

INTERGOVERNMENTAL AGREEMENT FOR THE USE AND IMPROVEMENT OF THE PIKES PEAK COMMUNITY COLLEGE PUBLIC SAFETY TRAINING FACILITY

This INTERGOVERNMENTAL AGREEMENT (“Agreement”), dated as hereinafter set forth, is made by and between the City of Colorado Springs, a home rule city and Colorado municipal corporation (hereinafter referred to as the “City”), by and through its Colorado Springs Police Department (hereinafter referred to as “CSPD”), and the State of Colorado, Department of Higher Education, State Board for Community Colleges and Occupational Education, acting by and through Pikes Peak Community College (hereinafter referred to as “PPCC”). The City and PPCC are herein collectively referred to as “Parties” or individually as “Party.”

RECITALS

WHEREAS, the Parties are authorized by Colorado Constitution Article XX § 6, Colorado Constitution Article XIV § 18, and Colorado Revised Statutes § 29-1-203 to cooperate and contract with one another to provide the functions and services in this Agreement; and

WHEREAS, PPCC is the owner and operator of the Pikes Peak Community College Public Safety Training Facility, located at the PPCC Centennial Campus, 5675 S. Academy Blvd., Colorado Springs, Colorado 80906 (hereinafter the “Facility”) and desires to partner with the City to allow City public safety personnel to train at the Facility in exchange for funding to pay for certain improvements to the Facility.

AUTHORITY

1. The Parties agree that this Agreement will serve as the governing standard, in whole, until replaced or terminated, and that no other Intergovernmental Agreement or Memorandum of Understanding shall, without the full consent of both Parties, supersede or negate any of the provisions herein contained.
2. This Agreement is subject to approval by the Chief of Police of the City of Colorado Springs, Colorado, and the President of PPCC.

EFFECTIVE DATE AND TERMINATION

3. This Agreement shall become effective upon the signature of all Parties and shall be binding upon the Parties and their successors and assigns. The Agreement shall be for a term commencing on the date of the last signature of the Parties noted below and ending on June 30, 2051 (“Expiration Date”). The Agreement may be extended and renewed for a period of twenty (20) years from the Expiration Date and can be extended for a second twenty (20) year renewal term thereafter if mutually agreed by the Parties. The Parties, acting through the Chief of Police of the City of Colorado Springs, Colorado, and the

President of PPCC or their delegates, shall meet and review the Agreement every ten years or as operational issues arise.

4. This Agreement may be terminated by either Party upon the material breach of this Agreement by the other Party. The non-breaching Party will provide notice to the other Party of the material breach and provide sixty (60) days for the Party to cure the breach. If the material breach has not been cured, the non-breaching Party may terminate this Agreement and shall provide written notice to the other Parties at least one hundred and eighty (180) days in advance of the effective date of termination. If this Agreement is terminated by PPCC within the first twenty (20) years of the effective date, PPCC shall refund any money expended by the City for improvements to the Facility based upon a pro rata amortization of the amounts invested over a twenty (20) year period. For example, if the Agreement is terminated in year 10, PPCC would refund 50 percent (50%) of the amount invested by the City in the Facility. If the City terminates this Agreement for any reason other than a material breach by PPCC, at any time, PPCC shall not be obligated to repay any amount to the City.

USE, STAFFING, AND MAINTENANCE OF THE FACILITY

5. The Parties shall establish the Facility Steering Committee (“Steering Committee”) comprised of no more than eight (8) individuals with equal representation by each Party; four (4) individuals designated by the President of PPCC and four (4) individuals designated by the City Chief of Police. The Steering Committee shall establish their own meeting schedule and procedural rules, but shall meet at least annually.
6. PPCC shall have overall ownership and administrative authority over the use of the Facility and the PPCC Centennial Campus. This Agreement does not vest any real estate interest, lease or license in the Facility to the City. Any improvements to the Facility or to the Centennial Campus become the property of PPCC. Any public safety structures constructed on the Centennial Campus with State funds will require the Parties to renegotiate the terms of this Agreement for the City’s use of newly constructed public safety structures. The Steering Committee will work together on matters dealing with the operation of the Facility to include, but not limited to, required staffing, range scheduling, maintenance of target systems, lead mitigation efforts, and general upkeep of the Facility, etc.
7. The Steering Committee shall prioritize PPCC enrolled students for use of the Facility, then the City’s use of the Facility, and all other third-party users will be secondary to PPCC students and the City. The Facility shall be available for use by law enforcement officers from CSPD, Colorado State Patrol, Woodland Park Police, and other non-federal, governmental law enforcement agencies as approved by the Steering Committee. Additionally, the Facility will be available to CSPD training academy recruits. Use of the Facility by any and all users will be conducted in a manner to ensure that all agency training requirements of all of the Parties can be accomplished. In addition, all non-PPCC

users of the Facility will be required to have a qualified range master on-site during any and all firing range activities.

8. PPCC covenants not to take or permit to be taken any action with respect to the Facility which would cause the Certificates of Participation, Series 2019 (the "2019 Certificates") issued by the City to be deemed private activity bonds under the Internal Revenue Code of 1986, as amended, all as more specifically provided in Section 8.3 of the Tax Compliance Certificate dated October 22, 2019, executed and delivered by the City in connection with the 2019 Certificates. Such covenant shall survive any termination of this Agreement under paragraph 4 hereof but only through the final maturity or early redemption of the 2019 Certificates.
9. The scheduling, construction, and completion of any improvements to the Facility will be procured and executed as determined by PPCC. PPCC will have the absolute discretion and control over any improvements, including but not limited to any future development or new buildings. PPCC may seek City and Steering Committee input regarding improvements and future development when appropriate. The City agrees to execute any and all documents such as user agreements, that may be required as improvements are made to the Facility.
10. Any and all improvements to the Facility requested by and funded by the City will need to be pre-approved by PPCC. The City will provide PPCC with a formal proposal for all projects. Any discussions with an architect or contractor for City projects must include the PPCC Director of Capital Projects and Vice President for Administrative Services. As the contracting and procuring agency for projects at the Facility, even those projects that will be paid for by the City, PPCC is responsible for paying all invoices within the time period as prescribed in the contract. For all City funded projects, PPCC will notify and provide a copy of the invoice to the City for review and approval to pay. The City will notify PPCC within 7 days to pay or reject invoices. For approved invoices, City will remit reimbursement to PPCC within 14 business days. The City and PPCC will discuss with the contractor all issues as to why the invoice is being rejected and will notify the contractor payment will not be made until all issues are resolved to the satisfaction of the City and PPCC. Once all issues have been resolved, payment will be processed as previously noted.
11. At a minimum, the City shall contribute at least five million dollars (\$5,000,000) in the first five (5) years from the effective date of this Agreement subject to the provisions of paragraph 18. PPCC and the City have identified the following improvements each Party intends to make to the Facility within the first five (5) years of the effective date of the Agreement. The list of improvements below may be amended by the Parties based on funding and need.

12. City improvements include, but are not limited to:
 - a. Ranges 1 and 2 – Turn into a single range with 30 firing lines to include a new target system, appropriate baffling, and all dirt work.
 - b. Range 3 – Evaluate, assess, and make all needed improvements.
 - c. New Classroom – Design and construction a new classroom for City employees and evaluate, assess, and make all need improvements to the current classroom building.
13. PPCC improvements include, but are not limited to:
 - a. Erosion Issues – Evaluate, assess, and make improvements to correct and control the erosion issues on the north side of the Facility and infrastructure needs to the current classroom.
14. Future renewals of the initial term of this Agreement are conditioned upon the City good faith efforts to commit further financial resources to complete additional improvements to the Facility, including but not limited to:
 - a. Overall Design Improvements – City will work with an architect and consultant on overall design improvements to the Facility.
 - b. Parking Lot – City will work with a consultant to identify improvements to the existing parking lot.
 - c. Sound Barriers – City will design and construct a sound barrier to help minimize the transmission of gun fire noise from Facility shooting ranges.
 - d. Shoot House – Install a minimum of one modern "shoot house" that would allow for realistic firearm scenario training.
 - e. Shelter Canopies – Construct concrete shelter canopies for the two handgun ranges and the one 100-yard range.

All improvements will take into consideration current plans PPCC has for the Facility. Upon the City's commitment to fund additional improvements, the Parties will amend this Agreement to specify the improvement projects and extend the term of the Agreement.

15. The Steering Committee shall establish procedures governing weapon range safety, firearms usage, and other administrative matters concerning the weapon ranges. The Steering Committee will consult with bond counsel in the event the federal government

or a corporation requests to use the Facility to ensure compliance with the requirements of the Internal Revenue Code concerning private use of a bond financed facility.

16. Any disputes concerning this Agreement or use of the Facility shall be addressed and resolved by the Steering Committee. If the Steering Committee is unable to resolve the dispute the Mayor of the City or the Mayor's designee and the President of PPCC shall meet and discuss the issue with the opportunity for interested parties to make comments and provide input. The determination by the Mayor or the Mayor's designee and President shall be final and binding upon the Steering Committee.
17. Maintenance costs (routine and non-routine) and any other associated costs of the Facility will be determined by the hourly usage of the range by the City, PPCC and any third party. PPCC will front all maintenance cost and will submit an invoice, with supporting documentation, to the City for their share of maintenance cost by July 30th of each year. All fees collected by the College from third party usage will be applied to the total annual maintenance cost. Any deficit will be funded by PPCC and the City based on each Parties hourly usage rate of the Facility as maintenance by PPCC Campus Police.
18. PPCC, in consultation with the Steering Committee, may establish and charge fees as it deems reasonable and necessary for the use of the Facility, weapon ranges and other Facility improvements by third party agencies, excluding the City, requesting the use of the Facility. Fees charged to third parties for the use of the Facility may be used by PPCC to offset the any maintenance costs or other such costs of the Facility as recommended by the Steering Committee to PPCC.

PERFORMANCE SUBJECT TO APPROPRIATIONS

19. City: 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 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 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 shall such failure nor termination constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by 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.

20. PPCC: This Agreement is expressly made subject to the limitations of the Colorado Constitution. 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 PPCC, contrary to Article X, § 20, Colo. Const., or any other constitutional or statutory debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the PPCC 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 shall such failure nor termination constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the PPCC.

LIABILITY

21. Each of the Parties 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 of the Parties 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 each of the Parties by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq. and Article XI of the Colorado Constitution. The Parties shall neither have, nor exercise, any control or direction over the manner and means by which the Parties perform their obligations, except as otherwise stated in this Agreement.
22. Each of the Parties understands and agrees that its employees are not employees of the other. Each of the Parties is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation for benefit to its employees under this Agreement. It is specifically agreed between each of the Parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or in 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.

ADDITIONAL PROVISIONS

23. Severability: This Agreement shall be the entire agreement between the Parties. If any of the component or provisions of this Agreement are held or found invalid or unenforceable, then the remainder of this Agreement shall remain in force and continue as if the invalid portion is not included. Any component or provision held or found invalid can only be corrected or removed by a signed amendment to the Agreement, as outlined in paragraph 18.

- 24. **Amendments and Modifications:** This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and the Agreement shall not be altered, amended, modified, or changed in whole or in part except by a written amendment that is duly authorized and executed by each of the Parties.
- 25. **Assignment:** No Party to this Agreement shall assign or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of the other Parties.
- 26. **Governing Law:** This Agreement shall be governed by and interpreted in accord with the established laws of the State of Colorado. If any action should arise as the result of a dispute under this Agreement, court jurisdiction shall be exclusively in the El Paso County District Court for the Fourth Judicial District of Colorado.
- 27. **Notifications and Correspondence:** All written notices, pursuant to this Agreement shall be directed to the following parties:

Chief of Police
 Colorado Springs Police Department
 705 S. Nevada Avenue
 Colorado Springs, CO 80903

Vice President Administrative Services
 Pikes Peak Community College
 5675 S. Academy Blvd.
 Colorado Springs, CO 80906

The addresses above may be changed from time to time by written notice to the other Parties.

- 28. **Third Party Beneficiaries:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only. Each Party shall retain complete control and jurisdiction over its programs, and nothing in the execution of this Agreement or in its performance shall be construed to establish a joint venture of the Parties hereto.
- 29. **Headings:** The headings of the several articles and sections of this Agreement are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

30. Multiple Copies: This Agreement may be executed in multiple copies, each of which shall be considered an original.
31. Signature Authority: By signing below, each of us acknowledges and certifies that we have the vested authority to enter into this Agreement on behalf of the Party we represent. We agree that all the necessary formalities have been met to the satisfaction of all Parties to this Agreement. Furthermore, we agree to all terms and conditions promulgated by and under this Agreement and agree to be bound by its terms and conditions.

This Intergovernmental Agreement is entered into as of the date set forth below.

City of Colorado Springs:

State of Colorado, Department of Higher Education, State Board for Community Colleges and Occupational Education, acting by and through Pikes Peak Community College:

By: John W. Suthers
Mayor, City of Colorado Springs

By: Lance Bolton, Ph.D.
President, Pikes Peak Community College

Date: _____

Date: _____

Approved as to Legal Form:

Frederick Stein
Senior City Attorney