

RESOLUTION NO. 75-19

A RESOLUTION APPROVING AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE
EL PASO COUNTY CLERK AND RECORDER AND THE
CITY OF COLORADO SPRINGS REGARDING THE
CONDUCT AND ADMINISTRATION OF THE NOVEMBER
5, 2019 COORDINATED ELECTION

WHEREAS, on July 9, 2019 the Colorado Springs City Council adopted Resolution 60-19 indicating the intent of the City of Colorado Springs to participate in the November 5, 2019 coordinated election and designating the same as a special municipal election; and

WHEREAS, on August 13, 2019 the Colorado Springs City Council voted to refer ballot questions to the November 5, 2019 coordinated election; and

WHEREAS, the City Clerk of the City of Colorado Springs has worked with the El Paso County Clerk and Recorder to negotiate the terms of the attached intergovernmental agreement; and

WHEREAS, pursuant to Colorado Revised Statute § 1-6-116(2), an intergovernmental agreement is required to govern the parties' respective duties concerning the conduct of the November 5, 2019 Coordinated Election.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS THAT:

Section 1. The City Council hereby approves the intergovernmental agreement between the El Paso County Clerk and Recorder and the City of Colorado Springs regarding the conduct and administration of the November 5, 2019 Coordinated Election ("IGA"), a true copy of which is attached hereto and incorporated herein by reference, effective this 13th day of August, 2019.


Section 2. On behalf of the City, the Mayor is hereby authorized to execute and administer the attached IGA between the El Paso County Clerk and Recorder and the City of Colorado Springs.

DATED at Colorado Springs, Colorado, this 13th day of August, 2019.




Council President

ATTEST:



Sarah B. Johnson, City Clerk



INTERGOVERNMENTAL AGREEMENT
BETWEEN
EL PASO COUNTY CLERK AND RECORDER
AND
CITY OF COLORADO SPRINGS
Regarding the Conduct and Administration of the
November 5, 2019
COORDINATED ELECTION



Prepared by:

Chuck Broerman
El Paso County Clerk and Recorder
1675 West Garden of the Gods Road
Suite 2201
Colorado Springs, CO 80907
(719) 575-VOTE (8683)

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the **EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS** ("County"); **THE EL PASO COUNTY CLERK AND RECORDER** ("County Clerk") and City of Colorado Springs, a home rule city and Colorado municipal corporation ("Jurisdiction"), collectively referred to as the "Parties."

WITNESSETH

WHEREAS, pursuant to Colorado Revised Statutes (C.R.S. or the "Code") § 1-7-116(2), as amended, and the Rules of the Colorado Secretary of State (the "Rules"); the County Clerk and the Jurisdiction are required to enter into an agreement for the administration of their respective duties concerning the conduct of the November 5, 2019, Coordinated Election ("Election"); and

WHEREAS, the County Clerk and the Jurisdiction are authorized to conduct elections as required by law;

WHEREAS, the Colorado Constitution, Section 20 of Article X, requires the production of a mailed Ballot Issue Notice (also known as a "TABOR" notice) concerning certain ballot issues that will be submitted to the electors of the County and the Jurisdiction; and

WHEREAS, the Jurisdiction has certain ballot issues and/or ballot questions to present to its eligible electors and shall participate in this Coordinated Election.

NOW, THEREFORE, for and in consideration of the promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. This election shall be conducted as a Coordinated Election in accordance with the Uniform Election Code of 1992 (Articles 1-13 of Title 1, C.R.S.). The election participants shall be required to execute agreements with El Paso County for this purpose and may include any jurisdiction type, eligible to conduct such an election within the El Paso County limits and the State of Colorado.
2. This election shall be conducted by El Paso County as a Mail Ballot Election.
3. FURTHER, the Parties agree as follows:

ARTICLE ONE
PURPOSE AND GENERAL MATTERS

1.1 DEFINITIONS:

- A. **"Coordinated Election Official"**, (hereinafter **"CEO"**) shall mean the El Paso County Clerk and Recorder as referenced in C.R.S. § 1-7-116(1)(a). The CEO shall act within the Code and Rules and, as such, shall conduct the election for the Jurisdiction for all matters in the Code and the Rules which require action by the CEO.
- B. **"Colorado Election Code"** or **"Code"** shall mean any part of the Uniform Election Code of 1992 (Articles 1-13 of Title 1, C.R.S.), as well as the Colorado Constitution, and the State of Colorado Secretary of State (SOS) Rules.
- C. **"Coordinated Election"** shall mean an election where more than one jurisdiction with overlapping boundaries or the same electors holds an election on the same day and the eligible electors are all registered electors, and the County Clerk and Recorder is the Coordinated Election Official for the jurisdictions.
- D. **"Designated Election Official"** (hereinafter **"DEO"**), shall be identified by the Jurisdiction to act as the primary liaison between the Jurisdiction and the CEO or his designated contact person (defined below), and who will have primary responsibility for the conduct of election procedures to be handled by the Jurisdiction hereunder.
- E. **"IGA"** or **"Agreement"** shall mean this Intergovernmental Agreement between the County and the Jurisdiction for election coordination.
- F. **"General Election"** means the election held on the Tuesday succeeding the first Monday of November in each even-numbered year.
- G. **"Jurisdiction"** shall mean the City of Colorado Springs, a home rule city and Colorado municipal corporation.
- H. **"Mail Ballot Packet"** shall mean the packet of information provided by the CEO to eligible electors in the mail ballot election. The packet includes the ballot, instructions for completing the ballot, a secrecy sleeve, and a return envelope. C.R.S. § 1-7.5-103(5).
- I. **"SOS"** shall mean the State of Colorado Secretary of State.

J. **"SOS Election Calendar"** shall mean the most recent 2019 election calendar as published on the SOS website located at www.sos.state.co.us.

1.2 **GOAL:** The purpose of this Agreement is to set forth the tasks to be completed by the County Clerk and Recorder (CEO) and the Jurisdiction to conduct the election and to provide for the cost thereof.

1.3 **COORDINATED ELECTION OFFICIAL:** The County Clerk and Recorder shall act as the CEO in accordance with the Code and Rules and, as such, shall conduct the election for the Jurisdiction.

1.4 **CONTACT PERSON:** The CEO designates Angie Leath, or her designee, (Phone: 719-520-7325; email: angieleath@elpasoco.com) as the contact person to act as primary liaison between the CEO and the Jurisdiction. The contact person shall act under the authority of the CEO and shall have the primary responsibility for the coordination of the election with the Jurisdiction and completion of procedures assigned to the CEO herein. Nothing herein shall be deemed to relieve the CEO or the Jurisdiction from their official responsibilities for the conduct of the election.

1.5 **DESIGNATED ELECTION OFFICIAL:** The Jurisdiction shall appoint a Designated Election Official (DEO) to act as primary liaison between the Jurisdiction and the CEO. The Jurisdiction designates the below named person to act as the DEO for all matters under the Code and the Rules which require action by the DEO.

DEO name: Sarah B. Johnson

Primary phone: 719-385-5102

Cell phone: 719-323-9044

Email: Sarah.Johnson@coloradosprings.gov

From the date of execution of this Agreement through the official certification of the final election results including any recounts, the DEO shall be readily available and accessible during regular business hours, and at other times when notified in advance by the County's contact person, for the purpose of consultation and decision-making on behalf of the Jurisdiction. In addition, the DEO is responsible for receiving and timely responding to inquiries made by their voters or others interested in the Jurisdiction's election. The DEO is responsible for providing the CEO with emergency contact numbers to be reached before and after normal office hours and on Election Day from 7:00 a.m. until the counting of the

ballots is completed. To the extent that the Code requires that an Election Official of the Jurisdiction conduct a task, the DEO shall conduct the same.

- 1.6 **APPLICABILITY:** This Agreement shall be construed to apply to all areas within the jurisdictional boundaries of the Jurisdiction .
- 1.7 **TERM:** This Agreement shall start as of the date of the last party's execution of this Agreement and shall continue through the official certification of the November 5, 2019, Coordinated Election.
- 1.8 **LEGAL ADVICE:** The Jurisdiction understands that the CEO and his designees do not provide legal advice to the Jurisdiction. The CEO and his designees may provide information to the Jurisdiction concerning the CEO's understanding of applicable laws and rules, but it is the responsibility of the Jurisdiction to contact its own attorney for legal advice.
- 1.9 **RESPONSIBILITIES BEYOND THIS AGREEMENT:** The Jurisdiction understands that there may be additional obligations and responsibilities, legal, contractual, or otherwise, placed upon the Jurisdiction outside the terms of this IGA. The Jurisdiction further understands that it is the responsibility of the Jurisdiction to be aware of all obligations and responsibilities of the Jurisdiction.

ARTICLE TWO

DUTIES OF THE COUNTY CLERK AND RECORDER (CEO)

The CEO shall perform the following duties for the election for the Jurisdiction:

- 2.0 **VOTER REGISTRATION:** Supervise, administer and provide the necessary facilities and forms for all regular voter registration sites and voter service and polling centers.
- 2.1 **BALLOT PREPARATION:** Upon certification from the DEO pursuant to Section 3.4, the CEO shall layout the text of the ballot in a format that complies with the Code and the Rules. CEO shall provide ballot printing layouts and text for proofreading and for signature approval of the Jurisdiction. CEO shall certify the ballot content to the printer.
- 2.2 **VOTER LISTS:** Upon request of the Jurisdiction, create a list of the registered voters containing the names and addresses of each elector registered to vote in the Jurisdiction. This will not be a certified list, but may be used for checking signatures on candidate petitions. The Jurisdiction shall pay the CEO for the cost of such list. The Jurisdiction may choose to receive the list on CD, via FTP site or as a printed copy. The fee for furnishing the list shall be as follows:

List on ftp site = \$25.00
List on CD = \$25.00 plus \$1.25 CD charge
List as a Printed Copy = \$25.00 and \$.05 per page

- 2.3 **MAIL BALLOT PLAN:** The CEO shall file the proposed election plan with the Secretary of State as required by C.R.S. § 1-7.5-105 (1).
- 2.4 **ELECTION JUDGES/BOARD OF CANVASSERS/STAFF:** The CEO shall appoint, receive appointments as required by law, compensate, instruct and oversee election judges, the Board of Canvassers, and any qualified number of additional election staff to adequately serve the number of electors registered to vote in the Coordinated Election.
- 2.5 **ELECTION SUPPLIES:** The CEO shall provide all necessary equipment, forms and personnel to conduct the election, including the County's electronic vote counting equipment.
- 2.6 **LOGIC AND ACCURACY:** The CEO shall conduct three tests on all electronic voting equipment in accordance with C.R.S. § 1-7-509(1)(b) and Rules promulgated by the Secretary of State, including a hardware test, public logic and accuracy test, and a post-election test. The CEO shall select a testing board comprised of at least two persons, who are registered electors.
- The CEO shall conduct public testing of voting equipment prior to the commencement of voting. The public test shall be open to representatives of the political parties, the press and the public, pursuant to C.R.S. § 1-7-509(2)(b). The CEO shall select a testing board comprising of at least two persons who are registered electors. Notice of the fact that the public test will take place shall be posted in the designated public place for posting notices in the county for at least seven days before the public test.
- 2.7 **PREPARE AND MAIL BALLOT PACKETS:** The CEO shall prepare and mail all Mail Ballot Packets as required by C.R.S. § 1-7.5-107 and § 1-8.3-110.
- 2.8 **ELECTION DAY:** The CEO shall provide Election Day telephone and in person support from 7:00 a.m. to the conclusion of the unofficial count on election night.
- 2.9 **COUNTING OF BALLOTS:** The CEO shall conduct and oversee the process of counting the ballots and reporting the results by precinct. Establish backup procedures and voting sites should the need arise. Provide personnel to participate in the ballot counting procedures as accomplished by any electronic vote tabulating equipment used in the

election. Provide personnel and all other necessary services for any recount as provided by the Code.

- 2.10 **STORAGE:** The CEO shall store all voted ballots and all other election materials for a minimum of twenty-five (25) months, to be saved in such a manner that they may be accessed by the participating jurisdictions, if necessary, to resolve any challenge or other legal questions that might arise regarding the election.
- 2.11 **PUBLIC NOTICE:** The CEO shall provide notice by publication of a mail ballot election as required by C.R.S. § 1-5-205.
- 2.12 **BALLOT ISSUE NOTICE:** The CEO shall determine the "least cost" method for mailing the Ballot Issue Notice package and combine the text of the Ballot Issue Notice produced by the Jurisdiction with those of other participating jurisdictions to produce the Ballot Issue Notice package. The CEO will determine the order of the ballot and the order of the Ballot Issue Notice in the order of final ballot certification on a first received basis. All materials supplied by the participating jurisdiction shall be kept together by individual jurisdiction, and in the order supplied by the jurisdiction, and with the same text as supplied.

The CEO shall print, address and mail the package to "All Registered Voters" at each address of one or more active registered elector of the Jurisdiction. Nothing herein shall preclude the CEO from sending the Ballot Issue Notice or notice package to persons other than electors of the Jurisdiction if such sending arises from the CEO's efforts to mail the Ballot Issue Notice package at "least cost."

- 2.13 **COSTS:** The CEO shall keep a careful and accurate accounting of all chargeable items to the Jurisdiction. Costs shall include, but are not limited to: software and equipment usage, election judges and other associated election personnel, ballots and related election forms, printing, election supplies, public notices paid for by the CEO, postage, rental charges, related computer hardware and technical support, and any other fees reasonably related to conducting the 2019 Coordinated Election.

The CEO shall charge each jurisdiction taking part in the election a proportional share of the actual costs of the election. This proportional share shall be based upon the number of active voters eligible to vote within each jurisdiction involved in the election, the number of jurisdictions participating, and may also take into account the number of ballot issues and/or items to be included on the ballot for each jurisdiction.

In the event the Parties are required to defend against any legal or administrative action brought by a candidate or jurisdiction as it relates to

this Agreement, the Parties agree to utilize their existing legal services as appropriate to defend against the action. The Parties agree to consult with each other to determine whether legal counsel outside of the El Paso County Attorney's office and the Office of the City Attorney for Jurisdiction is required or warranted to defend legal or administrative action as referenced in this Agreement. If a determination is made that outside legal counsel is desired and warranted, the Parties may, but are not obligated to, enter into a separate agreement to defend against the actions and to pay for the outside legal services.

- 2.14 **Voting and Ballot drop-off:** The CEO shall establish precincts, voter service and polling centers, and ballot drop-off locations as required by law, and cooperate with Jurisdictions in the petition verification process.

ARTICLE THREE DUTIES OF THE JURISDICTION

- 3.0 **AUTHORITY:** The DEO shall provide the CEO with a copy of the ordinance or resolution stating that the Jurisdiction will follow the election provisions of the Code and that the Jurisdiction will participate in the Coordinated Election in accordance with the terms and conditions of this Agreement, including the time guidelines schedule attached hereto as these relate to the November 5, 2019, Coordinated Election.
- 3.1 **CALL AND NOTICE:** The CEO shall publish the Notice as required by C.R.S. § 1-5-205. If other notices required by C.R.S. § 1-7-908 or any other constitutional or statutory reference are required by the Jurisdiction, it shall be the DEO's responsibility to comply with those requirements.
- 3.2 **PETITIONS:** The DEO shall perform all responsibilities required to certify any initiative petition(s) to the ballot. Signatures on all petitions shall be verified by the Jurisdiction.
- 3.3 **CAMPAIGN FINANCE:**
- The DEO understands that issue committees formed to support or oppose any municipal ballot issue or question may have state law obligations that are separate and distinct from the Jurisdiction's campaign finance reporting obligations pursuant to Colorado Springs City Code § 5.2.201, *et seq.*
- 3.4 **BALLOT PREPARATION and CERTIFICATION:** The DEO shall certify the ballot issues and/or ballot questions and the titles and summaries of each ballot issue or question in the format as described in the attached "Format Information Page" to the CEO exactly as the list is to be printed

on the ballot as soon as the information is available but **no later than 5:00 P.M. on September 6, 2019.**

Certification is required by two methods any time prior to the above deadline:

Electronically by email to angieleath@elpasoco.com, and

A printed hard copy delivered to the Main Clerk & Recorder's office no later than 5:00 p.m. on September 6, 2019.

The Jurisdiction must indicate whether question(s) are a referred measure or an initiative from a citizen petition. The Jurisdiction understands and agrees that any ballot content submitted to the CEO after the above noted date may result in their issues or questions not being on the ballot. In such event, the Jurisdiction will be required to provide for its own election at its sole expense and the remaining terms and conditions of this Agreement will automatically terminate. Jurisdiction shall be solely responsible for the content of any ballot issue and/or ballot question, including the title and summary of any ballot issue and/or ballot question. The CEO may provide proofreading assistance (i.e. technical, grammatical, or syntactic proofing) but under no circumstance shall the CEO be responsible for the content or how it is presented to its voters.

The Jurisdiction understands that it must wait and that it must instruct ballot issue committees and coordinating entities to wait before the numbering of a ballot issue and/or ballot question until the CEO has assigned a number to the respective ballot issue and/or ballot question.

- 3.5 **PROOFING:** The DEO shall proofread the layout and the text of the Jurisdiction's portion of the official ballots before authorizing in writing the printing of the ballots. Such authorization shall be made **WITHIN THREE (3) HOURS** of the CEO's email or fax transmission to the DEO. The expected date and time for this proofing will be between 8:00 a.m. and 5:00 p.m. on Thursday, 9/12/19 or Friday, 9/13/19. Should the DEO fail to contact the CEO within three (3) hours of the CEO's email or fax transmission, the CEO shall not be held responsible for any errors or omissions should they proceed with the printing of the ballots.
- 3.6 **BALLOT ISSUE NOTICE:** The Jurisdiction shall prepare, and be solely responsible for, the language for the Notice for each ballot issue relating to Section 20, Article X of the Colorado Constitution. The language shall consist only of a concise title in the format as described in the attached "Ballot Issue Notice Example Page", and pro and con summaries each of 500 words or less. The Ballot Issue Pro/Con comments shall be delivered to the Jurisdiction's DEO **by September 20, 2019, or September 23, as applicable.** The Ballot Issue Notice including the summarized

comments shall be delivered to the CEO **by 5:00 p.m. September 23, 2019**, for inclusion in the Notice.

The CEO shall mail Ballot Issue Notices to each household with at least one active registered voter. The Notice may include only those ballot issues that electors receiving the Notice are eligible to vote on based upon their residential address.

- 3.7 **ELECTION DAY:** The Jurisdiction shall provide support on Election Day via the contact phone number provided in this Agreement.
- 3.8 **RECOUNT:** The Jurisdiction shall be responsible for costs of a recount concerning any Jurisdiction ballot issue or question, pursuant to C.R.S. § 1-10.5-101 and § 1-11-215 except for costs collected from an "interested party" pursuant to C.R.S. § 1-10.5-106 which shall be collected by the entity conducting the recount.
- 3.9 **PAYMENT OF COSTS:** The Jurisdiction shall reimburse the County for such costs allocated to the Jurisdiction within thirty (30) days of date of final billing.
- 3.10 **ESTIMATED COSTS:** The estimated cost for the Jurisdiction's portion of the election is approximately **\$283389.84**. It is understood and agreed that this is a cost estimate and the actual cost may be higher or lower depending on questions presented to the Jurisdiction's electorate and the number of Jurisdictions that participate in the Coordinated Election. The Jurisdiction further agrees to pay a deposit of **\$141694.92** which is 50% of the estimated cost to the CEO as soon as reasonably practicable upon finalization of the supplemental appropriation for these election costs. The CEO will maintain the deposit in a separate account and will remit any funds not used for the election to the Jurisdiction.

ARTICLE FOUR

CANCELLATION OF THE ELECTION

- 4.0 In the event that the Jurisdiction resolves not to hold the election, then the Jurisdiction shall comply with the provisions of C.R.S. § 1-5-208 and notice of such resolution shall be immediately provided to the CEO. The Jurisdiction shall within thirty (30) days promptly pay the CEO the Jurisdiction's proportional share of the activities of the CEO relating to the election incurred both before and after the receipt of such notice. The Jurisdiction shall provide notice by publication (as defined in the Code) of the cancellation of the election and a copy of the notice shall be posted in the office of the CEO, in the office of the DEO, at the primary location of the Jurisdiction, and, if the Jurisdiction is a special district, in the office of the Division of Local Government.

ARTICLE FIVE

LIABILITY

- 5.0 The Parties acknowledge that both are subject to the provisions of Colorado Constitution, Article XI, Section 1 which prohibits Counties and Cities from providing indemnification to other parties. Therefore, the Parties agree to be responsible for their own liability incurred as a result of participation in this Agreement. Nothing in this provision shall be deemed to waive or otherwise limit the defense available to the Jurisdiction and the County under the Colorado Government Immunity Act. This Agreement shall not be construed to create any rights or benefits for any person who is not a party to this agreement.

ARTICLE SIX MISCELLANEOUS

- 6.0 **APPROPRIATION:** Both the County and the Jurisdiction intend and commit to use all good faith and due diligent efforts to honor their respective financial obligations as set forth in this Agreement.
- 6.1 **NOTICES:** Any and all notices required to be given by the Parties by this Agreement are deemed to have been received and to be effective: 1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; 2) immediately upon hand delivery; or 3) immediately upon receipt of confirmation that a fax or email was received; to the address of the Parties as set forth below or to such Party or addresses as may be designated hereafter in writing:

To County Clerk:
and Recorder's
contact person

Angie Leath, Director of Elections
El Paso County Clerk and Recorder
P.O. Box 2007
Colorado Springs, Colorado 80901-2007
FAX: 719-520-7327

With a copy to:

El Paso County Attorney
200 South Cascade Avenue
Suite 150
Colorado Springs, Colorado 80903-2208

To Jurisdiction:

City Clerk
Attn: Sarah B. Johnson
30 S. Nevada Ave., Ste 101
Colorado Springs, CO 80903

- 6.2 **AMENDMENT:** This Agreement may be amended only in writing and following the same formality as the execution of this Agreement.
- 6.3 **INTEGRATION:** The Parties acknowledge that this written Agreement, constitutes the sole agreement between them relating to the subject matter hereof, and that no Party is relying upon any oral representation made by another Party or employee, agent or officer of that Party.
- 6.4 **CONFLICT OF AGREEMENT WITH LAW, IMPAIRMENT:** In the event that any provision of this Agreement conflicts with the Code, other statute, rule or valid prior resolution duly adopted by the El Paso County Board of County Commissioners, this Agreement shall be modified to conform to such law, resolution or ordinance. No subsequent resolution or ordinance of the Board of County Commissioners or the governing body of the Jurisdiction shall impair the rights of the CEO or the Jurisdiction hereunder without the consent of the other party to this agreement.
- 6.5 **TIME OF ESSENCE:** Time is of the essence in the performance of this Agreement. The statutory time requirements of the Code shall apply to the completion of the tasks required by this Agreement.

6.6 **Additional DEO and District Contact Information**

Jurisdiction Name: City of Colorado Springs

Business Hours: 8 AM to 5 PM

Telephone Numbers (during normal business hours):

719-385-5901

719-385-5103

Emergency Telephone Numbers (before and after normal business hours):

719-323-9044

719-385-5102

Election Day contact information:

719-385-5901

719-323-9044

ATTACHMENTS:

1. Format Information Page (pg. 15)
2. Ballot Issue Notice Example Page (pg. 16-17)
3. Sample Candidate Ballot Layout (pg. 18)
4. 2019 Election Calendar
5. Voter Registration List (Provided to Special Districts only)

IN WITNESS WHEREOF, the Parties have hereto signed this Agreement to be effective as described in Article One, section 1.7 of this agreement. Pursuant to Resolution No. 19-285, the El Paso County Clerk and Recorder (CEO) is authorized to execute this Agreement on behalf of the Board of County Commissioners, El Paso County, Colorado.

County Signatures below

El Paso County Clerk and Recorder

Date: _____

APPROVED AS TO FORM:

County Attorney's Office

Date: _____

Signatures from the Jurisdiction below

City of Colorado Springs


Signature of Mayor

Date: 8-13-19


Signature of DEO

Date: 8-13-19

APPROVED AS TO FORM:


Jurisdiction's Legal Counsel

Date: 8-13-19

