

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF COLORADO SPRINGS
AND EL PASO COUNTY, COLORADO
FOR THE HOMELAND SECURITY GRANT PROGRAM
URBAN AREA SECURITY INITIATIVE**

This Intergovernmental Agreement (“Agreement”) is between the City of Colorado Springs, a municipal corporation and home rule city (“Colorado Springs”) and El Paso County, Colorado (“Agency”). For purposes of this Agreement, each Party may be referred to as a “Party” or collectively as “Parties”.

RECITALS

WHEREAS, in 2002, the Homeland Security Act established the Homeland Security Grant Program. Colorado Springs has been identified as an eligible candidate of the Urban Area Security Initiative (“UASI”) program;

WHEREAS, Colorado Springs’s eligibility has been determined through an analysis of relative risk to terrorism faced by the 100 most populous Metropolitan Statistical Areas (“MSAs”) in the United States. Federal guidance mandates award by the state to the designated local recipient identified in congressional appropriations;

WHEREAS, the purpose of the UASI program is to assist high-threat, high-density Urban Areas in efforts to build, sustain, and deliver the capabilities necessary to prevent, protect against, mitigate, respond to, and recover from acts of terrorism. UASI funding can be used to enhance preparedness for other catastrophic events, e.g., hurricanes and wildfires as long as such use of the funds has a nexus to preventing, preparing for, protecting against, and responding to terrorism;

WHEREAS, Participation in the UASI program requires that all parties fully implement the National Incident Management System (“NIMS”) and National Preparedness Doctrine to include development across the Core Capabilities as defined by FEMA’s National Preparedness Goal of 2017 or future iterations thereof;

WHEREAS, the U.S. Department of Homeland Security (DHS) requires high-risk Urban Areas to complete a Threat and Hazard Identification Risk Assessment (“THIRA”) every three years and Stakeholder Preparedness Review (SPR) annually and to prioritize grant funding to support closing capability gaps identified in this process;

WHEREAS, Agencies entering into this Agreement are considered by Colorado Springs as project awardees; and

WHEREAS, the Recitals are hereby expressly incorporated into this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. PURPOSE.

The purpose of this Agreement is to provide for the distribution of UASI grant funds for goods and services through planning, organizing, equipping, training and exercising (POETE) activities to eligible entities, and to further the purposes of the UASI program. At the time of execution of this Agreement, the parties anticipate that the UASI grant will be used to fund POETE activities for goods and services to close gaps in the Core Capabilities. This Agreement is subject to the terms of the current, and any future version, FY UASI Notice of Funding Opportunity (NOFO). This Agreement may be amended to include future grant activities authorized by applicable grant guidance. Future amendments must be signed by a person(s) duly authorized to validly bind eligible entities prior to new POETE activities commencing.

2. DEFINITIONS.

Capability and Capabilities refer to the Core Capabilities across 5 mission areas defined by FEMA's National Preparedness Goal of 2015 or future iterations thereof.

Core City is defined by the UASI grants as the City of Colorado Springs.

Core County is defined by the UASI grants as El Paso County.

All references to *Grant Agreement(s)* or *grant agreement(s)* means the Colorado Department of Public Safety, Division of Homeland Security and Emergency Management ("DHSEM") Agreement between Colorado Springs and the Colorado Department of Public Safety, including amendments thereto, and any earlier and later agreements, through which U.S. DHS UASI grants were or are passed through from the State to Denver that are used to fund this Agreement.

Incident or Incidents mean emergencies resulting from man-made, technological or natural hazards or threats including all terrorist attacks involving chemical, biological, radiological, nuclear, explosive (CBRNE), incendiary, electromagnetic, or cyber weapons.

Include, includes, and including are to be read as if followed by the words "without limitation" unless specifically qualified by words of limitation.

IPP means Integrated Preparedness Plan.

Fiscal Risk Assessment refers to a document completed by the Project Awardee that is used by the City to determine if the Project Awardee has the financial and administrative ability to maintain and support any goods and services they may receive through the UASI grant process.

Mission Area(s) are defined by national Preparedness Goal 2017 as Protection, Prevention, Mitigation, Response, and Recovery.

Party and parties, regardless of whether capitalized, refer only to the named parties to this Agreement.

POETE means Planning, Organization, Equipment, Training and Exercise activities.

Project Awardee means a South Central All-Hazards Region Jurisdiction or Agency that receives a subaward from the Colorado Springs UASI program to carry out part of this program.

SPR means Stakeholder Preparedness Review as defined by Comprehensive Preparedness Guide 201 version 3 published in May 2017 or future iterations thereof.

State means the State of Colorado.

State Administrative Agency Point of Contact means the person designated by the Governor of the State of Colorado to be responsible for the management of the UASI program or such other person of the State agency, department, or division duly designated by the State.

THIRA means Threat and Hazard Identification and Risk Assessment as defined by Comprehensive Preparedness Guide 201 version 3 published in May 2017 or future versions thereof.

UASI means Urban Area Security Initiative.

U.S. DHS means the United States Department of Homeland Security.

Urban Area means the City and County of Denver and surrounding governmental and quasi-governmental jurisdictions that provide homeland security, emergency management, or capabilities defined under the National Preparedness Goal.

3. ROLES AND RESPONSIBILITIES.

A. Colorado Springs shall:

1. Is the fiscal agent and fiduciary authority of the UASI program award, and thereby solely responsible for ensuring compliance with 2 CFR 200 - Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards Uniform Guidance issued by the Federal Office of Management and Budget, including review of fiscal risk on the Agency and determining eligibility for current and future UASI funding.
2. Shall serve as the sole procurement and coordination agency for goods and services provided under the UASI program, unless Colorado Springs determines a joint procurement and/or coordination process is beneficial for completing a UASI-funded activity. Procurement and/or coordination of goods and services shall be made in accordance with the budget and Colorado Springs's own procurement laws, regulations, and policies.

B. The Agency shall:

1. Complete a Colorado Springs fiscal risk assessment prior to receiving UASI grant funded goods and services, if required.
2. Participate in the UASI THIRA/SPR process, including completion of provided forms and requests for information.
3. Comply with all terms of each grant agreement and UASI grants from which it receives any goods and services, including reimbursement for any reason.
4. Make available for inspection and monitoring all goods provided by the UASI grant program and provide any related maintenance records or documentation.
5. Concur that this Agreement does not warrant or guarantee entities will receive any specific amount of goods, services, or reimbursement. The Agency understands that it may receive goods, services, or reimbursement depending upon the approved budget and the Agency's ability to take advantage of the goods and services in a timely manner.
6. Participate in UASI regional planning and inter-agency coordination activities.
7. Assign a project point of contact to act as the Agency representative for all aspects of any UASI funded goods and services that directly involve the Agency.
8. Accept title to and/or delivery of goods at the place designated by the purchase order or contract, and assume the risk of loss, in accordance with the terms applicable to a particular shipment or delivery of equipment or other tangible goods.
9. Notify the UASI program staff upon receipt of goods and services, including providing any documentation requested by UASI staff and tagging equipment with UASI tags as provided for by the UASI program staff.
10. Accept goods or services provided to it under this Agreement; provided that the Agency shall retain all legal and equitable rights and remedies against a vendor, supplier, or manufacturer for non-conforming or defective goods or services.
11. Repair and maintain all equipment and other tangible goods provided to Agency under this Agreement in good working order for the reasonably expected life-cycle of such equipment and other tangible goods, ordinary use, wear and tear excepted, and to prevent them from becoming spoiled, deteriorated, defective, lost, stolen or obsolete.
12. Maintain all records on equipment and tangible goods that may be required by the terms of the UASI grant agreements, State and Federal laws, rules and regulations, or by Denver, including but not limited to maintenance records, depreciation schedules, physical location, and condition reports.
13. Provide all supplemental documentation that may be required by Colorado

Springs, including but not limited to completed inventory request forms as provided by the UASI, police reports for stolen equipment or goods, advanced written notification requesting permission to transfer, sell, or dispose of equipment or other tangible goods procured with UASI funds.

14. Respond to Incidents utilizing the equipment and other tangible goods provided for, or reimbursed under this Agreement, including replacement of supplies and equipment acquired in accordance with this Agreement, and utilizing trained personnel as requested and reasonably available.
15. Participate in the annual UASI IPP and complete requested documentation for the workshops.
16. Make its personnel and equipment or other tangible goods procured with funds from UASI grants reasonably available for training and exercise, and response to Incident based on requests from any UASI entity, the State, or U.S. DHS.
17. Make its personnel, trained through UASI funded Train-the-Trainer courses, reasonably available to the region to provide additional trainings as requested.
18. Test and train appropriate responsible persons, and participate in regional trainings and exercises, on use of equipment and other tangible goods in simulated exercises, including those done independently and through the Urban Area.
19. Provide a cash match as agreed to in the Agency's submitted grant application(s). The Agency shall pay this amount directly to Colorado Springs, prior to Colorado Springs beginning procurement. The Agency will pay the match invoice within thirty (30) days of receipt of the invoice from Colorado Springs. Failure to pay within thirty (30) days of receiving the match invoice under this Agreement shall constitute a material breach of this Agreement.

4. APPROPRIATIONS.

- A. In accord with the Colorado Constitution, Article X, Section 20, and Section 7-60 of the Charter of the City of Colorado Springs performance of Colorado Springs's obligations under this Agreement is expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this Agreement, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then the City may terminate this Agreement without compensation to any other party.
- B. In accord with the Colorado Constitution, Article X, Section 20, performance of any of the Agency's obligations under this Agreement is expressly subject to appropriation of funds by that County. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the County's obligations under this Agreement, or

appropriated funds may not be expended due to Constitutional spending limitations, then that County may terminate this Agreement without compensation to any party.

- C. This Agreement does not, and is not intended to, create a multiple-fiscal year direct or indirect debt or financial obligation of either party. Colorado Springs's obligations under this Agreement are further limited to the funds made available pursuant to the UASI Grant and budget approved by the Urban Area Working Group for fulfilling the purposes of this Agreement.

5. EXECUTIVE AND LIAISON.

Colorado Springs's point of contact for the UASI grants is the Deputy Chief of Staff of the Mayor's Office or designee, who will serve as Chair of the Urban Area Working Group. During the term of this Agreement, eligible entities shall fully coordinate all activities and obligations related to or arising out of this Agreement with Colorado Springs, including the Deputy Chief of Staff or designee, or as otherwise directed by Colorado Springs.

6. TERM AND TERMINATION.

The term of the Agreement is from date of full execution by the parties and terminates on December 31, 2026. Colorado Springs may terminate this Agreement, or any part thereof, for the reasons and in the manner provided in any UASI Grant funding this Agreement.

7. NO THIRD-PARTY BENEFICIARY.

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.

8. GOVERNING LAW; VENUE.

This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the City Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado.

- 9. NOTICES.** Notices concerning termination of this Agreement, alleged or actual, violation(s) of the terms or conditions of this Agreement, and notices of similar importance, as well as bills, invoices, or reports required under this Agreement, must be mailed by United States mail, postage prepaid, if to the Agency at its address written above, and if to the City of Colorado Springs at the addresses listed below. Notices must be delivered by prepaid U.S. mail and become effective three (3) days after deposit with the U.S. Postal

Service. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but these substitutions are not effective until actual receipt of written notification.

City of Colorado Springs
Office of Emergency Management
3755 Mark Dabling
Colorado Springs, Colorado 80907
Attn: UASI Program Manager

With copies of termination and violation notices to:

Office of the Mayor
30 South Nevada
Colorado Springs, Colorado 80903
Attn: City Attorney's Office

County Administrator
El Paso County
200 South Cascade
Colorado Springs, CO 80903

10. COLORADO GOVERNMENTAL IMMUNITY ACT:

Neither party shall have any liability or responsibility to anyone for any act or omission of the other. Each party will be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Nothing in this Section or any other provision of this Agreement or any Exhibit shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City or Agency may have under the Colorado Governmental Immunity Act or to any other defenses, immunities, or limitations of liability available to the City or the Agency by law.

11. DISPUTES. All disputes of any nature between Colorado Springs and the Agency regarding this Agreement will be resolved through good faith discussions between the parties. Should the parties be unable to resolve any dispute, Colorado Springs may terminate this agreement as provided for in Section 6.

13. SEVERABILITY.

Except for the provisions of this Agreement requiring appropriation of funds, if a court of competent jurisdiction finds any provision of this Agreement or any portion thereof to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

14. PARAGRAPH HEADINGS.

The captions and headings set forth in this Agreement are for convenience of reference only and do neither define nor limit its terms and may not be construed to do so.

15. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.

This Agreement is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment has any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement.

16. LEGAL AUTHORITY.

The parties represent and assure that each possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action necessary, to enter into this Agreement. The persons or person signing and executing this Agreement on behalf of a party, represent(s) that he or she is fully authorized to execute this Agreement on behalf of their jurisdiction and to validly and legally bind their jurisdiction to all the terms, performances, and provisions herein set forth. If there is a dispute as to the legal authority of either the Agency or the person signing this Agreement to enter into this Agreement, at its option, Colorado Springs may temporarily suspend or permanently terminate this Agreement or both. Colorado Springs will not be obligated to perform any of the provisions of this Agreement after it has suspended or terminated this Agreement as provided in this Agreement.

17. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.

The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by Colorado Springs in the manner specified by Colorado Springs, and by the Agency. The parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Colorado Springs, Colorado as of: _____

SEAL

City of Colorado Springs:

ATTEST:

By:

Clerk and Recorder/Public Trustee
Sarah Johnson

Mayor
John Suthers

APPROVED AS TO FORM:

Attorney for the City of Colorado Springs
By:

Senior City Attorney
Frederick Stein

THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENTAL AGREEMENT.

Board of County Commissioners of the County of El Paso, Colorado

By: _____
Chairman

ATTEST: By: _____
El Paso County Clerk and Recorder

Approved as to form: _____
El Paso County Attorney's Office