

**RESTATED INTERGOVERNMENTAL AGREEMENT
FOR
JOINT PROFESSIONAL FIREFIGHTER CERTIFICATION**

This Restated Intergovernmental Agreement for Joint Professional Firefighter Certification (“Agreement”), effective this __ day of _____, 2020 (“Effective Date”), is made by and between the City of Aurora, the City of Colorado Springs, the City and County of Denver, the Poudre Fire Authority, the South Metro Fire Rescue Fire Protection District, and the West Metro Fire Protection District (collectively the “Contracting Parties” and individually a “Contracting Party”).

1. **AUTHORITY:**

This Agreement is made under authority of Section 29-1-203(1) of the Colorado Revised Statutes (“C.R.S.”).

2. **PURPOSE:**

The purpose of this Agreement is to provide a mechanism for joint professional certification of firefighters employed by the Contracting Parties by combining the resources of the Contracting Parties as authorized by Section 29-1-203(1) C.R.S.; however, nothing herein is intended to create, and shall not be construed as creating, any separate entity as provided under Section 29-1-203(4) C.R.S.

3. **PRIOR INTERGOVERNMENTAL AGREEMENT, AS AMENDED, SUPERSEDED:**

The initial intergovernmental agreement between the original contracting parties was entered into effective January 15, 1996 (“1996 Agreement”), and subsequently amended in 2008, 2010, and 2014. This Agreement is intended to restate and replace the 1996 Agreement and all subsequent amendments to the 1996 Agreement. Upon the Effective Date, this Agreement shall fully supersede and replace the 1996 Agreement and all subsequent amendments thereto, and the 1996 Agreement and all subsequent amendments thereto shall be deemed null and void for all purposes as of the Effective Date.

4. **COLORADO METROPOLITAN CERTIFICATION BOARD:**

a. Contracting Parties and Board Representation.

- i. There is hereby created the Colorado Metropolitan Certification Board (“CMCB”).
- ii. The CMCB will consist of one Board member appointed by each Contracting Party (exclusive of any Contracting Party that withdraws or is involuntarily removed from this Agreement). The Board member shall be the Chief Training Officer or other employee of a Contracting Party who is appointed by its Fire

Chief. The Board member will serve at the pleasure of the appointing Contracting Party and may be replaced at any time by its Fire Chief. In the event a Board member is unable to perform his/her Board member duties due to absence, injury, illness or otherwise, the Contracting Party's Chief Training Officer shall submit to the CMCB another employee of the Contracting Party to serve as a proxy to the Board member.

- iii. Each Board member serving on the CMCB shall have one vote on all matters coming before the CMCB.
 - iv. Meetings of the CMCB shall only be conducted when a quorum of the Board members are participating. A "quorum" means more than one-half the number of Board members serving on the CMCB at the time of the meeting. A vacant Board member position will not be counted for purposes of determining if a quorum is present. A Board member who abstains from a vote will still be counted for purposes of determining if a quorum is present.
 - v. Action by the CMCB shall only be taken by affirmative majority vote. A "majority" means one more than half the Board members present at a meeting where a quorum of the Board members are present.
- b. CMCB Rules, Regulations and Policies. The CMCB shall establish written rules, regulations and policies (collectively, "Rules") for implementation and operation of the professional certification process, including an appeal process. The Rules shall be effective upon written approval by a majority of the CMCB. In the event there is a conflict between a Rule and this Agreement, this Agreement shall control.
- c. CMCB Staff.
- i. The Contracting Parties may, from time-to-time, designate one or more of the Contracting Parties to employ CMCB Staff on behalf of the Contracting Parties. Such designation shall only be effective upon the affirmative majority vote of the CMCB and the written consent of the Contracting Party(ies) that are being designated to employ one or more of the CMCB Staff. CMCB Staff shall include but not be limited to a full-time CMCB Director and a part-time CMCB Managing Evaluator ("Managing Evaluator"). The CMCB Director will dedicate at least 40 hours per workweek to the CMCB and its activities. The Managing Evaluator will dedicate 29 hours per workweek to the CMCB and its activities. A Contracting Party employing one or more of the CMCB Staff shall be responsible for ensuring the employee(s) is/are correctly classified and compensated under the federal Fair Labor Standards Act. A Contracting Party employing one or more of the CMCB Staff shall be responsible for compensating the employee(s) in accordance with the applicable rate schedules and benefits as determined from time to time by that Contracting Party.
 - ii. A Contracting Party employing one or more of the CMCB Staff shall provide Workers Compensation Coverage, tax withholding and payroll deductions, and

all other relevant human resource functions as are provided to other comparable employees of that Contracting Party. The CMCB's supervision of the CMCB Director will be provided through the CMCB Chairperson.

- iii. All liabilities, judgments, expenses, wages, benefits, and costs of the CMCB, whatsoever, shall be shared equally between the Contracting Parties. A Contracting Party employing one or more of the CMCB Staff shall establish specific budget codes through which CMCB funds will be maintained, and all expenses relating to CMCB Staff shall be drawn directly from the applicable CMCB budget codes. Once per quarter (March, June, September, and December) the CMCB Director shall calculate the actual expenses, and prepare an invoice to each Contracting Party for its share of the actual expenses.
 - iv. The duties of CMCB Staff shall be determined by the CMCB. The CMCB Director shall provide services only for the CMCB and shall not be used as an administrative backup for any Contracting Party. However, in the event the CMCB Director position becomes vacant, or in the absence of the CMCB Director, the Managing Evaluator shall provide backup services until the CMCB Director position is filled or the CMCB Director resumes his/her duties. The expenses of providing the backup services shall be shared between the Contracting Parties as provided for the CMCB Director in this Section.
 - v. The Contracting Parties agree that provision of CMCB Staff is an activity which, as recognized by Section 29-1-203 C.R.S., could be performed separately by each Contracting Party. Accordingly, the Contracting Parties agree that, for purposes of the Colorado Constitution, Article X, Section 20, any funds contributed, paid or otherwise provided by any Contracting Party to a Contracting Party employing one or more of the CMCB Staff are and remain solely an expenditure of that Contracting Party, and are not revenue or expenditures of the Contracting Party(ies) employing one or more of the CMCB Staff.
- d. CMCB Staff Office Space. The Contracting Parties may, from time-to-time, designate one or more Contracting Parties to provide office space for CMCB Staff on behalf of the Contracting Parties. Such designation shall only be effective upon the affirmative majority vote of the CMCB and the written consent of the Contracting Party(ies) that are being designated to provide office space for CMCB Staff. A Contracting Party providing office space for CMCB Staff shall receive a credit per quarter for the office space.
 - e. IT/Finance Support. The Contracting Parties may, from time-to-time, designate one or more Contracting Parties to provide IT/Finance support on behalf of the Contracting Parties for the CMCB and its authorized activities. Such designation shall only be effective upon the affirmative majority vote of the CMCB and the written consent of the Contracting Party(ies) that are being designated to provide IT/Finance

support. A Contracting Party providing IT/Finance support shall receive a credit per quarter for the IT/Finance support.

5. TRAINING AND FACILITIES:

Each Contracting Party shall conduct its certification training and testing using its own facilities and equipment, except that, for economy of resources, the CMCB may from time to time designate joint training facilities and joint training equipment, with the consent of the Chief Training Officer(s) of the Contracting Party(ies) owning or controlling those facilities or equipment.

6. OWNERSHIP OF MATERIALS AND EQUIPMENT:

All testing materials developed or acquired under this Agreement shall be the joint property of the Contracting Parties to this Agreement. Any equipment acquired under this Agreement shall be approved by the CMCB prior to acquisition and payment for that equipment. The individual files of any firefighter tested pursuant to this Agreement shall be the sole property of the Contracting Party employing the firefighter. Nothing in this Agreement is intended, or shall be construed, to modify, waive or amend any provision of the Colorado Open Records Act, the Colorado Governmental Immunity Act, or any other State or Federal law.

7. LAW:

This Agreement is subject to and shall be interpreted under Colorado law and the applicable Charter, City Code, Ordinances, Rules, and Regulations of the Contracting Parties.

8. APPROPRIATION OF FUNDS:

In accordance with state and local law, performance of any Contracting Party's obligations under this Agreement is expressly subject to appropriation of funds by the Contracting Party's governing body and the availability of those funds under state and local spending limitations. The Contracting Parties acknowledge that: a) the Contracting Parties do not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years; and, b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of any Contracting Party.

9. WORKER'S COMPENSATION INSURANCE:

Each Contracting Party shall provide during the period of this Agreement, Colorado Worker's Compensation Insurance for all personnel of the Contracting Party.

10. INTELLECTUAL PROPERTY RIGHTS:

The Contracting Parties agree that all products, item writings, designs, models, examples, or other work product produced or acquired pursuant to this Agreement shall be jointly owned by the Contracting Parties, and each Contracting Party shall have joint ownership of any intellectual property rights of such materials.

11. NON-DISCLOSURE OF CONFIDENTIAL COMMERCIAL DATA:

Confidential information provided to the Contracting Parties under this Agreement is subject to and shall be interpreted under Colorado law, including non-disclosure of confidential commercial data under Section 24-72-204(3)(a)(IV) C.R.S.

12. LIABILITY FOR FACILITIES, EQUIPMENT AND EMPLOYEES:

- a. No employee of a Contracting Party shall participate in any activity under this Agreement unless the employee is on duty within the meaning of the federal Fair Labor Standards Act. When a Contracting Party's employee attends training or otherwise participates in activities under this Agreement, that employee shall at all times remain exclusively under the direction of that Contracting Party, and that Contracting Party shall be responsible for all compensation and benefits, including Workers Compensation benefits, for that employee, and each Contracting Party shall handle all legal issues raised by or pertaining to its employee or personnel.
- b. When a Contracting Party's facility or equipment is utilized under this Agreement, that Contracting Party shall remain responsible for the facility or equipment and shall be responsible for any claims or damages resulting from the use of that facility or equipment, except that employees of any Contracting Party are deemed to be performing their duties for their own Contracting Party when utilizing another Contracting Party's facility or equipment, and shall be covered by their own Contracting Party's benefits in the event of injury or other claims or damage. In the event that a facility or equipment is damaged, the Contracting Party whose employee is responsible for the damage shall be responsible for the costs of that damage unless the damage is intentional, in which case the Contracting Party owning the facility or equipment may pursue all legal remedies against the person intentionally causing the damage.
- c. Subject to the limitations of subparagraph 12(b) above, in the event that a legal action for damages is brought against a Contracting Party as a result of its facility or equipment use under subparagraph 12(b) above, that Contracting Party may request reimbursement of any and all fees, costs or damages paid as a result of the legal action or settlement thereof, from the Contracting Party whose employee was responsible for the damages, and the employee's Contracting Party may reimburse those expenses subject to subparagraph 12(d) below. In the event that an insurance payment is made by a Contracting Party as a result of vehicle operation under

subparagraph 12(b) above, the Contracting Party that owns the vehicle may request reimbursement of any and all fees, costs or damages paid as a result of the legal action or settlement thereof, and the Contracting Party whose employee caused the damage may reimburse those expenses subject to subparagraph 12(d) below.

- d. Reimbursements under this Agreement shall be subject to appropriation of funds by the Contracting Party's governing body for that purpose, and nothing herein shall be construed as requiring appropriation of funds by any governing body. In addition, the Contracting Parties may, at their sole option, agree to pay any reimbursement, or any judgment of financial liability to a third party, resulting from operation of a facility or equipment, from special funds which the Contracting Parties may from time to time choose to appropriate for that purpose, on behalf of the liable Contracting Party.
- e. Nothing in this Agreement shall be construed to place the officers of any Contracting Party under the control or employment of another Contracting Party. Each Contracting Party remains responsible for all compensation, benefits, employment decisions, and worker's compensation liabilities, for its own personnel. 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, nor does any Contracting Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

13. ASSIGNMENT:

A Contracting Party's rights and responsibilities under this Agreement shall not be assigned or otherwise transferred without the prior written consent of all other Contracting Parties to this Agreement at the time of the potential assignment or transfer.

14. WITHDRAWAL OR REMOVAL FROM AGREEMENT; TERMINATION:

- a. Withdrawal from Agreement. A Contracting Party may withdrawal from this Agreement upon sixty (60) calendar days prior written notice to all other Contracting Parties at the time of such withdrawal. Upon withdrawal, the Contracting Party shall have no further right, title or interest in or to any equipment or materials under Section 6 (Ownership of Materials and Equipment) or intellectual property rights under Section 10 (Intellectual Property Rights) of this Agreement, except as permitted by Section 16.
- b. Removal. The CMCB may remove a Contracting Party as a party to this Agreement upon the occurrence of either of the following: i) the Contracting Party's breach of this Agreement ("Breach"); or ii) the Contracting Party's failure to pay in full at the required time all amounts owed under this Agreement ("Failure to Pay"). The procedure for such removal shall be as follows:
 - 1. *Super Majority Vote.* Removal shall require a Super Majority vote of the CMCB at a meeting during which the Contracting Party shall have the

opportunity to present relevant evidence in its defense, which relevancy shall be determined by the CMCB. "Super majority vote" means at least sixty-six percent (66%) of the Board members attending a CMCB meeting where a quorum of the Board members are present.

2. *Opportunity to Cure.* If the Board members vote to remove a Contracting Party as set forth above, the Contracting Party shall have thirty (30) calendar days to cure a Breach, or ten (10) calendar days to cure a Failure to Pay, as applicable.
 3. *Final Removal Vote.* At a meeting where a quorum of the Board members are participating, the CMCB shall determine whether the Contracting Party cured the violation within the applicable cure period. The CMCB may review such evidence as it determines is reasonable and necessary and shall thereafter vote on the matter. Whether the Contracting Party successfully cured the violation shall be determined by a majority vote of the Board members. If the meeting is to evaluate the cure of a Breach, this meeting shall be held not less than thirty (30) calendar days and not more than sixty (60) calendar days after a super majority vote of the Board members to remove the Contracting Party. If the meeting is to evaluate the cure of a Failure to Pay, this meeting shall be held not less than ten (10) calendar days nor more than thirty (30) calendar days after a super majority vote of the Board members to remove the Contracting Party. If the CMCB determines that the Contracting Party did not cure the violation, the Contracting Party shall be removed as a party to this Agreement.
 4. Upon removal, the terminated Contracting Party shall have no further right, title or interest in or to any equipment or materials under Section 6 (Ownership of Materials and Equipment) or intellectual property rights under Section 10 (Intellectual Property Rights) of this Agreement, except as permitted by Section 16. Removal of one or more Contracting Parties shall not cause termination of this Agreement.
- c. Termination. This Agreement may be terminated at any time by written agreement of all the Contracting Parties, or all of the Contracting Parties except one, who are a Contracting Party to this Agreement at the time of such termination. The Contracting Parties will use their best efforts to reach an equitable division of any equipment or materials jointly developed or acquired by the CMCB pursuant to this Agreement, and any associated intellectual property rights, or, if not divided, how given equipment or property will continue to be jointly owned, including any associated intellectual property rights.

15. NEW CONTRACTING PARTIES:

- a. A governmental agency may become a Contracting Party to this Agreement upon the super majority vote of the CMCB consenting to the governmental agency becoming a Contracting Party. In addition to considering such addition factors as it deems appropriate, the CMCB shall find that the governmental agency:

- i. Is accredited by the Commission on Fire Accreditation International (CFAI) or has demonstrated it can obtain accreditation within one year of becoming a Contracting Party;
 - ii. Operates on, or has demonstrated that within one year of becoming a Contracting Party it will operate on, a common Learning Management System platform consistent with CMCB;
 - iii. Has a training facility/training site and equipment that conforms to NFPA 1402, as may be amended from time to time.
 - iv. Agrees to be bound by all terms and conditions of this Agreement upon becoming a Contracting Party.
- b. Upon the CMCB's consent pursuant to Section 15(a), above, the new Contracting Party shall sign a written document agreeing to become a Contracting Party, stating the effective date of such joinder, and that the new Contracting Party shall be subject to all of the terms and conditions of this Agreement as if the new Contracting Party had been an original Contracting Party to this Agreement. Upon the new Contracting Party's execution of such document, the document shall constitute a valid and binding amendment to this Agreement with no further action being required by the Contracting Parties.

16. EXAMINATION OF RECORDS:

The Contracting Parties agree that any duly authorized representative of any Contracting Party shall, until five years following a Contracting Party's withdrawal from this Agreement, or the Termination of this Agreement, whichever shall occur first, have access to and the right to examine any directly pertinent books, documents, papers and records of each Contracting Party involving transactions related to this Agreement, except for any books, documents, papers and records that confidential or privileged under state or federal law.

17. NO THIRD-PARTY BENEFICIARY:

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and any rules, regulations or policies promulgated pursuant to this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Contracting Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person or entity, including but not limited to contractors, subcontractors, subconsultants, suppliers, and persons seeking certification. It is the expressed intention of the Contracting Parties that any person or entity, other than the Contracting Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

18. SEVERABILITY:

It is understood and agreed by the Contracting Parties that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Contracting Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid. Further, the Contracting Parties agree and acknowledge that the activities contained in this Agreement are matters of local concern only, and that the Contracting Parties have mutually joined together for the performance of the matters of local concern, and that nothing in this Agreement shall be construed as making any of the local concerns covered herein matters of statewide concern.

19. INTEGRATION; AMENDMENT:

This is a completely integrated Agreement and contains the entire agreement between the Contracting Parties. Any prior written or oral agreements or representations regarding the subject matter of this Agreement shall be of no effect and shall not be binding on any Contracting Party. Further, the Contracting Parties acknowledge and agree that this is a negotiated text agreement, and that as such no term shall be construed against any Contracting Party as the author thereof. This Agreement shall only be amended in writing, with approval by the governing bodies of the Contracting Parties, and signatures of the authorized representative of each Contracting Party. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

20. EXECUTION:

This Agreement may be executed in counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the governing bodies of the Contracting Parties have executed this Agreement on the dates indicated below:

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

FOR THE CITY OF AURORA:

By: _____
Mayor

This ____ day of _____, 2020.

ATTEST:

By: _____
City Clerk

Approved as to Form:

By: _____
Assistant City Attorney

Recommended and Approved for Aurora:

By: _____
Deputy City Manager for Community Services

By: _____
Fire Chief

FOR THE CITY OF COLORADO SPRINGS:

By: _____
Mayor

This ___ day of _____, 2020.

ATTEST:

By: _____
Deputy City Clerk

Approved as to Form:

By: _____
City Attorney

FOR THE CITY AND COUNTY OF DENVER:

By: _____

Fire Chief

This ____ day of _____, 2020.

Recommended and Approved for Denver:

By: _____

Executive Director of Safety

By: _____

Fire Chief

FOR POUUDRE FIRE AUTHORITY:

By: _____
Board Chair

This ___ day of _____, 2020.

ATTEST:

By: _____
Board Secretary

Approved as to Form:

By: _____
General Counsel

FOR SOUTH METRO FIRE RESCUE FIRE PROTECTION DISTRICT:

By: _____
Fire Chief

This ____ day of _____, 2020.

FOR THE WEST METRO FIRE PROTECTION DISTRICT:

By: _____
Fire Chief

This ____ day of _____, 2020.

ATTEST:

By: _____
Secretary

Approved as to Form:

By: _____
District's Attorney