

RESOLUTION NO. 38-20

A RESOLUTION APPROVING AN
INTERGOVERNMENTAL AGREEMENT FOR WILDFIRE
MITIGATION AND SUPPRESSION PLANNING

WHEREAS, the City of Colorado Springs (the "City") on behalf of its enterprise Colorado Springs Utilities ("Utilities") is authorized to enter into intergovernmental agreements with other Colorado governmental entities for the provision of any function or service with the approval of the City Council of the City of Colorado Springs ("City Council") pursuant to § 29-1-203, C.R.S.; and

WHEREAS, § 29-20-105.5(3)(a)(II), C.R.S., requires each local government owning land for utility purposes located either entirely or partially outside its own territorial boundaries and inside the territorial boundaries of a county and that contains at least fifty percent (50%) forest land or land that constitutes a wildland area to either enter into an intergovernmental agreement with such county or the Colorado State Forest Service for the purpose of mitigating forest land or wildland fires; and

WHEREAS, Utilities previously entered into that certain Services Agreement dated April 22, 2014, with the Board of Governors of The Colorado State University System, on behalf of the Colorado State Forest Service (the "CSFS Service Agreement") for purposes of implementing the Pikes Peak Watershed Management Plan, including wildland fire mitigation such as the planning, preparation, and contracting for forest management work such as thinning, forest surveys, forest health monitoring, and administration of service and sales contracts; and

WHEREAS, the City of Colorado Springs, on behalf of Utilities, also previously entered into that certain Agreement for Wildfire Operations and Participation in the Emergency Fire Fund dated March 3, 2015, with the Colorado Division of Fire Prevention and Control (the "EFF Agreement") for the purpose of establishing Utilities' voluntary participation in funding the Colorado emergency fire fund ("EFF") so that agencies responding to wildfires on or in proximity to Utilities' properties in EFF-participating counties can seek reimbursement of costs for such incidents through the EFF; and

WHEREAS, while the Parties agree that the CSFS Service Agreement satisfies the City's obligations with respect to § 29-20-105.5, C.R.S., the City, on behalf of Utilities, desires to enter into the attached Intergovernmental Agreement with Teller County, on behalf of the Teller County Sheriff's Office, to further ensure the mitigation of forest land or wildland fires affecting City-owned land used for utility purposes ("Utilities' Lands") located in the unincorporated area of Teller County, to include wildland fire prevention, preparation, mitigation, suppression, and suppression planning; and

WHEREAS, the Sheriff of Teller County, Colorado, pursuant to §§ 29-22.5-103 and 30-10-512, *et seq.*, C.R.S., is the fire warden of Teller County and is responsible for the coordination of fire suppression efforts in case of forest or wildland fires occurring in the unincorporated area of Teller County outside the boundaries of a fire protection district or that exceed the capabilities of a fire protection district to control or extinguish; and

WHEREAS, the Sheriff of Teller County, Colorado, pursuant to § 30-10-513.5, C.R.S., has authority to order and monitor resources for purposes of responding to wildland fires within the Teller County Sheriff's Office's jurisdiction; and

WHEREAS, the City has established within Utilities, its Watershed Planning Group that oversees the mitigation of forest and wildland fuels on Utilities-managed lands, and coordinates wildland fire suppression planning activities to protect priority watershed lands and infrastructure; and

WHEREAS, the City on behalf of Utilities will also seek City Council approval of that certain Wildland Fire Protection and Incident Response Agreement with Teller County in order to enable the Catamount Wildland Fire Team to provide fire protection and incident response services when such services will protect its utility system and assets; and

WHEREAS, City Council has determined that approval of the attached Intergovernmental Agreement will provide for increased opportunities for wildland fire mitigation and suppression planning on Utilities-controlled, City property.


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby finds that approval of the attached Intergovernmental Agreement for Wildfire Mitigation and Suppression Planning is in the best interests of the citizens of the City of Colorado Springs and ratepayers of Colorado Springs Utilities and further approves the attached Intergovernmental Agreement.

Section 2. The City Council hereby authorizes the Chief Executive Officer of Colorado Springs or his designee, on behalf of Utilities, to execute the attached Intergovernmental Agreement.

Dated at Colorado Springs, Colorado this 9th day of June, 2020.

ATTEST:


Sarah B. Johnson, City Clerk



Council President



**INTERGOVERNMENTAL AGREEMENT FOR
WILDFIRE MITIGATION AND SUPPRESSION PLANNING**

This Intergovernmental Agreement for Wildfire Mitigation and Suppression Planning (the "Agreement") is hereby entered into this 11th day of June, 2020, by and between Teller County (the "County"), on behalf of the Teller County Sheriff's Office ("TCSO"), and the City of Colorado Springs (the "City"), on behalf of its utility enterprise Colorado Springs Utilities ("Utilities") 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, C.R.S., to enter into intergovernmental agreements with other governmental entities to provide any function or service that each, individually, is authorized to perform; and

WHEREAS, § 29-20-105.5(3)(a)(II), C.R.S., requires each local government owning land for utility purposes located either entirely or partially outside its own territorial boundaries and inside the territorial boundaries of a county and that contains at least fifty percent (50%) forest land or land that constitutes a wildland area to either enter into an intergovernmental agreement with such county or the Colorado State Forest Service for the purpose of mitigating forest land or wildland fires; and

WHEREAS, Utilities has entered into that certain Services Agreement dated April 22, 2014, with the Board of Governors of The Colorado State University System, on behalf of the Colorado State Forest Service (the "CSFS Service Agreement") for purposes of implementing the Pikes Peak Watershed Management Plan, including wildland fire mitigation such as the planning, preparation, and contracting for forest management work such as thinning, forest surveys, forest health monitoring, and administration of service and sales contracts; and

WHEREAS, the City of Colorado Springs, on behalf of Utilities, has also entered into that certain Agreement for Wildfire Operations and Participation in the Emergency Fire Fund dated March 3, 2015, with the Colorado Division of Fire Prevention and Control (the "EFF Agreement") for the purpose of establishing Utilities' voluntary participation in funding the Colorado emergency fire fund ("EFF") so that agencies responding to wildfires on, or in proximity to, Utilities' properties in EFF-participating counties can seek reimbursement of costs for such incidents through the EFF; and

WHEREAS, while the Parties agree that the CSFS Service Agreement satisfies the City's obligations with respect to § 29-20-105.5, C.R.S., the City, on behalf of Utilities, desires to enter into an agreement with Teller County, on behalf of the TCSO, to further ensure the mitigation of forest land or wildland fires affecting City-owned land used for utility purposes ("Utilities' Lands") located in the unincorporated area of the County, to include wildland fire prevention, preparation, mitigation, suppression, and suppression planning; and

WHEREAS, the Sheriff of Teller County, Colorado, pursuant to §§ 29-22.5-103 and 30-10-512, *et seq.*, C.R.S., is the fire warden of Teller County and is responsible for the coordination of fire suppression efforts in case of forest or wildland fires occurring in the unincorporated area of the County outside the boundaries of a fire protection district or that exceed the capabilities of a fire protection district to control or extinguish; and

WHEREAS, the Sheriff of Teller County, Colorado, pursuant to § 30-10-513.5, C.R.S., has authority to order and monitor resources for purposes of responding to wildland fires within the TSO's jurisdiction; and

WHEREAS, the City of Colorado Springs has established within Utilities the Watershed Planning Group that oversees the mitigation of forest and wildland fuels on Utilities-managed lands, and coordinates wildland fire suppression planning activities to protect priority watershed lands and infrastructure; and

WHEREAS, the City of Colorado Springs has established within Utilities the Catamount Wildland Fire Team ("Catamount WFT"), a volunteer wildland fire team, to assist in the response to wildland fire incidents where such incidents place Utilities' land, assets, and infrastructure at risk or when such response is otherwise in the best interests of the City and Utilities; and

WHEREAS, the City on behalf of Utilities has or will enter into that certain Wildland Fire Protection and Incident Response Agreement with Teller County ("CWFT Fire Protection and Incident Response Agreement") in order to enable the Catamount WFT to provide fire protection and incident response services when such services will protect its utility system and assets; and

WHEREAS, the Parties to this Agreement have determined that entering into this Agreement for purposes of wildland fire mitigation on City-owned land used for utility purposes is in their respective best interests.

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 address the requirements set forth in § 29-20-109.5, C.R.S., regarding the mitigation of forest land or wildland fires occurring within unincorporated Teller County, Colorado.

Section 3. Roles and Responsibilities.

(A) The TCSO is the fire warden of Teller County, and is responsible for the coordination of fire suppression efforts in case of prairie, forest, or wildland fires or wildfires occurring in the unincorporated area of the County, outside the boundaries of a fire protection district or that exceed the capabilities of the fire protection district to control or extinguish, as set forth in § 30-10-512, *et seq.*, C.R.S. As such, the TCSO agrees to cooperate and coordinate with

Utilities for purposes of wildland fire mitigation on Utilities' Lands as required by § 29-20-105.5(3)(a)(II)(a), C.R.S., and suppression planning, as further set forth and described in Section 4., of this Agreement.

(B) The City of Colorado Springs, on behalf of Utilities, owns Utilities' Lands in the unincorporated area of the County and has a significant interest in cooperating and coordinating with the TCSO for purposes of wildland fire mitigation and suppression activities that affect such land, as further set forth and described in Section 4., of this Agreement.

Section 4. Procedures for Cooperation and Coordination.

(A) On no less than an annual basis, Utilities and the TCSO shall meet to develop and update an annual action plan that establishes specific procedures for cooperation and coordination between TCSO, Utilities' Watershed Planning Group and other Utilities' staff, and the Catamount WFT Chief with respect to wildland fire mitigation and suppression planning for Utilities' Lands within the unincorporated area of the County. At a minimum, the annual action plan shall address the following:

- (1) Communication.
- (2) Access to Utilities' Lands.
- (3) Periodic coordination meetings.
- (4) Use of Utilities' resources identified in Section 6 of this Agreement.
- (5) Annual mitigation projects.
- (6) Critical Utilities Lands, assets, and infrastructure.
- (7) Safety zones and evacuation routes, as appropriate.
- (8) Priorities in the event of a forest or wildland fire.

(B) As part of the cooperation and coordination effort, the Watershed Planning Group and other Utilities staff will take TCSO on site visits to each of Utilities' watershed lands and other Utilities' Lands within the unincorporated area of the County to facilitate TCSO's understanding of specific areas of concern to Utilities and the characteristics and condition of Utilities' watershed lands and other Utilities' Lands, and to ensure appropriate access thereto.

Section 5. Management Objectives and Designation of Authority.

(A) Wildland Fire Prevention. The Parties to this Agreement agree that prevention of forest and wildland fires is fundamental to protecting Utilities Lands and assets. TCSO will be responsible for ensuring that appropriate regulations for prevention of forest and wildland fires are adopted and will take necessary enforcement action as needed or upon request of Utilities. Utilities

will manage the Utilities' Lands in accordance with applicable TCSO regulations for prevention of forest and wildland fires, and will request assistance in the enforcement of such regulations if needed.

(B) Wildland Fire Preparedness and Planning. The Parties acknowledge that preparation and planning for forest or wildland fires is necessary for the effective management of forest and wildland fires. The Parties will work together to develop the annual action plan as set forth in Section 4, above, and provide the staff needed to support the activities identified in the annual action plan. TCSO shall coordinate with other jurisdictional agencies to ensure that the resources identified and information and activities included in the annual action plan may be utilized and performed in the most effective manner in the event of a forest or wildland fire. Additionally, Utilities will continue to do the following activities:

(1) Work to establish more formal relationships with TCSO, fire protection districts, and other agencies with jurisdiction over Utilities' Lands.

(2) Work to ensure that critical Utilities' Lands, assets, and infrastructure are included in the Federal Wildfire Decision Support System to aid in identification of such Utilities' Lands, assets, and infrastructure during a forest or wildland fire.

(3) As part of Utilities' EFF Agreement, work to ensure that Utilities' contact information and asset maps are available with the Colorado Division of Fire Prevention and Control.

(C) Wildland Fire Mitigation. The Parties agree that mitigation of forest and wildland fires reduces the likelihood, impact, and extent of a forest or wildland fire. TCSO acknowledges that Utilities regularly conducts fire mitigation activities on Utilities' Lands. Utilities will keep TCSO informed regarding planned and implemented mitigation activities on Utilities' Lands, and will coordinate with TCSO, private property owners, the United States Forest Service, non-profit organizations, and other entities in its mitigation efforts.

(D) Wildland Fire Suppression. The Parties agree that suppression and control of forest and wildland fires protects persons and property from the impacts of forest and wildland fires. TCSO will utilize the resources provided by Utilities in Section 6 in the event of a forest or wildland fire on Utilities' Lands to the greatest extent possible. Additionally, TCSO will utilize other resources at its disposal to protect Utilities' Lands from forest and wildland fire. In the event of a forest or wildland fire on Utilities' Lands that TCSO is unable to suppress or control using TCSO resources, TCSO will ensure the needed resources are brought in to effectively suppress or control the forest or wildland fire. Utilities will make available the resources identified in Section 6 for suppression and control of forest and wildland fires on Utilities' Lands. TCSO and Utilities will further coordinate suppression responsibilities through the annual action plan.

(E) Reclamation and Rehabilitation. Utilities will use best efforts to inform TCSO of its reclamation and rehabilitation efforts on Utilities' Lands within the unincorporated area of the County impacted by forest or wildland fire; and TCSO will use best efforts to inform Utilities of reclamation and rehabilitation efforts on County-owned lands impacted by forest or wildland fire.

Section 6. Colorado Springs Utilities' Available Resources.

(A) Utilities has agreed or will agree to provide resources to the TCSO in the manner provided in the CWFT Fire Protection and Incident Response Agreement. These resources may include, but are not limited to, Utilities' personnel and Utilities' equipment, subject to the requirements and limitations set forth in the CWFT Fire Protection and Incident Response Agreement. In the event the CWFT Fire Protection and Incident Response Agreement is terminated prior to the termination of this Agreement, the Parties will amend the annual action plan to identify alternative available resources.

(B) Utilities will make available personnel who will participate in the development of the annual action plan and in the coordination and collaboration of the activities described in this Agreement. Utilities will also provide maps of critical areas and assets or other pertinent information as requested by TCSO.

Section 7. Reimbursement and Billing.

(A) TCSO 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 suppression of forest or wildland fires occurring on Utilities' Lands.

(B) Pursuant to the EFF Agreement with DFPC, DFPC has agreed to review any requests for reimbursement submitted to DFPC from a jurisdictional fire agency regarding fire-related activities involving Utilities' Lands. Except as otherwise provided in the annual action plan, TSO will submit all requests for reimbursement to DFPC for review. All TCSO requests for reimbursement shall be reduced based on the value of resources provided by Utilities to TCSO under this Agreement.

(C) All Utilities' personnel resources made available to TCSO 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.

(D) In the event TCSO chooses not to utilize the resources made available pursuant to Section 6(A) of this Agreement, Utilities shall not be required to reimburse TCSO 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. 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 9. Upon written agreement of the Parties the Agreement may be extended for subsequent five (5) year terms.

Section 9. 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 10. No Duty. This Agreement shall not be construed to create a duty on Utilities for the provision of wildland 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.

Section 11. 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 12. Notice. Any notice required by this Agreement for each Party shall be addressed to the following persons:

TELLER COUNTY SHERIFF'S OFFICE
Jason Mikesell
TCSO Sheriff
11400 US Highway 24
Divide, CO 80814
(719) 687-9652

COLORADO SPRINGS UTILITIES
Eric Howell
Forest Program Manager
1521 Hancock Expy, MC 1825
Colorado Springs, CO 80903
(719) 668-4554

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 fire suppression 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 13. Assignment. Neither Party may assign or otherwise transfer this Agreement or any part hereof without prior written consent of the other Party.

Section 14. 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 Teller County, Colorado.

Section 15. Waiver of Liability. Each Party agrees to be responsible for its own liability arising under this Agreement. Furthermore, nothing in this Agreement should be construed as a waiver of the protections afforded pursuant to the Colorado Governmental Immunity Act.

Section 16. 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 17. 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 18. 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.

IN WITNESS WHEREOF, the representatives of each Party hereto certified via execution below that they are duly authorized to commit their organization to this Agreement in its entirety:

COLORADO SPRINGS UTILITIES,
An enterprise of the City of Colorado Springs

By: 
Earl Wilkinson III
Chief Water Services Officer


Approved as to Form:


Colorado Springs City Attorney's Office – Utilities Division

BOARD OF COUNTY COMMISSIONERS
of the County of Teller, Colorado

By: 

SHERIFF OF TELLER COUNTY

By: 
Jason Mikesell

Approved as to Form:

 2/28/2020
Teller County Attorney's Office