

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

COVER PAGE

State Agency Department of Public Safety, Colorado State Patrol	Agreement Number
Local Government City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation	Agreement Performance Beginning Date The later of the Effective Date or _____
Agreement Maximum Amount The State is not expending State funds for this Intergovernmental Agreement.	Initial Agreement Expiration Date _____, 2028
Agreement Purpose The City of Colorado Springs is providing the CSP with a hangar for one of its Cessna 182 aircraft free of charge, which the State appreciates and recognizes the great benefit the City will be bringing to the people of Colorado. Accordingly, CSP and the State wish to work collaboratively and in partnership with the City regarding law enforcement investigations and other matters for the City and its neighboring jurisdictions.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Terms and Conditions of Use of Hangar at the Colorado Springs Airport 2. Exhibit B – Colorado Springs Airport Consent to Sublease 3. Exhibit C – Sample Option Letter <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Colorado Special Provisions in §16 of the main body of this Agreement. 2. The provisions of the other sections of the main body of this Agreement. 3. Exhibit A, Terms and Conditions of Use of Hangar at the Colorado Springs Airport 4. Exhibit B, Colorado Springs Airport Consent to Sublease 5. Exhibit C, Sample Option Letter. 	
Principal Representatives <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> For the State: <i>Matthew Packard, Chief</i> <i>Colorado State Patrol</i> <i>700 Kipling Street</i> <i>Lakewood, Colorado 80215</i> Email: <i>matthew.packard@state.co.us</i> </div> <div style="width: 45%;"> For the City: City of Colorado Springs Attn: Mayor 30 S. Nevada Avenue, Suite 601 Colorado Springs, CO 80901 With a copy to: City Attorney 30 S. Nevada Avenue, Suite 501 Colorado Springs, CO 80901 Email: <i>cityatty@coloradosprings.gov</i> </div> </div>	

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.




CITY OF COLORADO SPRINGS	STATE OF COLORADO Jared S. Polis, Governor Department of Public Safety Stan Hilkey, Executive Director
By: John W. Suthers, Mayor Date: _____	By: Matthew C. Packard, Chief/Colonel, Colorado State Patrol  Date: <u>3/8/2023</u>
2nd State or City Signature if Needed By: Name & Title of Person Signing for Signatory Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General By:  Lori Ann Knutson, First Assistant Attorney General Date: <u>03/08/2023</u>
In accordance with § 24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.	
STATE CONTROLLER Robert Jaros, CPA, MBA, JD By:  Tanya Olsen, Controller, Department of Public Safety Effective Date: <u>3/13/2023</u>	

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1. PARTIES

This Agreement is entered into by and between the Local Government named on the Cover Page for this Agreement (the “City of Colorado Springs” or the “City”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State” or “CSP”). The City and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Agreement before the Effective Date.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State and the *City of Colorado Springs*, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Agreement (each such period an “Extension Term”). In order to exercise this option, the State or the *City of Colorado Springs* shall provide written notice to the City in a form substantially equivalent to the Sample Option Letter attached to this Agreement. Except as stated in §2(D), the total duration of this Agreement, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the State Purchasing Director in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, either Party, upon written notice to the other Party as provided in §12, may extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State and the City of Colorado Springs are entering into this Agreement to serve the public interest of the State of Colorado and the City of Colorado Springs as determined by its Governor, General Assembly, the Courts or the City Council of the City of Colorado Springs. The City is entering into this Agreement to serve the public interest of the City of Colorado Springs. If this Agreement ceases to further the public interest of the State, or the City, either Party may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by the City, which shall be governed by §10.

i. Method and Content

The Party seeking termination in accordance with §12 will notify the non-terminating Party. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, the City or the State, as applicable, shall be subject to the rights and obligations set forth in §10.

F. Early Termination

Either Party may terminate this Agreement provided that the terminating Party provides 14 calendar days prior written notice to the other Party.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Agreement”** or **“Contract”** means this contract, agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **“Breach of Agreement”** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. If City is debarred or suspended under § 24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- C. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in § 24-11-101(1), C.R.S.

- D. **“CCJRA”** means the Colorado Criminal Justice Records Act, § 24-72-301, *et seq.*, C.R.S.
- E. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to § 24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the State.
- F. **“City Confidential Information”** means any and all City Records not subject to disclosure under CCJRA or CORA. City Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the City, which has been communicated, furnished, or disclosed by the City to the State which (i) is subject to disclosure pursuant to CCJRA or CORA; (ii) is already known to the State without restrictions at the time of its disclosure to the State; (iii) is or subsequently becomes publicly available without breach of any obligation owed by the State to the City; (iv) is disclosed to the State, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any City Confidential Information.
- G. **“City Records”** means any and all City data, information and records, regardless of physical form, including, but not limited to, information subject to disclosure under CCJRA or CORA.
- H. **“CORA”** means the Colorado Open Records Act, § 24-72-200.1, *et seq.*, C.R.S.
- I. **“End of Term Extension”** means the time period defined in §2(D).
- J. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- K. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- L. **“Extension Term”** means the time period defined in §2(C).
- M. **“Initial Term”** means the time period defined in §2(B).
- N. **“Party”** means the State or the City, and **“Parties”** means both the State and City.
- O. **“State Confidential Information”** means any and all State Records not subject to disclosure under CCJRA or CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to the City which (i) is subject to disclosure pursuant to CCJRA or CORA; (ii) is already known to the City without restrictions at the time of its disclosure to the City; (iii) is or subsequently becomes publicly available without breach of any obligation owed by the City to the State; (iv) is disclosed to the City, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- P. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CCJRA or CORA.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. REPORTING - NOTIFICATION

A. Litigation Reporting

If the City is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect the City's ability to perform its obligations under this Agreement, the City shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Cover Page for this Agreement.

5. CITY OF COLORADO SPRINGS RECORDS

A. Maintenance

The City shall maintain a file of all documents, records, communications, notes and other materials relating to this Agreement (the "City Records"). City Records shall include all documents, records, communications, notes and other materials maintained by City that relate to any work performed by Subcontractors, and City shall maintain all records related to the work performed by Subcontractors required to ensure proper performance of that work. City shall maintain City Records until the last to occur of: (i) the date three years after the date this Agreement expires or is terminated, (ii) final payment under this Agreement is made, (iii) the resolution of any pending Agreement matters, or (iv) if an audit is occurring, or City has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

City shall permit the State to audit, inspect, examine, excerpt, copy and transcribe City Records during the Record Retention Period. City shall make City Records available during normal business hours at City's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor City's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor City's performance in a manner that does not unduly interfere with City's performance.

D. Final Audit Report

City shall promptly submit to the State a copy of any final audit report of an audit performed on City's records that relates to or affects this Agreement, whether the audit is conducted by City or a third party.

6. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

City and State shall keep confidential, and cause all Subcontractors to keep confidential, all City Records and State Records, unless those City Records or State Records are publicly available. *City and State* shall not, without prior written approval of the other Party, use, publish, copy, disclose to any third party, or permit the use by any third party of any City Records or State Records, except as otherwise stated in this Agreement, permitted by law or

approved in writing by the City or State. *City and State* shall provide for the security of all City Confidential Information and State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. *City and State* shall immediately forward any request or demand for City Records or State Records, as the case may be, to the City's or State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

City and State may provide City Records or State Records to its agents, employees, assigns and Subcontractors as necessary, but shall restrict access to City Confidential Information or State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. *City and State* shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any City Confidential Information or State Confidential Information. *City and State* shall provide copies of those signed nondisclosure provisions to the City or State, as the case may be upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

- i. The City shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. City shall provide the State with access, subject to City's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, City shall return State Records provided to City or destroy such State Records and certify to the State that it has done so, as directed by the State. If City is prevented by law or regulation from returning or destroying State Confidential Information, City warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.
- ii. The State shall use, hold and maintain City Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all City Confidential Information wherever located. State shall provide the City with access, subject to State's reasonable security requirements, for purposes of inspecting and monitoring access and use of City Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, State shall return City Records provided to State or destroy such City Records and certify to the City that it has done so, as directed by the City. If State is prevented by law or regulation from returning or destroying City Confidential Information, State warrants it will guarantee the confidentiality of, and cease to use, such City Confidential Information.

7. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

The City shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of the City under this

Agreement. Such a conflict of interest would arise when the City or the City's Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

The City acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, the City shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the City's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if the City is uncertain whether a conflict or the appearance of a conflict has arisen, the City shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

8. INSURANCE

A. City Insurance

The City is self-insured. The City shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Agreement, to provide such insurance through an insurance company. To the extent the City requires additional insurance through an insurance company, the City agrees to carry and maintain the following insurance coverage with respect to the Hangar during the term of this Agreement:

- i. Commercial General Liability Insurance covering operations by, or on behalf of, the City on an occurrence basis against claims for bodily injury, property damage and personal injury liability with minimum limits of (a) \$1,000,000 each occurrence; (b) \$2,000,000 general aggregate; (c) \$2,000,000 products and completed operations aggregate.
- ii. Property Insurance covering the Hangar, including the premises, its equipment (if applicable), and the City's interest in improvements and betterments on an "All Risk" basis, including where appropriate, the perils of Flood and Earthquake. Coverage shall be written with a Replacement Cost valuation and include an agreed value provision.
- iii. All policies shall be written with carriers approved to do business in the State of Colorado with an A.M. Best Rating of at least A-VII.

B. State Insurance

The State shall provide insurance on its inventory, equipment, Aircraft, and all other personal property located in the Hangar against loss resulting from fire or other casualty at the State's sole cost. The State shall have the right to provide such insurance under a self-insurance program, or, at any time during the term of this Agreement, to provide such insurance through an insurance company. With respect to general liability, the State is self-insured in accordance with the provisions of the Colorado Governmental Immunity Act set forth at § 24-10-101, *et seq.*, C.R.S. and the Colorado Risk Management Act, set forth at § 24-30-1501, *et seq.*, C.R.S.

9. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Agreement, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§10** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if the City is debarred or suspended under § 24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

10. REMEDIES

A. State's Remedies

If the City is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§10**, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of the City's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. The City shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, the City shall not incur further obligations or render further performance past the effective date of such notice, and if applicable, shall terminate outstanding orders and subcontracts with third parties. However, the City shall complete and deliver to the State all services not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. Upon termination, the City shall take timely, reasonable and necessary action to protect and preserve property in the possession of the City but in which the State has an interest. At the State's request, the City shall return materials owned by the State in the City's possession at the time of any termination.

b. Damages and Withholding

Notwithstanding any other remedial action by the State, the City shall remain liable to the State for any damages sustained by the State in connection with any breach by the City.

B. City's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, City, following the notice and cure period in **§10** and the dispute resolution process in **§11** shall have all remedies available at law and equity.

11. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by City for resolution.

B. Resolution of Controversies

If the initial resolution described in §11(A) fails to resolve the dispute within 10 Business Days, City shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in § 24-102-202(3), C.R.S. for resolution in accordance with the provisions of § 24-106-109, C.R.S. and § 24-109-101.1, C.R.S. through § 24-109-505, C.R.S., (the "Resolution Statutes"), except that if City wishes to challenge any decision rendered by the Procurement Official, City's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before City pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

12. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Agreement.

13. RIGHTS IN RESPECTIVE INFORMATION

A. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). City shall not use, willingly allow, cause or permit State Materials to be used for any purpose other than the performance of City's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, City shall provide all State Materials to the State in a form and manner as directed by the State.

B. Exclusive Property of City

City retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to City including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by City under the Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "City Property"). City Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

14. DAMAGE TO CSP AIRCRAFT AND/OR EQUIPMENT

Pursuant to Exhibit A, Terms and Conditions of Hangar at Colorado Springs Airport, even if the City uses all due care, if CSP's Aircraft and/or equipment are damaged by the City while in or at the Hangar, then CSP will refer the matter to the State Risk Manager for resolution with the City.

15. GENERAL PROVISIONS

A. Assignment

City's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of City's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

City shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Such approval by the State will not be unreasonably withheld. City shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by City in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in §15(A), all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

L. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

M. Taxes

The City and the State are both exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under § 39-26-704(1), *et seq.*, C.R.S. (City Sales Tax Exemption Identification Number 98-03479) (Colorado Sales Tax Exemption Identification Number 98-02565). The City and the State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on the City or the State.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §15(A), this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under § 24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

City shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in City's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

City shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

16. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. § 24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. § 24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the City, its departments, offices, employees and officials shall be controlled by the provisions of the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., as now written or amended in the future. No term or condition of this Contract shall be construed or interpreted

as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in this statute.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, § 24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

The City shall perform its duties hereunder as an independent contractor and not as an employee. Neither the City nor any agent or employee of the City shall be deemed to be an agent or employee of the State. The City shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **The City and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for the City or any of its agents or employees. The City shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. The City shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

The City shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires either Party to indemnify or hold the other Party harmless; requires the City or the State to agree to binding arbitration; limits the City's *and the State's* liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of § 24-106-109, C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The City hereby certifies and warrants that, during the term of this Contract and any extensions, City has and shall maintain in place appropriate systems

and controls to prevent such improper use of public funds. If the State determines that City is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. § 24-18-201, C.R.S. and § 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. City has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of City's services and City shall not employ any person having such known interests.

EXHIBIT A, TERMS AND CONDITIONS OF HANGAR AT COLORADO SPRINGS AIRPORT

Pursuant to this Agreement, the City agrees to provide hangar space, free of charge to the State/CSP. Such hangar space is located at the City of Colorado Springs Municipal Airport, known as the Colorado Springs Airport, a city-owned public civil-military airport, El Paso County, Colorado.

A. Colorado State Patrol Aircraft

1. The City will provide the CSP with hangar space located at the Colorado Springs Municipal Airport. The hangar space is known as *950 Aviation Way, Colorado Springs CO 80916* (the "Hangar").
2. During the term of this Agreement, CSP shall be allowed to park, one Cessna 182 with one of the following tail numbers:
 - a. NP-201SP; or
 - b. NP-202SP; or
 - c. NP-203SP; or
3. The City agrees to allow the CSP to have a *hand aircraft tow* on-site supply cart in the Hangar, which cart will fit under the belly of the Aircraft, with the following items on the supply cart:
 - a. Oil for Aircraft engine;
 - b. Supplies to allow the pilot or crew to wipe down the wing tips of the Aircraft;
 - c. Consumables.
4. CSP understands that there may be instances where even though the Aircraft is parked in the Hangar, there may be need for the City to have the Aircraft out of the Hangar. As such, if the City desires to have the Aircraft moved out of the Hangar, the City will either:
 - a. As soon as possible to needing the Hangar, notify CSP in writing and request that CSP move the Aircraft out of the Hangar (and move the Aircraft back in the Hangar); or
 - b. As soon as possible to needing the Hangar, notify CSP in writing that the City will move the Aircraft out of the Hangar, but will also move the Aircraft back into the Hangar before leaving for the day; or
 - c. In case of an emergency, the City will utilize members who have been trained to move the Aircraft out of the hangar and return it to the hangar when equipment has been moved.
 - d. Whether the City or CSP moves the Aircraft, the Parties shall only move the Aircraft under the following conditions:
 - i. There must be two people to move the Aircraft;
 - ii. The Aircraft shall only be moved using the mechanized equipment;

- iii. If the mechanized equipment is not used, the Parties must follow the instructions as set forth in the brochure prepared by CSP for two individuals to move the Aircraft by hand.
- iv. The Aircraft shall be centered on the plastic one dot stickers on the Hangar floor to ensure proper positioning and location.

B. Restricted Access

1. The CSP understands that the Hangar is located in an area that has restricted access. As such, the City will issue a pilot prox card to the CSP, at CSP's expense.
2. The City will also issue a second back-up prox card to the CSP, at CSP's expense.
3. In order to avoid damage to any CSP patrol cars that are parked in the parking lot within the restricted access area, the CSP patrol cars will only be at the Hangar while the Aircraft is being flown. CSP patrol cars will be moved after the Aircraft has been flown and returned to the Hangar.

C. Helicopter Inspections

1. The CSP understands that the City will conduct helicopter inspections four times per calendar year at the Hangar occupied by the CSP.
 - a. As soon as possible to each inspection period, the City shall provide the CSP with written notice of each helicopter inspection with dates of each inspection. CSP will re-locate CSP Aircraft to its home hangar for the duration of the helicopter inspection period.

D. For any day-to-day issues that have not been addressed in this Agreement or Exhibit A, the City will work with the CSP Director of Flight Operations to work collaboratively to resolve such issues.

EXHIBIT C, SAMPLE OPTION LETTER

State Agency Department of Public Safety, Colorado State Patrol	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Local Government City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Agreement Maximum Amount The State is not expending State funds for this Intergovernmental Agreement.	Option Contract Number Insert CMS number or Other Contract Number of this Option

1. OPTIONS:

A. Option to extend for an Extension Term

2. REQUIRED PROVISIONS:

A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

B. **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Public Safety Stan Hilkey, Executive Director</p> <p>By: _____ By: Matthew C. Packard, Chief/Colonel Colorado State Patrol</p> <p>Date: _____</p>	<p>In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: _____</p>
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