1. The County will:
 - a. Cooperate in the organizing, training, equipping, and maintaining of wildland firefighting forces in the county.
 - b. Reimburse the State for State costs of equipment ordered by the County with the exception of State fire engines assigned in the county by the State as specified in such Cooperative Service Agreements.
2. The State will:
 - a. Assist the County in the organizing and training of County and cooperator forces to detect, contain, and extinguish wildfires at no charge.
 - b. Assist the County in the procurement, inspection, and arrangements for maintenance of major wildfire equipment items at previously agreed upon costs.
 - c. Make wildfire tools and small equipment available to the County and cooperators at STATE cost.
 - d. Extend the benefits of state cooperative wildfire program assistance to the County to the extent of available funds and/or excess personal property, provided that in no case shall any direct federal financial assistance exceed one-half the total expenditures of the County during the period for which assistance is given.
3. The County and State District Forester will mutually agree upon the locations of any State wildfire equipment prior to its assignment or reassignment in the county.

F. WILDFIRE PREVENTION:

1. The County will:

- a. Confer with the State Forest Service about the need for fire restrictions and upon determination for that need, recommended to the Board of County Commissioners the need for an appropriate County Resolution.
- b. Participate, as outlined in the Annual Fire Operating Plan and County resolution, to the extent of available resources, with cooperators in unified law enforcement efforts to enforce any burning restrictions or public movement because of extreme fire danger.
- c. Will use the Interagency Fire Restriction and Fire Closure Guidelines in determining the need for fire restrictions.
- d. Send plats of proposed developments in rural areas to the applicable State district office for review and comment about the development's wildfire hazards and protection needs.

2. The State will:

- a. Confer with the County about the need for fire restrictions, and upon determining the need for restrictions on open burning and/or public movements, recommend to the Board for County Commissioners and the County Sheriff the imposing or lifting of restrictions for burning and/or public movement.
- b. Provide prevention efforts and available state materials on hand at no cost to the County. Provide additionally requested materials at State cost to the County and cooperators.
- c. Review proposed development plats received from the County for wildfire hazards and protection needs, and provide written comments about such to the County.

3. Both the County and State will coordinate public fire prevention messages provided to the mass media as outlined in the Annual Fire Operating Plan.

G. WILDFIRE DETECTION/NOTIFICATION:

1. The County Sheriff, or designee shown in the Annual Fire Operating Plan, will accept all notifications of possible wildfires and immediately inform appropriate authorities of same or dispatch forces to verify the existence of wildfire and/or to suppress wildfires.
2. The State will immediately forward all notifications it receives of possible wildfires to the County Sheriff, or designee shown in the Annual Fire Operating Plan, for action.

H. WILDFIRE SUPPRESSION:

1. The County will:

- a. Upon receiving notice of wildfire in the county from any source, notify the appropriate agencies or dispatch necessary initial attack forces available within the county to suppress the incident as outlined in the Annual Fire Operating Plan.
- b. Make, ensure and/or supervise initial attack resources on wildfires on lands of its jurisdictional responsibility, including any state or federal lands as shown on maps which are a part of the Annual Fire Operating Plan.
- c. Notify the State as soon as practical of the existence of uncontrolled wildfires within the County, according to the Annual Fire Operating Plan.
- d. Have the County Sheriff, or his designated representative, assume the command of all nonfederal wildfire incidents outside incorporated areas of the County as outlined in the Annual Fire Operating Plan.
- e. Establish and/or participate in unified command post operations on wildfires within the County as outlined in the Annual Fire Operating Plan. County participating agencies are outlined in the Annual Fire Operating Plan.
- f. Request needed wildfire suppression assistance according to the Annual Fire Operating Plan.

2. The State will:

- a. Maintain knowledge about locations and availability of state and federal wildfire suppression resources for use by the County.
- b. In exercise of reasonable discretion and available funds, respond to all requests from the County for state or federal wildfire suppression assistance, and aid, support and assist the County in its suppression efforts as necessary.
- c. Implement State cooperative service agreements in the county under terms of such cooperative service agreements.

3. Both the County and the State will take aggressive actions to suppress all wildfires occurring within the county, including boundary fires, as outlined by the Annual Fire Operating Plan and appropriate land management agency policies. Both parties agree that the intent and primary concern of Section H is the extinguishing of wildfires, and neither party will delay extinguishment efforts while deciding ultimate responsibility for such fires.

I. REPORTS:

1. The County will:

- a. Maintain records for a period of at least two years of wildfire incidents occurring within the county on state and private lands outside incorporated areas.
- b. Report to the State on forms provided by the State wildfire statistical and expenditure information, or make wildfire suppression information and records available to the State during normal business hours.

2. The State will:

- a. Provide needed reporting forms to the County and cooperators for recording and transmitting statistical wildfire information.
- b. Maintain statewide records of wildfire statistics and disseminate the totals.

J. PRESCRIBED BURNING:

1. The County will endeavor to stay informed about all prescribed burning being conducted in rural areas of the county.
2. Each party will notify the other in advance, as outlined in the Annual Fire Operating Plan, the locations and times of prescribed burns it plans to ignite in the county and will, to the extent practical, cooperate with the other party in the scheduling and ignition of prescribed burns.
3. If one of the parties to this agreement is executing or directing the prescribed burning, that party is the financially responsible party for controlling any escape of the fire.
4. First initial attack on prescribed burning escapes will be made by forces doing the burning. They will also immediately notify the County Sheriff or designate outlined in the Annual Operating Plan of such escape and actions. The sheriff will proceed with fire suppression measures as outlined in the Annual Fire Operating Plan.
5. Either party or its cooperators may take appropriate but coordinated suppression action when lands under its protection jurisdiction are involved in or threatened by the escaped fire. Such suppression action may either be taken on the agency's own initiative or at the request of the responsible party. Either party may respond at the request of the responsible party when it jurisdictional lands are not involved in or threatened by the fire.

K. PAYMENT:

Except as outlined in paragraph 3 of section J above, payment of the cost of suppressing and extinguishing wildfire will be as follows:

1. The County will:

- a. Be responsible for paying all fire suppression costs as outlined in the Annual Fire Operating Plan.
- b. Not request or expect reimbursement from the Colorado State Forest Service for any expenses incurred by the County or cooperators for wildfire suppression on state, county, or private lands, unless provided by a cooperative service agreement between Colorado State Forest Service and the County, or provided by appropriation to the Colorado State Forest Service.
- c. Aggregate all county and local cooperator reimbursable expenses incurred to suppress fires on federal-responsibility lands, as outlined in the Annual Fire Operating Plan, and invoice the State for reimbursement of federal funds. Offset and/or reciprocal fire protection service expenses will be excluded. The County agrees to consolidate all such expenses and supporting documentation by incident.
- d. Upon receipt of State invoice, reimburse the State for all its valid non-salary fire suppression expenses incurred by the State at County request and all reimbursable fire suppression expenses paid by the State to federal cooperators for their requested assistance to the County.

2. The State will:

- a. Be responsible for paying all State salaries expended in suppressing County-responsibility fires.
- b. Not request or expect reimbursement from the County for costs of State salaries expended in suppressing County-responsibility fires.
- c. Aggregate all non-salaried expenses incurred by the State and all reimbursable payments made by the State to the federal government for suppressing County-responsibility incidents, as outline in the Annual Fire Operating Plan, and invoice the County for reimbursement. Offset and/or reciprocal fire protection service expenses will be excluded. The State agrees to consolidate all such expenses and supporting documentation by incident.
- d. Upon receipt of County invoice, reimburse the County for all actual and valid County and local fire expenses incurred while suppressing federal-responsibility fires as outlined in the Annual Fire Operating Plan. Provided, however, that the

obligation of the State under this section shall be contingent upon the State obtaining full reimbursement of all amounts paid to County from the responsible state or federal agency. The State may advance payments to County pursuant to this section if sufficient funds have been appropriated and budgeted by the State to make such payments, such advance payments being made expressly upon the condition that County shall refund to State all or any portion of such advance payments if State is unable, in the exercise of reasonable diligence, to obtain reimbursement from the responsible agency within 180 days after payment to the County is made.

e. Process all County and State reimbursement request for federal disaster fires, and transmit to the County its share of any funds made available for reimbursement of disaster fire costs.

3. The terms of any special cooperative service agreement, such as the Emergency Fire Fund contract, in effect at the time of an incident will be used to offset or reduce State or County expenses before any request for reimbursement is made.

4. Requests for reimbursements and notices to be given under this agreement shall be made to :

County: CHEYENNE
P.O. Box 567
CHEYENNE WELLS, CO 80802

State: Colorado State Forest Service
Colorado State University
203 Forestry Building
Fort Collins, CO 80523-5060

L. OTHER CONDITIONS:

1. This agreement is the current basic wildfire protection agreement between the county and the State. It serves as the foundation for other special cooperative fire agreements or cooperative service agreements between the County and the State.

2. This agreement provides the link to County-State-Federal cooperation for wildfire protection as outlined in current cooperative fire agreements between the State and the various agencies of the federal government.
3. Both parties will mutually seek ways to continue and improve wildfire protection capabilities within the county through new programs, cooperative service agreements, and other cooperative activities.
4. The parties will work to adapt and use the National Interagency Incident Management System's Incident Command System (ICS) to manage wildfire suppression operations by state and county forces. Both parties will encourage and promote implementation of ICS by cooperators.
5. This agreement does not commit or obligate either party regarding vehicular or structural fires. However, this agreement shall apply to such fires during conflagrations which also involve wild or rural lands.
6. Both Parties will abide by contractual regulations of the State Controller shown as Special Provisions. For the purpose of this Agreement for Cooperative Wildfire Protection; references in Special Provisions to contract will mean agreement, and references in Special Provisions to contractor will mean cooperator or County. As to any conflict between this agreement and Special Provisions, term of Special Provisions will prevail.
7. This agreement and its amendments may be terminated by either party upon at least 60 calendar days written notice to the other party.

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.

Indemnity: To the extent authorized by law, the contractor shall indemnify, save, and hold harmless the University and the State of Colorado 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, Section 24-10-101 et seq. C.R.S. 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. 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.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

This agreement shall become effective on the last date signed below.

BOARD OF COMMISSIONERS OF

CHEYENNE COUNTY, COLORADO

By Ronald Richfeld 11-20-03
Chair Date

ATTEST:

Kay Deyle Co Clerk
County Clerk

(SEAL)

COUNTY SHERIFF OF

CHEYENNE COUNTY, COLORADO

By Virgil Drescher 11-21-03
Sheriff Date

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

By Bobbad 3-18-04
State Forester Date

LEGAL SUFFICIENCY:

Ken Salazar

Attorney General, State of Colorado

By: _____


Robert Schur

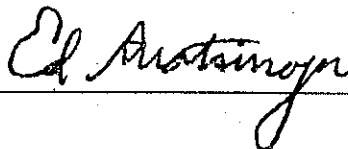
University Contracts Manager

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 performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
ARTHUR L. BARNHART

By _____



Date _____

3/30/2004

ATTACHMENT 1
DEFINITIONS FOR
COOPERATIVE WILDIRE PROTECTION

1. Annual Fire Operating Plan. An annually updated document which may include the following:
 - a. Maps showing boundaries delineating federal, state, county, and local areas of responsibility under this Agreement and whether each area is to be treated as offset, reciprocal, or reimbursable.
 - b. Mobilization Plan, an annually updated portion which contains:
 - i. Information on wildfire protection organizations, names of contact persons, and telephone numbers.
 - ii. Wildfire suppression manpower, equipment, and facilities, which are available for cooperative use, subject to each agency's procedures and regulations.
 - c. Each agency's plans and procedures for:
 - i. Issuing burning permits.
 - ii. Initiating, effecting, and discontinuing burning restrictions or public movements during extreme fire dangers.
 - iii. Maintenance of roads, trails, communications, and other fire suppression facilities.
 - iv. Wildfire prevention efforts, assignments, and coordination of such efforts.
 - v. Law enforcement actions.
 - vi. Fire investigation and incident final reports.
 - d. Details of reimbursable and non-reimbursable costs and services, including provisions and rates for overhead costs, if any.
 - e. Details about fire suppression air operations including ordering, use, costs, and payment.
 - f. Wildfire attack dispatch plans and standards.
 - g. Schedules for manning, inspections, shutdowns.

- h. Wildfire detection procedures, standards.
 - i. Repair and maintenance schedules and costs of facilities operated for joint need/use.
 - j. Fire danger monitoring and information dissemination.
 - k. Details and procedures for out-of-county suppression assignments for local and county personnel (payrolling, rates, qualifications, equipment, and personal gear, etc.)
 - l. Procedures for resolution of disputes.
 - m. Definitions of additional terms not included in this Agreement.
 - n. Designation of authorized agency representatives.
 - o. Plan approvals of authorized agency representatives.
2. Boundary Fire. Fire burning upon adjoining lands of two or more fire jurisdictions, or which threatens to burn across such boundaries. It also includes situations where the actual boundary is uncertain.
 3. Incident Command System. The common emergency incident management system used in Colorado on any incident and tailor to fit the specific management needs of each incident.
 4. Cooperative Service Agreement. Specific wildfire protection services or items furnished by one party to the other with costs, details, and dates specified in a separate agreement.
 5. Cooperator. Organized fire control forces of other agencies, paid or volunteer, public or private, at the local, municipal, state, or federal level.
 6. County. Employees, elected officials, and appointed officers of the county to this Agreement.
 7. Fire. Except when stated otherwise, this is the same as "wildfire".
 8. First Period. The period of wildfire suppression from the time of dispatch of initial attack forces to the incident and ending at an agreed time later as described in the Annual Fire Operating Plan.
 9. Federal Agencies. U.S. Forest Service, Bureau of Land Management, National Park Service, Bureau of Indian Affairs, military, and/or other agencies of the federal government which have wildfire protection responsibilities for lands they administer within the county.
 10. Incident. An occurrence or event, either human-caused or natural phenomena, which requires action by emergency service personnel to prevent or minimize potential loss of life or damage to property and/or natural resources. Also includes false alarms for such events.

11. Initial Attack Forces. Wildfire suppression personnel and equipment (air and/or ground) of agencies that are initially dispatched to an incident in accordance with pre-existing dispatch plans/procedures.

12. Offset Fire Protection. An exchange of protection area or services so that one set of actions balances another between two wildfire protection agencies. Sometimes referred to as Exchange Zones.

13. Overhead Costs. Costs not directly chargeable to specific incident suppression efforts but which are part of the overall cost of operation as applicable to services provided under this Agreement.

14. Prescribed Burn. A fire intentionally set and/or allowed to burn in wildland fuels consistent with previously determined and approved managerial and environmental constraints to meet specified land management objectives.

15. Reciprocal Fire Protection Services. Wildfire protection assistance extended by one agency to the lands of another agency at no charge, as each may be able to furnish. These lands are described and shown in the Annual Fire Operating Plan. Sometimes referred to as Mutual Aid.

16. Reimbursable. Wildfire protection efforts furnished as a chargeable cooperative service as shown in the annual Fire Operating Plan, or additional personnel and equipment which exceed reciprocal fire protection services which are furnished by one agency at the request of another agency.

17. Resources. All personnel and items of equipment available for assignment to incident tasks and about which their status is maintained.

18. State. Refers to the Colorado State Forest Service, a statutory entity governed by the State Board of Agriculture. Unless otherwise defined, State refers only to this agency.

19. Wildfire. Uncontrolled fire burning in forest, prairie, brush, or cropland fuels, or conflagrations involving such fuels and structures.