

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF COLORADO SPRINGS AND EL PASO COUNTY
TO ESTABLISH MUTUALLY BINDING PROCEDURES FOR MUNICIPAL ANNEXATIONS**

This Intergovernmental Agreement (“Agreement”) is made by and between the City of Colorado Springs, a home rule city and Colorado municipal corporation (“City”), and El Paso County, Colorado, a duly organized county and political subdivision of the State of Colorado (“County”). The City and the County may be referred to collectively as “Parties” or each individually as “Party.”

RECITALS

WHEREAS, the continued growth in El Paso County has created both opportunities and challenges for urban growth; and

WHEREAS, the County and City desire to encourage new urban-level development to occur within the City when practicable; and

WHEREAS, the County and City also desire to encourage urban-level development in the County to consider annexation into the City once eligible and with consent of existing residents, in order to efficiently provide urban-level municipal services; and

WHEREAS, the County and City desire to promote well-planned and orderly extension of municipal infrastructure and services and to further improve the planning and coordination of annexations and the equitable transfer of the ownership and maintenance responsibility of associated public improvements; and

WHEREAS, the Local Governmental Land Use Control Enabling Act (C.R.S. § 29-20-101, *et. seq.*) makes explicit the authority of local governments to jointly plan and regulate land use; and

WHEREAS, the County and City desire to enter into an intergovernmental agreement to establish mutually binding procedures for providing additional notice of annexation petitions, for coordinating the fair and equitable transfer of rights of way and associated public infrastructure owned and/or maintained by the County to the City and for requiring that urban-level development develop to urban-level standards.

AGREEMENT

NOW THEREFORE, the County and the City agree to enter into this Intergovernmental Agreement (Agreement) as follows:

1. **City Comprehensive Annexation Plan.**

A. City Obligations.

- i. City Comprehensive Annexation Plan. The City agrees to develop a Comprehensive Annexation Plan (hereafter referred to as “CAP”), which will include the City’s policies for annexations. Such policies will, at a minimum, evaluate impacts upon and inclusion of County infrastructure (e.g., transportation, stormwater, etc.) and services to the extent that such impacts can be known in advance of annexation petitions being submitted. As adopted by the City, this CAP may be referred to by a different title (e.g. “AnnexCOS- the City of Colorado Springs Annexation Plan”).

- ii. Area of Planning Interest Map. The CAP will include a map of the area of planning interest (hereafter referred to as “Area of Planning Interest Map”) surrounding the incorporated boundaries of the City as required by, and consistent with Colorado Revised Statutes § 31-12-105(1)(e)(I). It is specifically recognized that the CAP will include properties within three (3) miles of the existing City limits, and may also include properties located, in whole or in part, more than three (3) miles from existing City limits. As applicable, the Area of Planning Interest Map will depict or be inclusive of:
 - a. Annexation and Growth Opportunity Areas. Areas within the unincorporated area of County that are likely to experience urban-level development and which currently is or may be suitable for annexation. The CAP will evaluate or support the evaluation and analysis of impacts from plans that have been formally submitted to or approved by the City on existing or planned and funded County services and infrastructure, including any infrastructure owned or otherwise maintained by the County. Such analyses will be coordinated with the County and will be based upon the condition, capacity, operations, and maintenance of the County infrastructure.
 - b. Limited Annexation and Growth Potential Areas. Areas within the unincorporated area of County, and within three (3) miles of the City incorporated boundary, which are less likely to experience urban-level development and which are therefore less suitable for annexation by the City and/or for extraterritorial provision of City water, wastewater and/or other utility service. The CAP will evaluate or support the evaluation and analysis of impacts from plans that have been formally submitted to or approved by the City on existing or planned and funded County services and infrastructure, including any infrastructure owned or otherwise maintained by the County. Such analyses will be coordinated with the County and will be based upon the condition, capacity, operations, and maintenance of the County infrastructure.
 - c. Enclaves and Isolated County Areas. All existing unincorporated areas meeting the definition in Colorado Law of an “enclave,” together with all areas of unincorporated County that are partially surrounded by the City and the remaining boundary of the County area consists entirely of federal and/or state owned lands, will be identified in the CAP.
 - d. County Roadways Serving Incorporated Areas. All County owned or maintained roadways and appurtenant infrastructure providing access to incorporated areas of the City, or to City owned properties, serving significant populated areas of the City, or where such roadway crosses into and out of the incorporated boundary of the City will be identified in the CAP and mapped on the Area of Planning Interest Map. Each segment of County roadway meeting these parameters will be identified consistent with the CAP as roadways with potential to be annexed by the City, whether in association with the annexation petition for private lands or as a standalone annexation, or otherwise transferred via separate instrument to the City. The CAP will also identify circumstances that, once met, may cause the City to accept the roadway from the County within one (1) year after the circumstances are met, pursuant to Paragraph 3, below. The circumstances may consider, to the extent

applicable and among other matters, deferred maintenance of County infrastructure, standards or warranties for title to County infrastructure, compliance of infrastructure with federal or Colorado law, including, but not limited to, the Americans with Disabilities Act and Municipal Separate Storm Sewer System (MS4) Permit requirements.

e. Other County Property. All County-owned or maintained property and infrastructure, to include drainage infrastructure, detention ponds, trails, open space, parks and easements, which fall within the Area of Planning Interest Map. Such County-owned or maintained property, excluding trails, open space and parks, will be identified, or contemplated in the CAP as property that may be annexed by the City, whether in association with the annexation petition for private lands or as a standalone annexation, or otherwise transferred via separate instrument to the City, upon agreement by the County. The CAP will also provide support and guidance to encourage and assist in the identification, annexation, and acceptance for maintenance of these properties, by the City, as applicable.

iii. Drafting of CAP. The City agrees to engage the County in drafting the CAP.

iv. Referral of CAP to County. The City agrees to provide a copy of the draft CAP that will be presented to the City Council to the County Administrator, and the Planning and Community Development Director for El Paso County at least ninety (90) days prior to the City approving the CAP.

v. Referral of CAP to Special Districts. The City agrees to provide notice of the draft CAP that will be presented to the City Council, and information as to where to review the draft CAP, to any special district or metro district that (1) has a service area within the Area of Planning Interest Map and (2) provides water, wastewater, and/or other utility services or provides emergency services, such as fire protection.

vi. Ongoing Updates of CAP and Three (3) Mile Plan. The City agrees to update the CAP, and associated Area of Planning Interest Map, within five (5) years of the initial adoption of the CAP and within each successive five-year period thereafter. The Parties agree that such updates will be subject to the same requirements as identified above in Paragraphs 1(A)(iii) and (iv). The County Administrator and Mayor may mutually agree to relax strict adherence to the timeframes set forth in this Section A.

B. County Obligations.

i. Provide Information. To provide the City with a list, to the extent known to the County, of all County owned or maintained property and infrastructure; all existing or planned and funded County services or infrastructure; and formally or submitted or approved County plans, that fall within the Area of Planning Interest Map and is required to be depicted or analyzed by the City in the Area of Planning Interest Map or CAP. The City's obligation to include or analyze County infrastructure, services or plans shall be limited to the information provided by the County.

- ii. Timely Review of CAP. The County agrees, in good faith, to coordinate and cooperate with the City in the drafting of the CAP, or any updates thereto, as requested by the City pursuant to Paragraphs 1(A)(ii)(a) through (e). Further, the County agrees to review and comment on the draft CAP, or any updates thereto, upon receipt from the City, and thereafter present the CAP to the County Planning Commission at an open and public hearing, and to the Board of County Commissioners at an open and public hearing for consideration.

The County agrees to provide any written comments regarding the draft CAP to the City no later than sixty (60) days after the City's deadline as set forth under Paragraph 1(A)(iv).

The Board of County Commissioners may authorize an individual commissioner(s) or County staff member(s) to provide written comments or verbal testimony to the City when the City Council considers the CAP at a public meeting.

- iii. Adoption of CAP as Master Plan Element. The County, at its discretion, may choose to adopt the CAP, either in whole or in part, as an element of the overall County Master Plan. Such adoption may be requested of the County Planning Commission by resolution of the Board of County Commissioners. The County Planning Commission may review and consider adoption of the CAP pursuant to requirements and authorities of the County Planning Commission as stated in Section 30-28-101 *et seq.* (C.R.S.).
- iv. Flood and Fire Mitigation Plan. If requested by either the City or County, for properties within the Area of Planning Interest Map, the City and County agree to: (1) collaborate and work cooperatively with one another to develop flood control standards in consultation with other governmental entities as may be appropriate; and (2) collaborate and work cooperatively with one another to develop fire mitigation standards in consultation with any applicable fire protection district(s).

2. **Additional Notice of Annexations to the County by the City.**

A. City Obligations.

- i. In addition to the notice requirements provided for by Colorado law and City Charter and Code, the City also agrees to provide additional notice to the County of all "Initial Annexation Petitions" received by the City. Such notice will occur within one (1) week of receipt by the City Clerk of an "Initial Annexation Petition."
- ii. Upon receipt of a formal application for annexation and associated application materials, the City will provide notice, the application and application materials to the County. The County will provide comments to the City, if at all, no less than twenty-one (21) days from the date of notice. The City shall send notice to the relevant persons identified for the County in Paragraph 8 of this Agreement.

- B. County Obligations. The County agrees to receive all referrals of annexation petitions from the City and to make good faith efforts to respond with comments on each such referral as set forth below.

- i. If upon review of an formal application, a subsequent modification thereto, or of an official annexation petition, the County believes there will not be undue impacts to County infrastructure, services, maintenance, and/or operations, then the County will provide notice to the City that the County is not requesting a separate agreement. The County may condition said notice on any further amendments or modifications to the Initial Annexation Petition or official annexation petition.
- ii. If upon review of an formal application, or a subsequent modification thereto, the County believes there will be undue impacts to County infrastructure, services, maintenance, and/or operations, then the County will provide notice to the City requesting a separate agreement related to annexation impacts as provided for in this Agreement.
- iii. In the event that the County fails to respond with comments to the City’s notice and referral for comment on any formal application within twenty-one (21) days of receipt, or as later provided for by the City, then County agrees that such failure to respond shall be viewed as the County having no objection to the formal application.
- iv. The County agrees to review and reference the CAP when reviewing development applications within the Area of Planning Interest Map, and shall encourage developers to contact the City to discuss the possibility of annexation if the proposed development application is for (i) a commercial, industrial or mixed use, (ii) a residential subdivision that includes developable lots smaller than two and one-half (2.5) acres, or (iii) any subdivision proposed to be served by either a central water or sanitary sewer system (collectively, “Urban-level Development”). If the County does not abide by the requirements of this Paragraph, the City shall be relieved of its obligation to produce or update the CAP as provided for in Paragraph 1(A).

This Paragraph shall not be interpreted in any manner as the County conceding its authority to receive notice and provide comment on “official annexation petitions” which the Parties agree are not “Initial Annexation Petitions”. For the purposes of this Agreement, the Parties agree “Initial Annexation Petitions” shall include any pre-application annexation requests made to City staff. The County shall send notice to the relevant persons identified for the City in Paragraph 9 of this Agreement.

3. **Annexation of County Infrastructure.**

If requested by the County, the City agrees to coordinate, by separate agreement, for the fair and equitable transfer of legal rights and responsibilities associated with County-owned or maintained infrastructure that primarily serves the property that is the subject of the annexation petition and other properties within the City and that is located within the area identified in the annexation petition or within one (1) mile of such area. The agreement may address, to the extent applicable and among other matters, deferred maintenance of County infrastructure, cost participation to improve infrastructure, standards or warranties for title to County infrastructure, compliance of infrastructure with federal or Colorado law, including, but not limited to, the Americans with Disabilities Act and MS4 Permit requirements.

The City agrees, to the extent permitted under City Charter and Code, to approve such annexation petitions only after a separate agreement is approved by both the City Council and the Board of County Commissioners addressing the transfer of rights and responsibilities

associated with County-owned or maintained infrastructure that could be burdened or otherwise impacted by the annexation and potential development of lands adjacent to or within one (1) mile of County infrastructure into the incorporated boundaries of the City. The City may approve an annexation petition prior to entering into a separate agreement with the County as contemplated above only on condition of the City entering into said agreement no later than one hundred eighty (180) days after the City officially approved the annexation. In the event the City fails to do either, the County may request an in-person meeting between the County Administrator and the City Chief of Staff in order to negotiate an agreement. If good faith negotiations fail, the County may seek judicial relief, under Paragraph 6, to compel the City to enter into said agreement; provided however, that the County shall not have unreasonably withheld approval of the of the agreement.

4. **County Referral of Development Applications to City.**

Upon finalization of the CAP by the City and delivery of the same to the County, then the County agrees to invite the City to all pre-application / early-assistance meetings, which shall include forwarding of associated materials, concerning any proposed development application located within the Area of Planning Interest Map as included in the adopted CAP, that the County holds with the proposed developer.

Within seven (7) calendar days after the pre-application / early-assistance meeting, the City shall notify the County as to whether or not the City will require that the engineering and construction of the public improvements proposed to be accepted by the County meet the City engineering design standards pursuant to Section 1.8 of the El Paso County Engineering Criteria Manual, as may be amended, which may also include a request that the County utilize alternative engineering design standards as jointly agreed upon by the City Engineer and County Engineer pursuant to the El Paso County Engineering Criteria Manual. Alternatively, the City may request additional information regarding the proposed application. The City shall notify the County of its election regarding engineering design standards within seven (7) days after the additional information is provided. The County Engineer, or designee, and City Director of Public Works, or designee, agree to meet as appropriate to discuss the design standards within the timeframe above.

The County further agrees to provide notice to the City of any development application received by the County for properties located within the unincorporated areas within the Area of Planning Interest Map as included in the adopted CAP within one (1) week after receiving such development application.

Upon finalization of the CAP by the City and delivery of the same to the County, then the County agrees that for any development application for Urban-level Development received within any unincorporated areas within the Area of Planning Interest Map, for which no pre-application / early-assistance meeting was held, the County shall, upon request from the City, require the engineering design standards as requested by the City, following a meeting between the City and County as outlined above.

In the event the City requires the County to utilize City engineering design standards, then the City and County agree to cooperate to address, at a minimum, the review, inspection, acceptance, maintenance, and operation of the public improvements and a timeline for the City to assume ownership of any public improvements as may be applicable. The City and County may address project specific issues by way of separate agreement. The Parties both agree that the Mayor (or Chief of Staff if delegated by the Mayor) for the City, and the Chair of the Board

of County Commissioners (or County Administrator if delegated by the Chair) for the County, are hereby authorized to execute any agreements as contemplated under this paragraph.

5. **Effective Date, Term, and Amendments.**

This Agreement shall be become effective after it has been executed by the El Paso Board of County Commissioners and the Colorado Springs City Council. This Agreement shall remain in full force and effect for the five (5) year period commencing on its effective date. Thereafter, this Agreement shall automatically remain in full force and effect for successive five (5) year terms, unless sooner terminated as provided for herein. This Agreement may be terminated at the end of any five (5) year term by a Party giving written notice to the other party not less than one hundred eighty (180) days prior to the expiration of the then-current five (5) year term. This Agreement may also be terminated at any time by mutual agreement of the Parties.

This Agreement may be amended in writing by mutual agreement by the Parties. At the end of each five (5) year term, the Parties may coordinate to determine if any amendments to this Agreement are warranted based on current circumstances.

6. **Remedies.**

The Parties agree and acknowledge that this Agreement creates no separate cause of action in law or in equity, unless otherwise set forth herein. The Parties agree that any cause of action is limited to the other Party's breach of this Agreement, and any remedy sought shall be limited to performance of a duty or obligation as contemplated under this Agreement. In the event of a lawsuit, each Party agrees to be solely responsible for its own respective costs, inclusive of respective attorneys' fees.

7. **Rights and Remedies Not Waived.**

No assent, express or implied, by either Party to any breach of this Agreement by the other Party shall be held to be a waiver by such non-breaching Party of any later breach by the other Party. Neither the County nor the City shall be excused from complying with any provisions of this Agreement because of any failure to insist upon, or to seek compliance with, such provision.

8. **Notices.**

All notices, demands, requests or other communications required under this Agreement shall be in writing and may be delivered via e-mail, facsimile, or U.S. mail, to the individual or staff member of the jurisdiction for which it is intended as follows:

El Paso County:
County Administrator
200 South Cascade Avenue
Colorado Springs, Colorado 80903
Facsimile:

With a copy to:
County Attorney
200 South Cascade Avenue
Colorado Springs, Colorado 80903
Facsimile:

Planning and Community Development Executive Director
2880 International Circle

Suite 110
Colorado Springs, Colorado 80910
Facsimile:

Clerk to the Board of County Commissioners
1675 West Garden of the Gods Road
Suite 2201
Colorado Springs, CO 80907

City of Colorado Springs:
Chief of Staff
30 South Nevada Avenue
Suite 601
Colorado Springs, CO 80903

With a copy to:
City Attorney
30 South Nevada Avenue
Suite 501
Colorado Springs, CO 80903

Planning and Development Director
30 South Nevada Avenue
Suite 701
Colorado Springs, CO 80903

In the event facsimile transmission or other electronic means of notice is provided, the notice shall be deemed to be delivered upon its transmission and receipt of confirmation of its receipt at the business location of the receiving party.

9. **No Third-Party Beneficiaries.**

Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law. No term or conditions of this Agreement or any amendments thereto hereafter, shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, (C.R.S.), or the Federal Tort Claim Act, 28 U.S.C. 2671, *et seq.*, as applicable.

10. **Assignments.**

Neither Party shall assign its respective rights or obligations under this Agreement except upon the prior written consent and approval of the other Party.

11. **Interpretation of Agreement.**

Because this Agreement is the result of mutual negotiation and drafting, in the event this Agreement is deemed to be ambiguous or vague, the Parties agree with the rule of construction that “ambiguities shall be construed against the drafter” shall not apply.

12. **Applicable Law, Jurisdiction and Venue.**

This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, the City Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs,

Colorado, applicable regulations of El Paso County, Colorado, and applicable federal law. Court jurisdiction and venue shall be exclusively in the District Court for El Paso County, Colorado.

13. **Limitations on Jurisdiction.**

Nothing herein shall be construed so as to in any manner expand upon or limit the lawful jurisdiction and authority of either the County or City.

14. **Modifications and Waivers in Writing.**

No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained, except those specifically discussed, shall be valid unless in writing and duly executed by the party to be charged therewith.

15. **Invalidity of Terms.**

This Agreement shall be void and of no further force or effect if a court of competent jurisdiction holds that any of the provisions of Paragraphs 1-4 of this Agreement are unenforceable in any material respect. If any term, claim, clause or provision of this Agreement (other than Paragraphs 1-4) shall be judged to be invalid, the validity and effect of any other term, claim, clause or provision shall not be affected, and such invalid term, claim, clause or provision shall be deemed from this Agreement in a manner to give effect to the remaining terms, claims, clauses or provisions.

16. **Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which when taken together shall constitute one and the same Agreement.

17. **No Third-party Beneficiaries.**

This Agreement is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement.

18. **Consents/Approvals.**

Wherever this Agreement calls for the consent or approval of any Party hereto, with respect to which consent or approval under this Agreement is not self-executing, in order to be effective, such consent or approval shall be in the form of written approval by the Chair of the Board of County Commissioners (or the County Administrator if designated by the Chair) for the County and in the form of written approval by the Mayor of Colorado Springs or designee for the City.

19. **Entire Agreement.**

This Agreement is intended as the complete integration of the understanding between the County and the City and constitutes the entire Agreement between the Parties. All other representations or statements previously made, whether verbal or written, are merged herein.

20. **Liability.**

Each party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the County or the City by the Colorado

Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution.

21. **Fiscal Obligations.**

This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the County or the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the County or the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the County or the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance or resolution and budget and specifically as to the City, the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, this Intergovernmental Agreement is executed by the City of Colorado Springs and the Board of County Commissioners of El Paso County as of the date both Parties execute this Agreement, provided for below.

CITY OF COLORADO SPRINGS

BY: _____
John W. Suthers, Mayor

Date: _____

ATTEST:

City Clerk

Approved as to form:

Office of the City Attorney

EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS

BY: _____
Stan VanderWerf, Chair
Board of County Commissioners

Date: _____

ATTEST:

Clerk and Recorder

APPROVED AS TO LEGAL FORM:

El Paso County Attorney's Office