



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: December 5, 2024

AGENDA TITLE

Consideration of a motion to approve an Intergovernmental Agreement (IGA) between the City of Boulder and the Mountain View Fire Protection District concerning the installation, use and management of a firefighting cistern on City of Boulder property.

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Dan Burke, Director, Open Space and Mountain Parks
Jeff Haley, Deputy Director, Visitor Experience and Infrastructure
Ilene Flax, Senior Landscape Architect

EXECUTIVE SUMMARY

Staff requested Open Space Board of Trustees (OSBT) action, in the form of a recommendation to City Council, to execute an intergovernmental agreement (IGA) concerning a firefighting cistern located on Open Space & Mountain Parks (OSMP). The Mountain View Fire Protection District (MVFPD) provides fire protection and emergency medical services to the area on and around the Marshall Mesa Trailhead, and OSMP manages and protects the city's open space and mountain parks, including the trailhead, so there is mutual interest in wildfire prevention and suppression in the wildland/urban interface area surrounding Eldorado Springs and Marshall. MVFPD has additional strategic goals to prevent and suppress private structure and property fires in the MVFPD service area and has determined that the cistern that has been located on OSMP Property is in disrepair and will not hold firefighting water.

OSMP has worked with MVFPD to outline terms for MVFPD's installation, use and maintenance of a new firefighting cistern and related activities at the Marshall Mesa Trailhead as a component of OSMP's upcoming trailhead reconfiguration and improvement project.

Installation of Cistern. MVFPD and OSMP will each have the following responsibilities and funding obligations with respect to installation of the cistern:

- a. OSMP and MVFPD work collaboratively on the location and access to the new cistern.
- b. OSMP will remove the defective cistern while reconfiguring the trailhead property.
- c. MVFPD is entirely responsible for the design, engineering and installation of the cistern and appurtenances and associated costs. This design is included in the site plan and construction documents for the trailhead renovation.
- d. MVFPD is responsible for any right-of-way improvements and permits needed if the cistern is accessed from the roadway for filling or use.
- e. OSMP will provide accommodation for the cistern and appurtenances, as well as access needed for filling and maintenance in any site plan for the property.

Cistern Access, Operation and Maintenance. MVFPD and OSMP will each have the following responsibilities and funding obligations with respect to access, operation and maintenance of the cistern:

- a. OSMP will permit MVFPD to access the property to install, maintain, and test the cistern.
- b. All testing, filling, maintenance, repairs and replacement of the cistern shall be the responsibility of MVFPD.
- c. MVFPD will conduct standard maintenance on the cistern, including flushing and refilling when necessary to ensure the cistern is kept in good working order.
- d. MVFPD will coordinate all installation, maintenance and testing of the cistern with OSMP to the extent possible to minimize any impacts or disruptions to the trailhead or OSMP Property and shall pay for or repair any damages caused by MVFPD's use.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to approve an Intergovernmental Agreement (IGA) between the City of Boulder and the Mountain View Fire Protection District concerning the installation, use and management of a firefighting cistern on City of Boulder property.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The cistern design and installation are funded entirely by the MVFPD.
- Environmental – The cistern component of the trailhead supports environmental and sustainability goals by increasing resilience to climate changes in the form of fire.
- Social – The community is enthusiastic about the installation of a cistern at this location, as expressed to the County Commissioners during the special use review hearing.

RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE

None

BOARD AND COMMISSION FEEDBACK

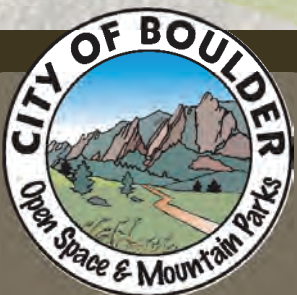
At the November 13, 2024, regular meeting of the Open Space Board of Trustees, the board unanimously approved a motion to recommend to City Council to approve an Intergovernmental Agreement (IGA) between the City of Boulder and the Mountain View Fire Protection District concerning the installation, use and management of a firefighting cistern on City of Boulder property.

PUBLIC FEEDBACK

None

ATTACHMENTS

- **Attachment A:** Marshall Mesa Trailhead Illustrative Plan showing cistern and cistern access
- **Attachment B:** Mountain View Fire Protection District Intergovernmental Agreement



MARSHALL MESA TRAILHEAD

Illustrative Plan
November 2024

**INTERGOVERNMENTAL AGREEMENT REGARDING
INSTALLATION, USE AND MAINTENANCE OF A FIREFIGHTING CISTERN
ON CITY OF BOULDER OPEN SPACE LANDS**

This Intergovernmental Agreement is made and entered into as of _____, 2024, by and between the Mountain View Fire Protection District, a special district organized under title 32, article 11 of the Colorado Revised Statutes ("MVFPD") and the City of Boulder, a Colorado home rule municipality ("City") by and through its Open Space and Mountain Parks Department ("OSMP"), and collectively known as "Parties."

RECITALS

- A. MVFPD is a fire protection district that provides fire protection and emergency medical services to a portion of Boulder County, Colorado, including the area around Eldorado Springs and the community of Marshall ("Marshall").
- B. OSMP is a department of the City that manages and protects the City's open space and mountain parks, including the Marshall Mesa Trailhead, located on the City Limits Open Space property ("Property").
- C. MVFPD and OSMP have a mutual interest in wildfire prevention and suppression in the wildland/urban interface area surrounding Eldorado Springs and Marshall.
- D. MVFPD has additional strategic goals to prevent and suppress private structure and property fires in the MVFPD service area.
- E. MVFPD has determined that the cistern on the Property which had been installed to serve a building that was removed when the City acquired the Property, is in disrepair, and will not hold firefighting water.
- F. OSMP is planning to redesign and reconfigure the Marshall Mesa Trailhead and surrounding areas, including the area where the existing cistern is located.
- G. The Parties wish through this Agreement to outline general terms for MVFPD's installation, use and maintenance of a new firefighting cistern ("Cistern") and related activities on the Property.
- H. Sections 29-1-201, et. seq., and 32-1-1001(1)(d) C.R.S., authorizes the Parties to cooperate and contract with each other with respect to such functions lawfully authorized to each of the parties, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, Section 18(2).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

- 1. Recitals.** The Recitals set forth above are incorporated herein and made a part of this Agreement.
- 2. Purpose.** The purpose of this Agreement is to define the permitted access and funding, operation, and maintenance obligations with respect to the Cistern on the Property.
- 3. Installation of Cistern.** MVFPD and OSMP will each have the following responsibilities and funding obligations with respect to installation of the Cistern:
 - a. OSMP will remove or abandon the defective cistern while reconfiguring the trailhead property and disconnect the power service to the pump.
 - b. OSMP and MVFPD will work collaboratively on the location and access to the new Cistern. The location and access will be cooperatively determined by the Parties and included in the site plan and construction documents for the Property.
 - c. MVFPD will be entirely responsible for the design, engineering and installation of the Cistern and appurtenances and associated costs.
 - d. MVFPD will be responsible for any right-of-way improvements and permits needed if the Cistern is accessed from the roadway for filling or use.
 - e. OSMP will provide accommodation for the Cistern and appurtenances, as well as access needed for filling and maintenance in any site plan for the Property.
- 4. Cistern Access, Operation and Maintenance.**
 - a. OSMP will permit MVFPD to access the Property to install, maintain, and test the Cistern.
 - b. All testing, filling, maintenance, repairs and replacement of the Cistern shall be the responsibility of MVFPD.
 - c. MVFPD will conduct standard maintenance on the Cistern, including flushing and refilling when necessary to ensure the Cistern is kept in good working order.
 - d. MVFPD will coordinate all installation, maintenance and testing of the Cistern with OSMP to the extent possible to minimize any impacts or disruptions to Property or the use of the Property by OSMP or the public and shall pay for or repair any damages caused by MVFPD's use of the Property pursuant to this Agreement. This includes but is not limited to damage to any vegetation, soil, surface water, fences, roads, and parking areas.
- 5. Hazardous Materials.** MVFPD shall not bring (or permit to be brought) onto the Property any hazardous or toxic substance or material (including petroleum) regulated by the State of Colorado, the United States government, or any other government authority with applicable jurisdiction ("Hazardous Materials") other than that required for operating tools and machinery in customary quantities only or as otherwise required for the installation or operation of the Cistern and in compliance with applicable laws and with secondary containment. MVFPD shall bear all costs related to environmental investigation, cleanup, removal, or restoration of any water, air, groundwater, natural resources, soil, or land incurred as a result of the MVFPD's introduction of such Hazardous Materials in violation of applicable laws arising out of the acts or omissions of the MVFPD, its contractors,

agents, or employees. The MVFPD shall not be liable for any prior environmental contamination or any other existing condition on the Property.

6. **Notices.** Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party by the other Party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the representative to whom it is addressed or in lieu of such personal services, upon receipt in the United States mail, first-class postage prepaid, addressed to the following:

City of Boulder: Director
Open Space & Mountain Parks
2520 55th Street
Boulder, CO 80301

With a copy to: Office of the City Attorney
P.O Box 791
Boulder, CO 80306

MVFPD: Fire Chief
3561 N. Stagecoach Rd.
Longmont, CO 80504

Either Party may change its address for the purpose of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph.

7. **Indemnification.** Neither party is required to indemnify the other in connection with this Agreement. However, each party assumes responsibility for its actions and omissions in the performance or failure to perform work under this Agreement, as well as the actions and omissions of its contractors, agents, and employees. Neither party waives or intends to waive the limitations on liability which are provided to the Parties, their officers, and employees under the Colorado Governmental Immunity Act, Section 24-10-101 *et. seq.*, C.R.S. ("CGIA"). MVFPD agrees to cause its contractors performing any work on the Property to indemnify and hold the City harmless from and against all losses, claims, demands, liabilities, injuries, damages and expenses, including, without limitation, attorneys' fees and court costs the City may suffer or incur which may arise from negligent or wrongful performance of the MVFPD contractors while working on the Property.

8. **Insurance.**

- a. MVFPD agrees that it will cause any contractors performing any work on the Property to procure and maintain in force, at its or their own cost, the insurance coverages and other contract requirements set forth in **Exhibit A**.

- b. MVFPD is a “public entity” within the meaning of the CGIA and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CBIA.

9. Term. This Agreement and the covenants herein contained shall be perpetual unless modified by Court order, or a signed written agreement of the Parties or their successors in title.

10. Default/Breach and Remedies

a. Defective Performance.

- i. The City reserves the right to decide all questions arising as to the proper performance of MVFPD’s performance of the obligations in this Agreement. In the event that the City shall determine that the obligations herein are not being performed in accordance with the terms of this Agreement, or, if the obligations herein be wholly, or in part, negligently, or improperly performed, then the City shall provide written notice of such defect or defects to MVFPD.
- ii. In the event that such defect or defects are not remedied within a reasonable time from the date notice is given, the City may, at its option, declare MVFPD to be in default, either as to the particular obligation(s) declared to be defective or as to this entire Agreement. In the event that a default is declared as to particular obligations, it is agreed and understood that such declaration of default shall not in any way relieve MVFPD from any liability for non-performance of the remaining obligations, but the same shall be and remain valid and binding obligations against MVFPD. As to obligations *not* declared to be in default, MVFPD agrees to complete the same under the terms of this Agreement.

11. Non-Appropriation. The financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. No provision of this Agreement shall be construed or interpreted (i) to directly or indirectly obligate the Parties to make any payment in any fiscal year in excess of amounts appropriated for such fiscal year; (ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Parties within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or (iii) as a delegation of governmental powers by a party.

12. Amendment. This Agreement may be amended in writing by mutual agreement of the Parties.

13. No Assignment. MVFPD shall not assign this Agreement without the written consent of the City, which the City may withhold at its sole discretion.

14. No Conveyance. This Agreement does not grant or convey any property rights in the Property. This Agreement is for the benefit of the City and MVFPD only and creates no rights in third parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF BOULDER,
a Colorado home-rule municipality

By: _____
Nuria Rivera-Vandermyde, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney's Office

MOUNTAIN VIEW FIRE PROTECTION DISTRICT
a Title 32 Special District

By: 
Dave Beebe, Fire Chief

Exhibit A

Contractor Insurance

1. Insurance.

- a. Minimum Coverages. Contractor shall procure and maintain in force during the term of this Agreement and for the statute of repose, at its own cost, the following minimum coverages:

i. Workers' Compensation and Employers' Liability

- a. State of Colorado: Statutory

ii. Employer's Liability:

\$1,000,000 bodily injury for each accident
 \$1,000,000 each employee for disease
 \$1,000,000 disease aggregate

ii. General Liability

- A. General Aggregate Limit: \$2,000,000
 B. Per Occurrence: \$1,000,000

Coverage provided should be at least as broad as found in Insurance Services Office (ISO) Form CG0001 to include all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations.

iii. Automobile Liability Limits - ISO form CA0001 (BAP) or equivalent including coverage for owned, non-owned and hired autos. ¹

- A. Bodily Injury & Property Damage
 Combined Single Limit: \$1,000,000

iv. Professional Liability (errors and omissions)²

- A. Each Claim/Loss: \$1,000,000
 B. Aggregate: \$2,000,000

This paragraph is applicable to Contractor and any Subcontractors of any tier that is providing any professional services, including but not limited to: design, architecture, engineering, testing, surveying, or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply,

¹ Applicable only if Contractor, its agents, employees, or representatives will be using motor vehicles in Colorado while performing the Services.

² The City may require that this coverage remain in place for one year after the Services are complete.

structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical, fire protection systems, electrical, fire alarm systems.

Contractor and all Subcontractors providing professional services shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with the Scope of Work. Coverage shall include coverage for contractual liability. The Contractors and Subcontractors shall maintain for the statute of repose, following completion of the project. Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the professional's policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

b. Additional Insurance Requirements.

- i. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis (excepting Professional Liability).
- ii. Higher limits or lower limits may be required or accepted by the City. The City reserves the right to require an Excess/Umbrella Liability policy. If an Excess/Umbrella Liability policy is required, all coverages and terms required under the Commercial General Liability, Automobile Liability and Employer's Liability must be included. Contractor's Excess/Umbrella Liability Policy shall provide liability coverage, subject to the terms and conditions of the policy, in excess of all available underlying coverage before any primary or excess coverage held by an additional insured.
- iii. Where commercially available, **Contractor shall name "the City of Boulder, its elected and appointed officials, directors, officers, employees, agents and volunteers" as additional insureds as their interest may appear** (except for Workers' Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability.
- iv. A Certificate of Insurance evidencing the coverages described here, shall be submitted prior to commencing services on ACORD Form 25-S. **The Certificate Holder shall be identified as: City of Boulder, P.O. Box 791, Boulder, CO 80306.**
- v. All policies of insurance shall be written on a primary basis, non- contributory with any other insurance coverages and/or self-insurance carried by the City.
- vi. A Separation of Insureds Clause must be included in general liability policies.
- vii. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At its own expense, Contractor will reinstate the aggregate limits to comply with the

minimum requirements and shall furnish to the City a new certificate of insurance showing such coverage is in force.

- viii. Contractor's insurance carrier shall possess a minimum A.M. Best's Insurance Guide rating of A- VI.
- ix. Contractor, or Contractor's insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.
- x. Contractor is responsible for any damage or loss to its own vehicles or equipment.
- xi. The City and Contractor shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
- xii. **Contractor and its insurers shall waive subrogation in favor of Additional Insured parties** (except for Workers' Compensation and Professional Liability).
- xiii. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.