

TOWN OF SUPERIOR
RESOLUTION NO. R-24
SERIES 2022

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH BOULDER COUNTY AND THE CITY OF LOUISVILLE FOR THE PROVISION OF ASSISTANCE FOR DEBRIS REMOVAL

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. The Intergovernmental Agreement between the Town of Superior, Boulder County and the City of Louisville for the Provision of Assistance for Debris Removal, is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 14th day of March, 2022.



ATTEST:

Patricia Leyva
Patricia Leyva, Town Clerk

Clint Folsom
Clint Folsom, Mayor

**INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF ASSISTANCE
FOR DEBRIS REMOVAL RESULTING FROM THE COLORADO WILDFIRES AND
STRAIGHT-LINE WINDS DISASTER (DR-4653-CO)**

THIS INTERGOVERNMENTAL AGREEMENT (the “IGA”) is made by and among the COUNTY OF BOULDER, Colorado, a body corporate and politic (the “County”), the CITY OF LOUISVILLE, Colorado, a home rule municipality (the “City”), and the TOWN OF SUPERIOR, Colorado, a municipal corporation (the “Town”) (each, a “Party” and, collectively, the “Parties”).

RECITALS

- A. Colorado law, C.R.S. § 24-33.5-707, authorizes local and interjurisdictional emergency management agencies to establish emergency management plans for its areas that include provisions for the response and recovery from emergencies and disasters. In addition, C.R.S. § 30-15-401 authorizes county governments to provide for and compel the removal of rubbish, including trash, junk, and garbage, from lots and tracts of land within the county. Per this authority, Boulder County Office of Emergency Management adopted the Emergency Operations Plan for Boulder County, City of Boulder, Local Governments and Special Districts, and this plan authorizes Boulder County to coordinate for and remove debris following a disaster. C.R.S. § 24-33.5-713 further encourages political subdivisions to make suitable arrangements for furnishing mutual aid in coping with disasters.
- B. C.R.S. § 31-15-401(1)(b) grants power to municipalities “[t]o do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.”
- C. Intergovernmental agreements to provide functions or services, including sharing the costs of such functions or services, or incurring debt, by political subdivisions of the State of Colorado, are specifically authorized by C.R.S. § 29-1-203, and other sections of the Colorado Revised Statutes.
- D. Grass wildfires and straight-line winds of epic proportions beginning on December 30, 2021 resulted in severe damage or total loss of at least 990 residential homes and commercial buildings in Boulder County, including in the City and the Town (the “Event” or “Disaster”).
- E. On December 30, 2021, Colorado Governor Jared Polis declared a state of emergency due to the Event on December 30, 2021, and on January 1, 2022, President Joseph R. Biden approved a Major Disaster Declaration for the Event (DR-4634-CO), beginning on December 30, 2021 and continuing.
- F. The Town of Superior is a municipal corporation within Boulder County and Jefferson County, but all of the property impacted by the Disaster is located within Boulder County.
- G. The City of Louisville is a municipal corporation within Boulder County.

- H. Hundreds of residential and/or commercial buildings/residences within the Town of Superior and City of Louisville were damaged or completely consumed by fire in the Disaster. The sheer amount of destruction from the Disaster across the Town, the City, and unincorporated Boulder County has resulted in unprecedented amounts of debris that will need to be removed. The County intends to assist the residents within its boundaries, including those within the Town and the City, especially during a time of response to and recovery from this unprecedented disaster. The Town and the City may also assist with the response and recovery within their respective boundaries.
- I. On January 2, 2022, Boulder County Public Health Executive Director Camille Rodriguez issued a declaration identifying debris caused by the Marshall Fire an immediate threat to the public health and recommending that efforts to remove the debris be made as soon as possible.
- J. On January 10, 2022, the Boulder County Board of Health issued a Public Health Advisory Regarding Structural Fire Debris, advising local governments, property owners, and other responsible persons and entities to take all steps necessary to remove Debris caused by the Marshall Fire as soon as possible in order to protect the public health.
- K. The Disaster caused extremely dense structure fires in a densely populated area. Structure fires generate debris that can include particulates, exposed asbestos, lead-containing building materials (such as glass and lead paint), and chemical residues.
- L. Soot and ash from structure fires may also be toxic and contain carcinogens. Fire debris and household items damaged by smoke, particularly soft goods, must be disposed of in a timely and proper manner so as to mitigate immediate risks to public health and safety posed by debris, soot, and ash.
- M. The Disaster also resulted in widespread utility outages over several days, resulting in spoiled perishables that must be disposed of order to prevent foodborne illness, mold, and resulting toxins that can become airborne.
- N. Due to freezing temperatures and snowfall following the Disaster, pipes within surviving and damaged structures may have burst, resulting in water damage to carpeting, soft goods, and furnishings that must be disposed of in a timely and proper manner to prevent mold and mildew and resulting airborne spores and toxins.
- O. Downed and damaged trees in the burn areas are also creating an imminent threat to public health and safety and need to be removed and properly disposed of in a timely fashion.
- P. On February 9, 2022, the County received partial approval from the Federal Emergency Management Agency ("FEMA") for Private Property Debris Removal ("PPDR") in Boulder County, FEMA 4634-DR-CO. The partial approval designated the following types of hazardous debris as eligible for PPDR:
 - a. Removal of surface ash, which may include 3-6 inches of incidental soil;

- b. Burned debris from property remains, including burned or partially burned furniture, personal belongings, white goods, household appliances, and patio furniture;
 - c. This does not include burned or partially burned stone, concrete, landscaping features, or statues.
 - d. Hazardous materials and pollutants; and
 - e. Chimneys, trees, and unsupported walls that are hazardous to debris removal crews.
- Q. FEMA deferred its decision on other elements of the County's PPDR request, such as foundation removal, pending submission of additional information concerning economic recovery.
- R. On March 1, 2022, FEMA granted the County's request for additional public assistance funding to expedite economic recovery in the affected communities. Pursuant thereto, FEMA issued the following, consolidated list of types of hazardous Disaster-caused debris that are eligible for PPDR:
- a. Removal of surface ash, which may include three to six inches of incidental soil;
 - b. Removal of burned vehicles;
 - c. Removal of structural footings, foundations, and basements;
 - d. Burned debris from the remains of homes that are clearly destroyed, including burned or partially burned furniture, personal belongings, household appliances, and patio furniture;
 - i. This does not include burned or partially burned stone, sidewalks/concrete walkways on private property, landscaping features, or statues.
 - e. Hazardous materials and pollutants; and
 - f. Chimneys, trees, and unsupported walls that are hazardous to debris removal crews.
- S. In order to receive FEMA Public Assistance (PA) funding for PPDR, the County must undertake measures to avoid duplications of benefits, including by assisting the federal government in recovering any insurance or other proceeds that are paid to any private party for PPDR for which federal aid or reimbursement was received. *See* 42 U.S.C. § 5155, 44 C.F.R. § 206.253(a), and 2 C.F.R. § 200.406. If a property owner receives assistance for PPDR from any third party, the state and local governments must facilitate reporting and recovering these amounts for FEMA.
- T. RFP #7301-22, Private Property Structural Debris and Hazard Tree Removal Operations, was issued on January 18, 2022. The project consists of three Operational Areas: Operation 1 (unincorporated Boulder County), Operation 2 (Town), and Operation 3 (City). The evaluation committee included two staff representatives from each jurisdiction – Boulder County, the City and the Town. The evaluation committee did not include any elected officials, and the evaluation committee made a recommendation to the Boulder County Board of County Commissioners (the "BOCC"). On February 10, 2022, the BOCC adopted the committee's recommendation to award RFP #7301-22 to DRC Emergency Services, LLC (DRC).
- U. The evaluation committee developed a total project cost estimate of \$52,641,495.89. However, final project costs are not yet fully determined. Final, total project costs will

depend on numerous outstanding variables such as federal funding approvals, the number of properties participating in the PPDR program, and the nature of debris on each property. The number of enrolled properties is expected to fluctuate over time and will heavily influence final project costs. Funding decisions will also affect project scope and costs, such as whether or not foundations will be removed.

- V. Given the magnitude of the Disaster and resulting destruction, the Parties desire to cooperate and work together to efficiently and effectively respond to and recover from this Disaster. The purpose of this IGA is to allow the County to assist the Town and the City with debris removal and to outline the respective rights and responsibilities of each Party with respect to the PPDR program.

AGREEMENT

1. The Parties agree that it is necessary for the County to provide for PPDR within certain areas of the Town and the City in order to protect against immediate threats to public health and safety in direct response to the Disaster. The Recitals above are hereby incorporated into this Agreement.
2. The Parties will work collaboratively to identify and respond to PPDR needs. The Town and the City will work with the County and DRC to conduct site selection for PPDR activities and provide necessary communications to residents.
3. Federal Funding.
 - a. The Parties agree to cooperate and work diligently to ensure timely FEMA reimbursement for the cost of debris removal. Such cooperation includes, without limitation, the Town and the City allowing the County to assist in creating and managing or administering FEMA project worksheets, all Parties providing and signing reasonable documentation needed to process the reimbursement requests, and the Town and the City allowing the County to review and audit the Town's and the City's financial and administrative processes and documentation related to reimbursement of the County's payment of invoices.
 - b. Once the PPDR Project Worksheet(s) are obligated, and upon payment by the County of an invoice from DRC, the Parties will work together to timely submit those costs as requests for reimbursement to DHSEM/FEMA.
 - c. Under no circumstances will the County apply for reimbursement for costs of services for which the Town or the City have applied for reimbursement under this IGA, except at the express direction of a federal or state agency, such as FEMA (an "Agency").
 - d. Under no circumstances will the Town or the City apply for reimbursement for costs of services for which the County has applied for reimbursement under this IGA, except at the express direction of an Agency.

- e. The Parties shall adhere to all Agency rules and regulations in procuring services related to the Disaster.
4. Permitting. Each Party is responsible for processing and issuing permits within its jurisdiction as necessary for DRC to perform the PPDR work.
5. Stormwater Permitting; Communication with Residents.
 - a. Each Party is responsible for stormwater permitting within its jurisdiction.
 - b. Each Party will work directly with DRC as needed to ensure compliance with federal, state, and local requirements for stormwater permitting, soil stabilization, perimeter and site-specific runoff control for private property parcels that are included in the PPDR program within each Party's respective jurisdiction.
 - c. Each Party is responsible for communicating stormwater permitting requirements to residents within their jurisdiction.
6. Communications. Each Party shall be responsible for timely providing accurate communications to residents within their jurisdiction, including the provision of communication and feedback channels for information to effectively flow between the Party and its residents. Each Party shall be responsible for providing information to and answering questions of residents regarding performance of PPDR work in their jurisdiction. The City and Town may request information from the County as needed to perform its obligations under this provision. The County's communications representative can review and vet messaging drafted by the City or Town upon request.
7. Project Costs.
 - a. Each Party is responsible for the costs of DRC's work performed within their jurisdiction.
 - b. The Town's total amount paid to the County under this Agreement shall not exceed \$3,500,000.
 - c. The City's total amount paid to the County under this Agreement shall not exceed \$ 4,500,000.
 - d. The County shall direct DRC to stop performing work and incurring costs within the jurisdiction of the Town or City so that that the total amount paid to the County by either Party, as set forth in subsections (b) and (c), is not exceeded. The total amount paid by either the Town or the City may be increased pursuant to a written amendment of this IGA between the County and the Party whose costs are to be increased.

e. The County shall enter into a contract with DRC for PPDR services within all three jurisdictions. The County is required to pay DRC's properly-submitted invoices within forty-five (45) days of an invoice's receipt.

i. The Parties acknowledge that the State of Colorado has furnished to the Parties the services of a third-party monitoring firm, CDR Maguire, which is an independent entity hired by the State to supervise DRC's performance of the PPDR work and ensure that the work is being performed in accordance with the contract and that DRC is not over-billing. DRC is also required to provide supporting documentation for its invoices to CDR Maguire. Given CDR Maguire's firsthand knowledge of the work and impartiality, CDR Maguire is uniquely positioned to review DRC invoices to ensure that charges align with work performed. The Parties agree to cooperate with CDR Maguire as necessary to support invoice review.

A. City and Town staff may observe DRC's work during the project. If staff have any concerns regarding DRC's performance or completion of the work, the City and Town project managers should promptly raise such concerns with the County.

B. If City or Town staff believe that work presented by DRC as complete is not performed to the satisfaction of the City or Town, the City or Town's project manager shall promptly notify the County's project manager. Pursuant thereto, the County will conduct further investigation into the work and require remediation as necessary.

ii. Invoices for work performed by DRC in each jurisdiction shall be paid by the County, on behalf of each of the three jurisdictions, out of the State of Colorado's grant/reimbursement advance ("State Advance"), less each Party's portion of the local cost share for reimbursable work within its jurisdiction and the full cost of non-reimbursable work within its jurisdiction.

iii. Each Party is responsible, during each billing cycle, for remitting payment to the County of the 5% local cost share on anticipated eligible expenses within the Party's jurisdiction as well as the entire cost for expenses incurred within the Party's jurisdiction that are known to be FEMA ineligible ("Amount Owed"). The calculation of the Amount Owed shall be provided by the County to the City and Town with DRC invoices. 5% local cost share is based on the Federal government covering 90% of eligible expenses and the State government covering 5% of eligible expenses.

iv. The County shall submit invoices to the Town and City within seven (7) days of receipt of a properly-submitted invoice from DRC so that the Town and the City may review such invoices for accuracy. The County may redact invoice information that it deems protected under C.R.S. § 24-72-204(3)(a)(IV), as determined by the County. DRC may otherwise provide invoices directly to the Town and City.

v. The City and Town shall pay the Amount Owed for their jurisdiction to the County within twenty-one (21) days of receipt of a DRC invoice from County, if the City and the Town identify no discrepancies in the DRC invoice.

vi. If any discrepancies are identified in DRC invoices, the Parties shall adhere to the following process:

A. The Town and the City shall provide notice of any invoicing discrepancies to the County within ten (10) days of invoice receipt. The Parties agree to work in good faith to resolve any invoicing disputes.

B. The County shall work with DRC to raise identified discrepancies and correct invoicing errors. The County shall exercise its contractual remedies as needed to ensure that DRC's performance of the work, incurrence of charges, and invoicing practices comply with the terms of their contract.

C. The City and Town are each responsible for providing to County the information and documentation necessary to support invoicing disputes with DRC for work performed in its jurisdiction.

D. In order to resolve an invoicing dispute, the County may require the City, Town, DRC, and the third-party monitor, as necessary, to participate in a dispute resolution conference. At this conference, each entity will present information and documentation to support its position regarding the invoice at issue and amounts owed.

E. The Parties acknowledge that, under the County's contract with DRC, the County must pay all amounts owed that it finds to be legitimate debts, irrespective of the jurisdiction in which the costs were incurred. Following the dispute resolution process outlined in this section, the County will make a determination as to any amounts owed by the City and Town under the County's contract with DRC. The City and Town shall remit such payment to the County within ten (10) days. If the Town or City fail to make payment for any amounts owed, as determined by the County following the dispute resolution process outlined in this section, the County may direct DRC to suspend or cease performance in the Town or City in order to mitigate any potential financial liability of the County pending any further efforts to resolve the dispute.

8. Project Management. Each Party will appoint a project manager to provide information and guidance to the County and DRC with respect to their jurisdiction. The City and Town project managers shall serve in an advisory role to the County.

a. The County project manager or their designee shall keep the City and Town project managers apprised of work being performed in their jurisdiction. The County project manager shall take into consideration the feedback of the City and Town project managers when managing the project and working with DRC.

b. The Parties will work in good faith to ensure that each Party receives and provides information as necessary to support successful completion of the project.

c. If circumstances arise that could result in a change to the scope of work or other significant impact to a particular jurisdiction, the County shall promptly notify the City or Town project manager. The County shall not approve any changes to the scope of work within the jurisdiction of the City or Town without the prior, written approval of the City or Town, and the County acknowledges that such approval may need to be presented to the governing body of the City or the Town for approval.

9. Duplication of Benefits. The County, as the applicant for PPDR, is responsible for ensuring no duplication of benefits as it relates to debris removal homeowners' insurance and other debris removal proceeds for private property parcels that are included in the PPDR program. Each Party shall be responsible for collection of and remittance to the County of any funding that FEMA considers to be a duplication of benefits; the Parties should utilize FEMA's Public Assistance Program and Policy Guide ([Version 4](#)), as applicable, in performing its obligations under this IGA. Each Party shall also be responsible for the expenses incurred for work in their jurisdiction that are determined to be ineligible by the Colorado Division of Homeland Security and Emergency Management (DSHEM) or FEMA.

10. Pending Litigation/Award of Contract. Boulder County Purchasing has determined that RFP #7301-22 complied with Boulder County Policies and Procedures. However, the Parties acknowledge that the County is involved in litigation challenging the County's award of the PPDR contract to DRC. The County will not execute the Statement of Work applicable to the City or Town or otherwise authorize DRC to perform work within the jurisdiction of the City or Town until the County receives written approval from the City and Town for such work to proceed.

11. General Terms.

a. Term. This IGA shall become effective as of the date of last signature as indicated on the last page. This IGA shall terminate December 31, 2022 unless earlier terminated by any Party upon thirty (30) days' notice to the other Parties.

b. Prior Agreements. Contracts or intergovernmental agreements for services between the Parties existing prior to the Disaster will continue, to the extent possible in light of the Disaster. Nothing contained in this IGA shall alter or modify any such pre-existing contracts or agreements. Services provided under such contracts or agreements shall be paid as usual, with no additional charges.

- c. Employment Status of Responding Personnel. Nothing contained in this IGA, and no performance under this IGA by personnel of any Party shall in any respect alter or modify the status of officers, agents, or employees of any of the Parties.
- d. Liability. Each Party agrees to be responsible for its own actions or omissions, and those of its officers, agents and employees in the performance or failure to perform work under this IGA. By agreeing to this provision, neither Party waives or intends to waive, as to any person not a Party to the IGA, the limitations on liability that are provided to the Parties under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
- e. Authority. This IGA is promulgated under C.R.S. § 29-1-201 and the relevant portions of Title 24, Article 33.5 of the Colorado Revised Statutes. Each and every term, provision, or condition herein in subject to and shall be construed in accordance with the provisions of Colorado law, the charters of the Parties (if applicable), and the ordinances and regulations enacted pursuant hereto.
- f. Severability. The Parties understand and agree that if any part, term, or provision of this IGA is by the courts held to be illegal or in conflict with any law of the State of Colorado, or of the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the IGA did not contain the particular part, term, or provision held to be invalid.
- g. Waiver. No waiver of any breach or default under this IGA shall be a waiver of any other or subsequent breach or default.
- h. No Third-Party Beneficiary. The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of this IGA, and no other person or entity is so intended.
- i. Amendments. Amendments to this IGA may be made with consent in writing by both Parties.
- j. Governing Law and Venue. This IGA shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement shall be in Boulder County, Colorado.
- k. Counterparts. This IGA may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute

one and the same agreement. Facsimile signatures shall be acceptable and binding upon all Parties.

- l. Insurance: Each Party is a “public entity” under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, and shall always during the terms of this IGA maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. This insurance shall have minimum limits, which shall match or exceed the maximum governmental liability limits set forth in C.R.S. § 24-10-114, as amended.

- m. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town or the City not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

[Signature page to follow]

EXECUTED on the dates set forth below.

BOULDER COUNTY:

Marta Loachamin

Marta Loachamin, Chair
Boulder County Board of County
Commissioners

DATE: March 23, 2022

ATTEST:

Cecilia Lacey

Clerk to the Board

TOWN OF SUPERIOR:

Clint Folsom

Clint Folsom, Mayor

DATE: March 23, 2022

ATTEST:

Patricia Leyva

Patricia Leyva, Town Clerk

CITY OF LOUISVILLE:

Ashley Stolzmann

Ashley Stolzmann, Mayor

DATE: March 23, 2022

ATTEST:

Meredyth Muth

Meredyth Muth, City Clerk