

**AMENDED INTERGOVERNMENTAL AGREEMENT
BETWEEN EL PASO COUNTY, COLORADO AND
THE CITY OF COLORADO SPRINGS
ESTABLISHING THE PIKES PEAK REGIONAL
OFFICE OF EMERGENCY MANAGEMENT**

This INTERGOVERNMENTAL AGREEMENT ("Agreement"), dated _____ is made by and between the County of El Paso, Colorado ("County"), and the City of Colorado Springs, a Colorado municipal corporation and home rule city ("City") to establish the Pikes Peak Regional Office of Emergency Management for the County and City, pursuant to the Colorado Disaster Emergency Act ("Act"). For purposes of this Agreement, the County and the City may be referred to as a "Party" or collectively as "Parties."

WHEREAS, it is the intent of the County and the City to enter into an inter- jurisdictional agreement pursuant to the provisions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, et seq., for the purpose of establishing an interjurisdictional disaster agency to serve the people of the County and the City in the event of a natural or human-made disaster, and

WHEREAS, the Parties are authorized pursuant to C.R.S § 29-1-203 and Article XX of the Colorado Constitution to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units; however, nothing contained in this Agreement shall be construed to create a separate instrumentality of any Party or the Parties collectively; and

WHEREAS, the intent of this Agreement is to form a cooperative agency staffed by County and City personnel to serve the citizens of El Paso County and Colorado Springs by building a more resilient community through collaboration and competence in emergency management services, and by providing mitigation, preparedness, response, recovery, and coordination for large-scale emergencies and disasters, saving lives and preventing property damage.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Title and Purpose.** A cooperative interjurisdictional disaster agency, to be known as the Pikes Peak Regional Office of Emergency Management for the County and City ("PPR-OEM") is established in accordance with C.R.S. § 24-33.5-707, for the purposes of:
 - a. Reducing the vulnerability of people in the County and City to damage, injury and loss of life and property resulting from natural or manmade catastrophes, community initiatives, civil disturbance or hostile military action; and

- b. Preparing for prompt and efficient search, rescue recovery, care and treatment in the event of an emergency; and
 - c. Providing a setting conducive to rapid and orderly recovery; and
 - d. Providing for more effective regional cooperation and communication in disaster prevention, preparation, preparedness and recovery; and
 - e. Providing a local disaster and emergency management system, which embodies all aspects of pre-disaster and post emergency preparedness.
2. **PPR-OEM Duties and Responsibilities.** In order to accomplish these purposes, the PPR- OEM shall:
- a. Coordinate emergency planning, training, exercise, mitigation and recovery efforts.
 - b. Develop and maintain the Pikes Peak Regional Emergency Operations Plan.
 - c. Administer and approve Pikes Peak regional emergency management plans that supplement the Pikes Peak Regional Emergency Operations Plan.
 - d. Provide resources to other jurisdictions in time of declared emergencies or disasters for the prevention of loss of life, injury or property damage pursuant to City Charter § 4-10 and in accordance with El Paso County ordinances, or as may be provided under approved mutual aid agreements.
 - e. Make emergency expenditures as authorized by emergency ordinances to save lives and property.
 - f. Coordinate with all state and federal agencies to obtain services, equipment, supplies, materials and funds for responding to and recovering from disaster.
 - g. Negotiate on behalf of the County and City with other duly constituted governmental agencies with the State of Colorado for establishment of mutual aid agreements and necessary memorandums of understanding.
 - h. Operate a regional Emergency Operations Center.
 - i. Coordinate with local nonprofit and volunteer organizations to ensure effective use of resources during times of emergency.
 - j. Manage federal and state grant funding and programs, as awarded, pursuant to the standards established by such granting agencies.

3. **Effective Date.** This Agreement shall become effective on _____, 2022.
4. **Term.** As to each Party, the term of this Agreement shall be from the effective date for an initial period of three (3) years through _____. This Agreement will be reviewed annually by the Parties for content and applicability.
5. **Appointment/Termination of Director.** The City and County desire to implement the hiring and appointment of the Director pursuant to the terms set forth in this paragraph. The County Administrator and Chief of Staff of Colorado Springs agree to jointly undertake the recruitment of the PPR-OEM Director. The PPR-OEM Director will be an at-will employee of either the City or the County. All appointment, supervision, discipline, and termination policies and procedures for the PPR-OEM Director will be the sole responsibility of the entity employing the PPR-OEM Director. As of the date of this Agreement, the PPR-OEM Director is an at-will employee of the City, subject to all applicable City Charter provisions, City Code provisions, and policies and procedures of the City. The PPR-OEM Director is an exempt position under the Fair Labor Standards Act.
6. **Advisory Board.** The PPR-OEM may be advised by a Regional Disaster Advisory Board ("Advisory Board"). The Advisory Board will be comprised of nine (9) members and (1) ex officio member constituted as follows: the Colorado Springs Fire Chief or designee, the Colorado Springs Police Chief or designee, the El Paso County Sheriff or designee, a local government member representing a local municipality or fire protection district, which will be jointly appointed by the County Administrator and Chief of Staff of Colorado Springs, a member appointed by the Colorado Springs City Council (which will not be an elected official), two members appointed by the El Paso Board of County Commissioners (neither of which will an elected official), and two (2) military partners from Department of Defense ("DOD") installations, located in El Paso County, which will include one (1) representative from the U.S. Army and one (1) representative from the U.S. Air Force. The DOD Advisory Board members will be jointly appointed by the County Administrator and Chief of Staff of Colorado Springs. The Public Health Director of the El Paso County Public Health Department will serve on the Advisory Board as an ex officio member.
 - a. The Advisory Board shall serve in an advisory capacity only and may provide assistance and counsel to the PPR-OEM Director as to policy, and will review and discuss regional disaster related matters. The Advisory Board members do not have voting rights.
 - b. The Advisory Board shall be briefed by the PPR-OEM Director no less than two times per calendar year. Additional meetings may be held as necessary when determined by the PPR-OEM Director or by members of the Advisory Board.
7. **Administration of the PPR-OEM.** The County Administrator (or designee) and the City Chief of Staff (or designee) will direct strategic and policy functions of the Pikes Peak Regional Office of Emergency Management. The PPR-OEM Director duties will be responsible for the day-to-day operations of the office, including but not limited to, managing employees, implementing policies and procedures,

furthering cooperative agreements, and establishing budgets necessary to further the mission of the PPR-OEM. As of the date of this Agreement, the PPR-OEM Director is a City employee and is administratively supervised by the City Chief of Staff (or designee).

8. **PPR-OEM Personnel.** The PPR-OEM will additionally be staffed by other supporting personnel as deemed appropriate, who will be responsible to the PPR-OEM Director. Supporting personnel will be assigned by the City and the County, in consultation with the PPR-OEM Director in accordance with the needs of the PPR-OEM. Supporting personnel will remain employees of their respective City and County agencies during their assignment to PPR- OEM and will be subject to the personnel policies of their respective agencies. Nothing in this Agreement will be construed as limiting the right of the Parties to promote, transfer, investigate, suspend, or remove a Party's employee from the PPR-OEM. Each Party understands and agrees that its employees are not employees of the other. Each Party is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation for benefit to its employees. All employment decisions concerning assigned PPR-OEM staff will be the sole responsibility of the employing entity.

9. **Funding.** All funding necessary to maintain the operations of the PPR-OEM, excluding federal and state monies appropriated or granted to the PPR-OEM, will be provided by the respective Parties. The budgets associated with each agency will be approved through their respective budget processes. The PPR-OEM Director will prepare the proposed PPR-OEM budget, subject to appropriations limitations in paragraph 17.
 - a. Each Party agrees to fund a fair and equitable share of the PPR-OEM budget. The Parties agree to address the funds budgeted to the PPR-OEM annually to ensure that each Party is contributing a fair and equitable share of the PPR-OEM budget, including but not limited to the PPR-OEM Director's salary and associated benefits. Any budget funding reductions that occur through efficiency of operations brought about by this Agreement will be split equitably between the Parties.
 - b. To the extent allowed by each specific grant funding award, both Parties agree to use their best efforts to maintain the grant funding revenue sources currently used to fund their emergency management operations in the funding PPR-OEM operations. The PPR- OEM Director will be notified by the appropriate Party when grant funds will not be renewed or will be reduced by a granting entity.
 - c. Should supplemental funding become necessary to fund PPR-OEM operations the PPR- OEM Director will present supplemental funding requests to The Board of County Commissioners and the Colorado Springs City Council.

10. **Fiscal Agent.** To the extent necessary or required by policy or law, the City and the County, for their respective budgets and grant funding, will act as the fiscal agent for the PPR-OEM. This provision does not alleviate or remove individual financial requirements of each Party.

11. **Termination.** Both Parties agree this Agreement can be terminated by either Party in writing upon one year (365 calendar days) written notice to the other Party, or sooner if agreed upon in writing by both Parties. Such notice shall be sent by certified mail, return receipt requested to the governing executive of the non-terminating party. The termination notice shall state the actual termination date. The Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through an informal process between the PPR-OEM Director, the County Administrator, and the Chief of Staff of Colorado Springs or designee prior to terminating the Agreement unless the Parties mutually determine such negotiations are unnecessary.
12. **Division of Individual Assets.** Upon termination, assets which were contributed by the Parties to the PPR-OEM will be returned, as is, to the contributing Party unless provided for differently in another written agreement by the Parties. The interest in general joint assets of the PPR-OEM shall be disposed of through good faith negotiations by the Parties.
13. **Liability.** Each Party agrees to be responsible for the acts and omissions of its own employees and/or agents assigned to PPR-OEM. In the event a claim is made against any individual assigned to PPR-OEM, the home agency of the individual against whom the claim is made is responsible for its own representation, expenses of litigation and/or costs of defending or settling the claim against its agent or employee. In the event any claim is made under this Agreement by a Party to this Agreement or a third party, each Party will be responsible for its own legal representation, 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 legal defense, immunity, or limitation of liability provided to each Party by law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution.
14. **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, 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 of this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.
15. **Not Partners.** The Parties to this Agreement are not partners or acting as a joint venture as a result of this Agreement.
16. **Notices.** Except as may otherwise be provided in this Agreement, all notices required or permitted to be given under the Agreement shall be in writing and shall be valid and sufficient if dispatched by: (a) registered or certified mail, return receipt requested, postage prepaid, in any post office in the United States, or (b) hand delivery to the designated agency head. The Parties agree that written notices regarding general operational issues may be accomplished through email directed to the appropriate

supervisory employees. The addresses below may be changed from time to time by written notice to the other Parties.

Mayor of Colorado Springs
C/O the Chief of Staff
30 S. Nevada Avenue
Colorado Springs, CO 80903

Chair of Board of County Commissioners
C/O the El Paso County Administrator
200 South Cascade Avenue
Colorado Springs, CO 80903

17. Appropriations. The appropriations limitations for this Agreement are as follows:

- a. 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 Colorado Springs 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 Colorado Springs. 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 Colorado Springs, 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.
- b. County: 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 the County, 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 County 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 County.

18. **Choice of Laws and Jurisdiction.** 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.
19. **Severability.** It is understood and agreed by the Parties that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any federal laws, or 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 Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision determined by the court to be invalid.
20. **Modifications and Amendments.** The Agreement shall not be altered, amended, modified, or changed in whole or in part except by a written amendment that is duly approved by each Party's legislative council. Ministerial changes only, such as correcting typographical errors or formatting, may be made upon the written agreement of the County Administrator or designee and the Chief of Staff of Colorado Springs or designee in consultation with the PPR-OEM Director. A revision to the Agreement will be required upon the hiring of a new PPR-OEM Director if the new Director is employed by a different government entity than is referenced in paragraph 5.
21. **Entire Agreement.** 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.
22. **Copies.** This Agreement may be executed in multiple copies, each of which shall be considered an original.
23. **Headings.** The headings of the several articles and paragraphs 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.
24. **Understanding.** 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. Furthermore, we agree to all terms and conditions promulgated by and under the Agreement and agree to be bound by its terms and conditions.

[Remainder of Page Intentionally Blank]

Stan VanderWerf, Chair, El Paso
County Board of Commissioners

Date

Approved as to Form:

County Attorney's Office

John W. Suthers, Mayor
City of Colorado Springs

Date

Approved as to Form:

Frederick Stein, Senior City Attorney
City Attorney's Office