

**INTERGOVERNMENTAL AGREEMENT
TO PROVIDE OPERATIONAL AND ADMINISTRATIVE SERVICES**

This Intergovernmental Agreement To Provide Operational And Administrative Services ("**Agreement**") is entered into by and between the Tri-Lakes Monument Fire Protection District ("**TLMFPD**") and the Donald Wescott Fire Protection District ("**WESCOTT**"), collectively referred to as the "**Parties**" or individually as a "**Party**".

A. Recitals

WHEREAS, the Parties are political subdivisions of the State of Colorado, organized pursuant to C.R.S. § 32-1-101, *et seq.* to provide fire suppression, fire prevention and public education, rescue, hazardous materials, ambulance and emergency medical services (collectively, "**Emergency Services**") to the citizens and property located within their respective jurisdictions and individuals passing through, or conducting business or other activities within, their respective jurisdictions;

WHEREAS, pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. § 29-1-203, the Parties may contract with one another to provide any function, service or facility lawfully authorized to be provided by each Party;

WHEREAS, the Parties recognize that both operational and financial benefit can be realized by joining operationally with the goal of ultimately forming a single, unified fire protection district, and that each Party brings assets and strengths that can benefit the other such as:

- Both Parties' commitment to retention of their respective broadly-experienced and competent personnel that will enhance Emergency Services within the service area of each Party and generate staff cohesiveness;
- WESCOTT's ownership of a fire station that is in close proximity to the border of the TLMFPD service area such that integrating and allowing access and use of such fire station will eliminate an immediate need for TLMFPD to build a costly new fire station;
- The solvent financial position of each Party, which will be further supported due to cost savings to be realized by eliminating duplication of some administrative and operational efforts;
- The inventory of apparatuses and equipment of each Party which can be pledged to assist each Party in the delivery of Emergency Services and thereby avoid duplication of equipment purchasing with attendant maintenance and insurance costs;

WHEREAS, the Parties intend, through and during the term of this Agreement and future action, to cooperate to merge the Parties into one single, unified fire protection district or authority through one of several legal processes that are available to the Parties to accomplish this goal ("**Merge**" or "**Merger**"); and

WHEREAS, the Parties desire, as an interim step toward such Merger, for WESCOTT to contract with TLMFPD to have TLMFPD perform the administrative and operational services set forth in this Agreement until the first to occur of the following: (1) the Merger is completed; (2) the Merger process is terminated; or (3) this Agreement is terminated.

B. Agreement

1. Services. During the term of this Agreement, TLMFPD, through its Fire Chief ("**Fire Chief**"), and the senior administrative and managerial personnel under his supervision (collectively, "**Executive Staff**"), shall provide the administrative and operational services to WESCOTT set forth below (collectively, "**Services**"). To the fullest extent practicable, the Services shall be provided in a manner that furthers the integration of the Parties' administrative and operational functions and facilitates the ultimate Merger of the Parties. TLMFPD's Fire Chief and Executive Staff shall have the authority to take such actions and make such statements as are reasonably necessary or appropriate to perform the Services and shall have such authority as is incidental to or implied from the Services. The Services provided by TLMFPD's Fire Chief and Executive Staff to WESCOTT shall be separate from and in addition to the duties and responsibilities they have to TLMFPD.

a. Operations:

i. Supervise all aspects of the Emergency Services, Fire Prevention, Public Education, and other operational services provided by WESCOTT. Emergency Services responses shall be made automatically to the areas served by each Party under normal Emergency Services response protocols, without regard to the respective boundaries of each Party;

ii. Ensure WESCOTT complies with all federal, state, and local constitutional, statutory, and common laws, rules, and regulations, including, but not limited to, the statutory duties required of a fire chief under the Colorado Special Districts Act, C.R.S. § 32-1-1002, and applicable medical protocols (collectively, "**Applicable Law**");

iii. Operate WESCOTT in an efficient, effective, and economical manner, consistent with the policies, procedures, and protocols established by the WESCOTT Board of Directors ("**WESCOTT Board**"), as may be amended from time to time. TLMFPD's Fire Chief shall recommend to the WESCOTT Board any changes to such policies, procedures, and protocols as he deems necessary for the efficient, effective, and economical operation of WESCOTT during the term of this Agreement. The TLMFPD Fire Chief may delegate to Executive Staff or third-party contractors (e.g., payroll and benefits administrators) such duties and responsibilities as he deems appropriate and shall confer with the WESCOTT Board as to the necessary staffing for such duties and responsibilities and any recommended interim personnel actions;

iv. Implement and enforce the rules, policies, and procedures established by the WESCOTT Board, as may be amended from time to time. The TLMFPD Fire Chief shall have authority to establish Standard Operating Procedures and issue Executive Directives as he deems necessary, provided that the Standard Operating Procedures and Executive Directives do not conflict with rules, policies, and procedures established by the WESCOTT Board. The TLMFPD Fire Chief shall recommend to the WESCOTT Board any changes he deems necessary to such

rules, policies, and procedures for the best interests of WESCOTT during the term of this Agreement;

v. Supervise, direct, and coordinate all WESCOTT personnel. TLMFPD's officers will have the authority to supervise lower ranking WESCOTT personnel and WESCOTT's officers will have the authority to supervise lower ranking TLMFPD personnel in accordance with normal chain of command procedures. Any personnel actions related to WESCOTT personnel requiring Board-level notification or direction shall be communicated by TLMFPD's Fire Chief to the WESCOTT Board; and

vi. Within the budget approved by the WESCOTT Board, maintain WESCOTT equipment, apparatus, facilities, and other property.

b. Administration:

i. Prepare and post (or publish when required by applicable law) notices of WESCOTT regular and special Board meetings (including work/study sessions), develop Board packets for such meetings, and prepare the minutes of such meetings;

ii. Supervise WESCOTT's day-to-day financial matters, including paying bills, invoices, and other expenditures, collecting revenues, and ensuring appropriate recording of all revenues and expenditures;

iii. Monitor all WESCOTT revenues and expenditures to ensure they stay within, and are consistent with, the annual budget approved by the WESCOTT Board;

iv. Ensure that the annual independent audit of WESCOTT's financial statements is timely completed and filed with the State Auditor;

v. TLMFPD's Fire Chief, or his designee(s), shall attend all special and regular WESCOTT Board meetings (including work/study sessions), and advise the WESCOTT Board on matters before it; provided, however, that TLMFPD's Fire Chief (or his/her designee(s)) shall not participate in any executive session wherein the topic(s) of discussion would conflict with the Fire Chief's (or designee's) duties to TLMFPD and its Board of Directors ("**TLMFPD Board**");

vi. Prepare regular or special reports upon any WESCOTT matters, as necessary or appropriate, or as requested by the WESCOTT Board;

vii. Review and act upon inquiries and complaints from the public or other agencies. Advise citizens, property owners, contractors, and others on questions relating to WESCOTT rules, policies, and procedures;

viii. Supervise, direct, and coordinate administrative personnel to ensure the efficient and effective administrative functions of WESCOTT; and

ix. Carry out any additional administrative responsibilities necessary for WESCOTT's administration as may be designated by the WESCOTT Board from time to time.

2. Compensation. During the term of this Agreement, WESCOTT shall pay TLMFPD for the Services an amount that is equal to \$1.00/per month, the sufficiency of which is hereby acknowledged. No payment shall be due until termination of this Agreement.

3. Relationship of the Parties and Liability.

a. TLMFPD, through the Fire Chief is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer or employee between TLMFPD and WESCOTT or any of TLMFPD's agents or employees, including without limitation the Fire Chief or the Executive Staff or other employees of TLMFPD. To the extent this Agreement creates a principal-agent relationship between the Fire Chief and WESCOTT, such relationship shall constitute a "special agency" and confers on the Fire Chief and employees of TLMFPD authority to act on WESCOTT's behalf only as to matters covered by this Agreement. As an independent contractor, TLMFPD, through the Fire Chief, offers to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement. In conformity with this Agreement, and under the supervision and direction of the WESCOTT Board, the Fire Chief shall retain all authority for providing the Services, standards of performance, control of personnel, including discipline, and other matters incident to the performance of the Services by TLMFPD through the Fire Chief and, within the limitations of the WESCOTT budget and direction, pursuant to this Agreement.

b. By entering into this Agreement, the Parties are not creating, and shall not be construed as creating, a joint venture, partnership, authority, or any other type of relationship between the Parties, and each Party shall remain a separate and distinct entity for all purposes under this Agreement. TLMFPD shall have no direct or indirect financial right to or interest in or to WESCOTT as a result of this Agreement. Likewise, WESCOTT shall have no direct or indirect financial right to or interest in or to TLMFPD as a result of this Agreement.

c. A TLMFPD employee or volunteer providing Services under this Agreement shall at all times remain TLMFPD's employee or volunteer, and shall retain all rights, privileges, and immunities held as a TLMFPD employee or volunteer. Under no circumstances shall a TLMFPD employee or volunteer be considered an employee or volunteer of WESCOTT for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation, or any other rights or privileges accorded the WESCOTT employees or volunteers by virtue of their employment/volunteer service. Similarly, under no circumstances shall a WESCOTT employee or volunteer be considered an employee or volunteer of TLMFPD.

d. The Fire Chief shall inform the WESCOTT Board anytime he deems a conflict of interest or potential conflict of interest may arise as a result of this Agreement. The WESCOTT Board and Fire Chief shall mutually agree on a course of action to either resolve such conflict or for WESCOTT to address the matter that gives rise to such conflict without the involvement of the Fire Chief or TLMFPD.

4. Term and Termination. Subject to Paragraph 8, below, the term of this Agreement shall be from January 1, 2022 continuing until the earlier of one of the following: (a) either Party gives written notice to the other Party of termination of this Agreement; or (b) the Merger of the Parties is completed; or (c) the Merger process is terminated by either Party; provided, however,

that if this Agreement is terminated for any reason other than the Merger process being completed, this Agreement shall continue for a period of 60 calendar days or such other period as the Parties may mutually agree to in writing.

5. Dispute Resolution.

a. **Mediation.** Any dispute arising from or relating to this Agreement or the Services shall be submitted to non-binding mediation, which is a condition precedent to either Party commencing a civil action on any dispute arising from or relating to this Agreement or the Services. Either Party may submit a written request for mediation. The Parties shall share the mediator's fee and any mediation costs equally; provided, that each Party shall pay its own attorneys' fees, costs, and expenses. Unless the Parties otherwise mutually agree in writing, the mediation shall be completed within 45 calendar days of a Party requesting mediation. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

b. **Civil Action.** If the Parties are unable to resolve a dispute through mediation, either Party may commence a civil action. Jurisdiction and venue for a civil action shall lie exclusively in the District Court for El Paso County. In any civil action, the prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including the reasonable attorneys' fees, costs, and expenses incurred in collecting or executing upon any judgment, order, or award.

6. Notices. Any notice permitted or required by this Agreement shall be in writing and shall be given by hand delivery to the receiving Party at its administrative offices addressed to the President of the Board of Directors of the receiving Party.

7. Governmental Immunity. This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, either Party and their current and former directors, officers, employees, volunteers, representatives, and agents under federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

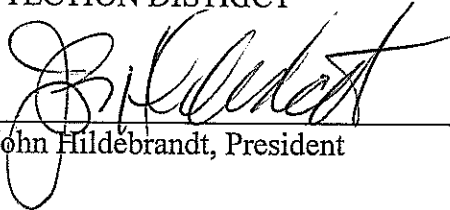
8. Non-Appropriation. All direct and indirect financial obligations of a Party under this Agreement are subject to annual appropriation of the funds necessary to meet such obligations. If either Party's governing body fails to appropriate funds necessary to meet that Party's obligations under this Agreement for the ensuing fiscal year, this Agreement shall terminate at the end of the year in which the non-appropriation occurred, and neither Party shall have liability to the other Party.

9. Additional Provisions. Colorado law governs this Agreement. This Agreement is the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement is not assignable by either Party. This Agreement shall inure to the benefit of and be binding upon the Parties and their successors. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a

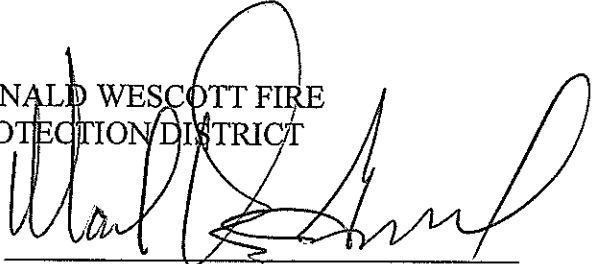
party to this Agreement; all rights of action relating to such enforcement shall be strictly reserved to the Parties. This Agreement may be executed in several counterparts and by PDF or facsimile, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement the 8 day of December, 2021.

TRI-LAKES MONUMENT FIRE
PROTECTION DISTRICT

By: 
John Hildebrandt, President

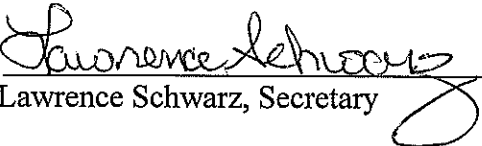
DONALD WESCOTT FIRE
PROTECTION DISTRICT

By: 
Mark Gunderman, President

ATTESTED:

By: 
Michael Smaldino, Secretary

ATTESTED:

By: 
Lawrence Schwarz, Secretary