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RESOLUTION NO. 09-207

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF EL PASO, STATE OF COLORADO

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
CITY OF COLORADO SPRINGS AND EL PASO COUNTY CONCERNING THE EL PASO  
COUNTY EMERGENCY SERVICES AGENCY

**WHEREAS**, the Board of County Commissioners of the County of El Paso ("Board") has the authority granted to it under the provisions of §§30-11-101(1)(e), and 30-11-107(1)(e), C.R.S., to represent the County and exercise its further powers to address concerns of the County in all cases where no other provisions are made by law; and

**WHEREAS**, both the City of Colorado Springs (hereinafter "City") and the Board has the legal authority to provide emergency services within its jurisdictional boundaries such as emergency medical services, disaster services, emergency telephone services and ambulance services; and

**WHEREAS**, pursuant to C.R.S. §§25-3.5-301, et seq., and §30-11-107(1)(q), the Board has statutory authority to license ambulance services, and to organize, own, operate, control, direct, manage, contract for, or furnish ambulance services within the unincorporated and incorporated areas of the County; and

**WHEREAS**, the City, pursuant to C.R.S. §31-15-201(1)(f), through its City Charter and Ordinance provisions, Article XX of the Colorado Constitution, municipal home rule powers, Article 31 of the Colorado Revised Statutes, and other applicable statutes has the authority to organize, own, operate, control, direct, manage, contract for, or furnish ambulance services within the incorporated areas of the City; and

**WHEREAS**, the City and the Board entered into an Intergovernmental Agreement (hereinafter "IGA") in 1995 that established the El Paso County Emergency Services Agency (hereinafter "ESA"); and

**WHEREAS**, the City and Board desire to make certain changes regarding board governance and administration of the ESA; and

**WHEREAS**, due to the City and the Board's shared boundaries and mutual responsibility in providing emergency services and to avoid duplication of services, to share the costs and functions, and other mutually beneficial purposes stated in the IGA, the City and the Board desire to cooperate as governmental entities by entering into an IGA for the purposes of forming a separate legal entity that provides ambulance service, emergency medical and rescue management services pursuant to the terms and conditions as stated therein; and

**WHEREAS**, it is necessary that the Board approve the IGA with the City in order to effectuate the hereinabove described transaction. This IGA is incorporated herein by reference and attached hereto as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED**, the Board of County Commissioners has determined that it would serve the best interests of the public to enter into this Intergovernmental Agreement for the purposes described herein.

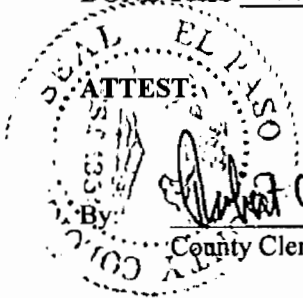
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**BE IT FURTHER RESOLVED** that the Board of County Commissioners of El Paso County, Colorado, hereby approves the Intergovernmental Agreement pursuant to the terms and conditions cited therein.

**AND BE IT FURTHER RESOLVED**, that Jim Bensberg, duly elected, qualified member and Chair of the Board of County Commissioners, or Sallie Clark, duly elected, qualified member and Vice-Chair of the Board of County Commissioners be and is hereby authorized on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

**DONE THIS** 26th day of May, 2009, at Colorado Springs, Colorado.

ATTEST:  
  
By: *Sallie Clark*  
County Clerk & Recorder

**BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO**

By: *Jim Bensberg*  
Jim Bensberg, Chairman

RESOLUTION NO. 160-09

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT  
CONCERNING THE EL PASO COUNTY EMERGENCY SERVICES AGENCY

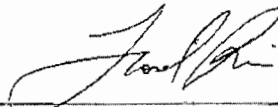
WHEREAS, an Intergovernmental Agreement Establishing the El Paso County Emergency Services Agency was entered into as of July 10, 2006; and

WHEREAS, the City Council for the City of Colorado Springs and the Board of County Commissioners for El Paso County now desire to make certain changes regarding board governance and administration of the El Paso County Emergency Services Agency.

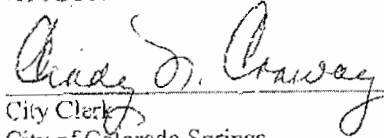
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby approves the attached Intergovernmental Agreement Concerning the El Paso County Emergency Services Agency and authorizes the Mayor to sign on behalf of City Council.

Dated at Colorado Springs, Colorado this 14th day of July, 2009.

  
\_\_\_\_\_  
Mayor  
City of Colorado Springs

ATTEST:

*Deputy*  
  
\_\_\_\_\_  
City Clerk  
City of Colorado Springs

**INTERGOVERNMENTAL AGREEMENT CONCERNING THE  
EL PASO COUNTY EMERGENCY SERVICES AGENCY**

**THIS INTERGOVERNMENTAL AGREEMENT, (“Agreement”)** is entered into by and between the **CITY OF COLORADO SPRINGS**, a Colorado home rule city and municipal corporation (herein "City"), and **EL PASO COUNTY, STATE OF COLORADO** (herein "County"), collectively referred to as the "Parties".

**WITNESSETH:**

*WHEREAS*, Colorado counties are expressly authorized, by state statute, to regulate, license and/or otherwise provide for emergency services within their jurisdictional boundaries, including by way of statutory example only, the counties' general powers (C.R.S. §§30-11-101 and 107); the counties' ordinance powers (C.R.S. §§30-15-401, et seq.); emergency medical services (Colorado Emergency Medical Services Act, C.R.S. §§25-3.5-101, et seq.); disaster services (Colorado Disaster Emergency Act of 1992, C.R.S. §§24-32-2101, et seq.); and emergency telephone service (C.R.S. §§29-11-101, et seq.); and

*WHEREAS*, more specifically, the Board of County Commissioners of El Paso County, State of Colorado, as the governing legislative body of the County (herein the "County Board"), has the express statutory authority, pursuant to C.R.S. §30-11107(1)(q), to "organize, own, operate, control, direct, manage, contract for, or furnish ambulance services"; and

*WHEREAS*, the County Board further has the exclusive statutory authority, pursuant to C.R.S. §§25-3.5-301, et seq., to license ambulance services within the unincorporated and incorporated areas of the County; and

*WHEREAS*, the City, as a home rule municipality, is a political subdivision of the State of Colorado, and likewise, has similar powers for the provision of emergency services within its jurisdictional boundaries pursuant, generally, to Article XX of the Colorado Constitution, municipal home rule powers, City Charter and ordinance provisions, and the applicable state statutes referenced above and Article 31 of the Colorado Revised Statutes; and

*WHEREAS*, more specifically, the City has the express statutory authority, pursuant to C.R.S. §31-15-201 (1)(f), to "organize, own, operate, control, direct, manage, contract for, or furnish ambulance service"; and

*WHEREAS*, Article XIV, Section 18, of the Colorado Constitution, and C.R.S. §§29-1-201, et seq., provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibility by cooperating and contracting with each other; and

*WHEREAS*, C.R.S. §29-1-203 provides, in relevant part:

(1) Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt, only if such cooperating or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve.

(2) Any such contract shall set forth fully the purposes, powers, rights, obligations, and the responsibilities, financial and otherwise, of the contracting parties.

(3) Any such contract may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so; and

*WHEREAS*, due to the Parties' shared boundaries and mutual responsibility in the provision of emergency services, the Parties entered into an Intergovernmental Agreement on October 12, 1995, creating a separate public entity, the El Paso County Emergency Services Authority ("ESA") for the purposes of ensuring a coordinated effective and efficient emergency management system, including the provision of ground emergency ambulance services through a contract, which Intergovernmental Agreement was repealed and replaced in its entirety by the Parties on or about July 10, 2006; and

*WHEREAS*, the consolidation and coordination of the provision of such emergency services has benefited and continues to benefit the taxpayers and citizens of both parties as well as the ultimate consumer; and

*WHEREAS*, the Parties in furtherance of their objectives desire to expand membership to the governing board of the ESA to permit board participation by representatives of government and professionals from the medical and emergency services community and citizens from the community; and

*WHEREAS*, the Parties deem that it is in the best interests of the City and the County that said parties have the ability to approve any contracts for emergency ambulance and other emergency services with a ground ambulance services provider ("Ambulance Contractor") prior to the implementation of said service contracts; and

*WHEREAS*, the Parties desire to revise and restate their agreements as to the Emergency Services Agency by adoption of this Agreement; and

*WHEREAS*, the Parties intend by entering into this Agreement that the El Paso County Emergency Services Agency hereby created shall fall within the definition of a "Public Entity" under the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, et seq.; and

*WHEREAS*, this Agreement shall not become binding and effective unless and until approved by both the City Council of the City of Colorado Springs, State of Colorado, hereinafter referred to as the City Council, and the Board of County Commissioners of the County of El Paso, State of Colorado, hereinafter referred to as the Board of County Commissioners. Any reference to Parties in this Agreement shall be a reference to the City Council and the Board of County Commissioners; and

*WHEREAS*, it is therefore deemed to be in the best interests of the Parties and for the general public health, safety, convenience and welfare that the Parties enter into this Intergovernmental Agreement, referred to through as the Agreement, for the purpose of forming a separate legal entity to provide for ambulance service and potentially other related emergency medical services.

NOW THEREFORE, in consideration of the mutual covenants and obligations expressed herein, it is agreed by and between the Parties hereto as follows:

**ARTICLE ONE  
GENERAL PROVISIONS**

**1.1 Repeal of Previous Intergovernmental Agreements.** This Intergovernmental Agreement Concerning the El Paso County Emergency Services Agency completely repeals in their entirety all previous Intergovernmental Agreements Concerning the El Paso County Emergency Services Agency, including any addendum or addenda thereto, and replaces them in the entirety with this Agreement.

**1.2 El Paso County Emergency Services Agency.** Upon the effective date of this Agreement, there remains established by this Agreement, a separate legal entity to be known as the El Paso County Emergency Services Agency (herein "Agency"). The Parties agree the Agency is an independent legal entity, separate and distinct from the Parties. The jurisdictional boundaries of the Agency shall comprise the corporate boundaries of the City, as may from time to time be changed, and the unincorporated areas of the County, as may from time to time be changed (together, the "Agency Service Area"). Any area of the County in which there is a municipality or fire protection or metropolitan district established pursuant to Title 32 of the Colorado Revised Statutes, which is providing an ambulance service or other emergency medical services as may be provided herein, may not be within the Agency Service Area unless such municipality, fire protection or metropolitan district and the Agency agree by formal written agreement to such inclusion within the Agency Service Area.

**1.3 Governing Board.** The Agency shall be governed by a twelve (12) member Board of Directors (herein "Agency Board") which shall have the power to provide the functions, services and facilities for which the Agency is formed, as set forth more fully herein.

**1.4 Purpose.** The Agency has served the purpose of providing ambulance service and other related emergency medical services, as set forth in Article 6, Scope of Services, together with such other services which are incidental and/or necessary to perform those services expressly set forth herein. The Agency's overall objective shall be to provide available, coordinated and quality emergency medical services through the establishment of an emergency services system, consisting of at least treatment, transportation, communication, and documentation subsystems, designed to prevent premature mortality and to reduce the morbidity that arises from critical injuries, disasters, exposure to poisonous substances, and illnesses. The Agency shall also coordinate with state and other local governmental entities for the purpose of interfacing with an overall state system providing maximally effective emergency services.

**1.5 Immunity.** The Agency shall be a "Public Entity" as defined by the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, et seq.

**1.6 Duration of the Agreement.** This Agreement shall be in effect from the time it is fully executed by both the City Council and the Board of County- Commissioners and shall continue until and unless revised, cancelled or terminated by one or more of the parties as provided in Article 7, Termination. This Agreement may be terminated by either party hereto, by providing written notice of termination as provided in said Article 7.

**ARTICLE TWO  
ORGANIZATIONAL STRUCTURE**

**2.1 Board of Directors Composition.** The Agency's governing Board shall be comprised of twelve (12) members who shall serve without compensation but may be reimbursed for their actual expenses incurred in serving the Agency. The City Council and the Board of County Commissioners shall each appoint one of its elected members as their respective representative to the Board along with an alternate who will serve in the absence of the appointed representative. The City Council and the Board of County Commissioners shall jointly appoint the following additional members. Under no circumstances shall the City Council and the Board of County Commissioners appoint any person to serve on the ESA board who is an agent, employee, director, officer, member, principal, partner (general or limited), stockholder, contractor of the Ambulance Contractor and/or who has any type of financial interest of whatsoever kind or nature in the Ambulance Contractor.

- One (1) Emergency Room Physician Representative from Memorial Hospital;
- One (1) Emergency Room Physician Representative from Penrose Hospital;
- One (1) City of Colorado Springs Fire Department Representative;
- One (1) El Paso County Sheriffs Office Fire Marshal or his/her designee;
- One (1) Representative from the Pikes Peak Fire Chiefs Forum;
- One (1) resident of the City of Colorado Springs who is currently employed or has been previously employed as a certified EMT or paramedic;
- One (1) resident of El Paso County, other than a resident of the City of Colorado Springs who is currently employed or has been previously employed as a certified EMT or paramedic;
- One (1) Elected Official from a city or town, other than the City of Colorado Springs, that participates in the ESA;
- One (1) Neighborhood Citizen Representative who shall be defined as a person who resides in El Paso County, including any incorporated area in the County; and
- One (1) Senior Citizen Representative who shall be defined as a person who resides in El Paso County, including any incorporated area in the County, and is a senior citizen.

**2.2 Ex-Officio Board Members.** The Agency Board may appoint ex-officio members of the Board as is deemed necessary by the Agency Board. Ex-Officio Board members shall have no voting rights and shall not be counted to constitute a quorum.

**2.3 Term of Board Members.** The term of the non-elected members of the Agency Board shall be three (3) years. The City Council and the Board of County Commissioner appointee members shall be appointed by their respective elected boards. Other appointees may be recommended by their respective organizations and their appointment approved by both the City Council and the Board of County Commissioners. To the extent a vacancy and/or the expiration of a term arises, the City Council and the Board of County Commissioners shall both approve a person to fill the vacancy, with the exception of vacancies in any position held by a member of City Council or the Board of County Commissioners. Any such vacancy in any position held by a member of City Council or the Board of County Commissioners shall be filled by their respective elected bodies. Vacancies shall be filled by the appointing party for the unexpired term of any nonelected member whose term becomes vacant. Any member whose term has expired shall be permitted to serve until a successor is duly appointed, except that under no circumstances shall a City Council or Board of Commissioner who is no longer in elected office be permitted to continue in service.

**2.4 Term Limits.** The City Council/Board of County Commissioner members are not subject to Board term limits. All other members shall be subject to two (2) three year terms of service for a total of six (6) consecutive years. In the event a person is appointed to fill one-half

or less than one half of a term of office, the person shall be permitted to serve an additional two (2) full terms. The terms of the current members of the Agency Board shall not be affected by the adoption of this Agreement by the City Council and Board of County Commissioners.

**2.5 Removal of Agency Board Members.** Agency Board members shall serve at the discretion of the party which appointed them. Any member of the Agency Board may be removed by the party that appointed that member, at any time and for any or no reason. An Agency Board member may resign by giving notice to the Agency Board Chairperson or Secretary. Notice of removal or resignation of an Agency Board member shall be given to the Parties. The party which appointed an Agency Board member who has been removed or resigned shall appoint a new Agency Board member as soon as practicable, but no later than ninety (90) days following the removal or notice of resignation.

**2.6 Voting and Quorum.** Each member of the Agency Board shall have one (1) vote. A quorum of the Agency Board shall consist of at least seven (7) of the Agency Board's members. At least one of the seven (7) Agency Board members constituting a quorum shall either be the representative of City Council who is appointed to serve on the Agency Board or the representative of the Board of County Commissioners who is appointed to serve on the Agency Board. No official action may be taken by the Agency Board on any matter unless a quorum is present. The affirmative vote of a majority of the Agency Board members present at the time of the vote shall be required for the Agency Board to take any action.

**2.7 Bylaws, Rules and Regulations.** The Agency Board shall adopt Bylaws and such Rules and Regulations as necessary for the conduct of the Agency, so long as such Bylaws and Rules and Regulations are consistent and not in conflict with the provisions of this Agreement. The Bylaws and Rules and Regulations and any amendments thereto shall be submitted to the City Council and Board of County Commissioners for review and final approval.

**2.8 Officers of the Agency Board.** The Agency Board shall elect a Chairperson, Vice-Chairperson, Secretary and Treasurer from its members. The officers shall perform the duties normal for their office including, but not limited to, the following:

- A. The Chairperson shall preside over all Agency Board meetings and sign all contracts or agreements on behalf of the Agency, except contracts or agreements which may be signed by officers delegated that responsibility by the Agency Board or by this Agreement, and shall perform such other duties as may be authorized by the Agency Board.
- B. The Vice-Chairperson shall perform all of the Chairperson's duties in the absence of the Chairperson and such other duties as may be authorized by the Agency Board.
- C. The Secretary shall attest to all contracts or agreements signed by the Chairperson, Vice-Chairperson, or other officers of the Agency, except routine purchase orders which need no attestation; shall keep and maintain the minutes and records of the Agency; and shall perform such other duties as may be authorized by the Agency Board.
- D. The Treasurer shall keep and maintain the financial books and records of the Agency and sign routine purchase orders which need no attestation; and shall perform such other duties as may be authorized by the Agency Board.

**2.9 Meetings.** Meetings of the Agency Board shall be held at the call of the Chairperson and shall be conducted in accordance with the following requirements:

- A. The Agency Board shall hold a minimum of one (1) monthly regular meeting, at such time and place as the Agency shall decide and may, upon the call of the Chairperson or of any three (3) Agency Board members, hold special meetings. Any regular meeting may be canceled by the affirmative vote of a majority of the Agency Board members at a meeting where a quorum is present or by the Chairperson for good cause.
- B. All regular and special meetings held by the Agency Board and any subcommittee meetings of the Agency Board where public business is discussed or at which formal action may be taken shall be open to the public and subject to the Colorado Open Meetings Law, C.R.S. §§24-6401, et seq. Notice of all regular and special meetings shall include an agenda and shall be posted in a designated public place no less than 24 hours prior to the meeting.
- C. The Agency Board shall keep minutes of its proceedings showing the presence or absence of each Agency Board member and the vote of each member upon every motion. Failure to vote and any abstentions shall be noted in the minutes. Minutes and records of the Agency Board shall be open to the public and subject to the Colorado Open Records Act, C.R.S. §§ 24-72-201, et seq.

### **ARTICLE THREE POWERS OF THE AGENCY**

**3.1 Plenary Powers.** For the purposes set forth in Article 6, Scope of Services, and except as otherwise limited by this Agreement, the Agency, in its own name and as provided herein, shall exercise all powers lawfully authorized by the Parties pursuant to C.R.S. §29-1-203, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. The Agency shall act through its Board, its officers and employees as authorized by the Agency Board pursuant to the Bylaws and Rules and Regulations. The Agency shall not have the power to levy taxes nor to incur debt on behalf of either the City or the County. The Agency shall not have the power to act as agent for or on behalf of either of the Parties without their written consent.

**3.2 General Enumerated Powers.** For the purposes set forth in Article 6, Scope of Services, the Agency's powers shall be those powers delegated by the Parties through this Agreement. Such powers include the following:

- A. To hold, acquire, manage, maintain, operate and sell or dispose of all real and personal property in the name of the Agency subject to the final approval of the Parties;
- B. To make and enter into contracts, subject to payment by annual appropriations of the Parties, including those with the Parties hereto, for goods, services or to implement the powers of the Agency subject to the limitation in paragraph Article 6, Paragraph 1.D., Scope of Services, and subject to the limitation that under no circumstances shall the Agency have the authority to enter into and approve any contract or purchase order in the amount of \$25,000 or more. Any such contract or purchase

order in the amount of \$25,000 shall not become valid and enforceable until approved by both the City Council and the Board of County Commissioners;

- C. To sue and be sued in the Agency's own name;
- D. To hire and fire agents, employees, consultants, professionals and volunteers pursuant to the Bylaws and Rules and Regulations of the Agency;
- E. To provide for the furnishing of services, privileges, or public works, including buildings, improvements or other facilities, necessary for purposes of this Agreement;
- F. To fix, maintain, and revise fees, rates, rents, and charges for functions, services, or facilities provided by the Agency subject to the review and final approval of the Parties;
- G. To provide a level of service for the service area of the Agency that is at least substantially the same as presently provided by the Parties within their respective jurisdictions, and to make improved changes in the level of service consistent with this Agreement;
- H. To prepare and recommend an annual operating budget, and any necessary amended or supplemental budgets for review and approval by the Parties, as set forth in Article 5, Budgets/Funding/Debt;
- I. To prepare and implement a pay and benefits compensation plan for all employees of the Agency;
- J. To recommend the adoption, modification, and amendment of the Bylaws and Rules and Regulations, subject to final approval by the City Council and the Board of County Commissioners as set forth in §2.7 above;
- K. To adopt, modify, and amend operating procedures and guidelines for the conduct of the Agency's internal and external affairs;
- L. To create standing and ad hoc subcommittees of the Agency to address particular issues or projects related to the purpose of the Agency;
- M. To enter into agreements with the Parties for the purpose of securing any necessary professional, administrative, or support services;
- N. To keep and maintain financial books and records to account for all expenditures of funds, and to obtain an independent audit conducted by Certified Public Accountants selected by the Agency Board of such records annually with the results of same submitted to the Parties;
- O. To accept contributions, grants, or loans from any public or private agency, individual, the State of Colorado or the United States, or any department, instrumentality or agency thereof, for the purpose of financing its activities;
- P. To adopt financial and investment policies for the Agency; and

Q. To take all actions necessary or appropriate to carry out and implement the provisions of this Agreement, and more specifically, Article 6, Scope of Services.

**3.3 Spending Authority.** The Agency is limited in its spending authority to the annual total budget recommended by the Agency Board and approved by the Parties. Annual expenditures shall not exceed revenues, including any reserve funds, as approved by the Agency Board. The Agency Board shall adhere to generally accepted accounting principles and state law.

**3.4 Participating Agencies.** A municipality, fire protection district or metropolitan district within El Paso County may become a member of the Agency effective upon the execution of an intergovernmental agreement between the Agency and the municipality, fire protection or metropolitan district (a "Participating Agency"). The rights and obligations of a Participating Agency and its relationship with the Agency shall be set forth in the intergovernmental agreement.

## **ARTICLE FOUR PERSONNEL**

**4.1 Intent of the Parties.** It is the expressed intent and objective of the Parties that the Agency should utilize the present personnel resources of the Parties, and not employ its own personnel. The use of such presently existing personnel shall be by appropriate arrangement of the Agency and the Parties.

**4.2 Employment Status.** The Agency shall not hire, retain or contract with any person who is an agent, employee, director, officer, member, principal, partner (general or limited), stockholder, contractor of the Ambulance Contractor and/or who has any type of financial interest of whatsoever kind or nature in the Ambulance Contractor. The foregoing provisions do not prohibit the Agency, by and through its fee system with said contractor, from receiving funding from the Agency for purposes of providing compensation and benefits to any employee of the Agency. The Agency shall be solely responsible for establishing personnel policies, rules and regulations for its employees, in accordance with this Agreement. Any liability or other financial obligation incurred or caused by the Agency, its Board, officers, agents or employees, shall be exclusively the responsibility of the Agency.

**4.3 Compliance with Law.** The Agency shall comply with all applicable federal, state and local law relating to employment standards and practices, including those pertaining to equal employment opportunity and nondiscrimination. The Agency shall maintain such levels of workers' compensation coverage as mandated by state law.

**4.4 Indemnification.** The Agency shall, to the extent permitted and within the limitations of the Colorado Governmental Immunity Act, indemnify and defend each director, officer, and employee of the Agency in connection with any claim or actual or threatened suit, action, or proceeding in which he or she may be involved in his or her official capacity by reason of his or her being or having been such director, officer, or employee, or by reason of any action or omission by him or her in any such capacity.

**4.5 Conflicts of Interest.** All directors, officers and employees of the Agency shall comply with the provisions of Title 24, Article 18, Parts 1 and 2, of the Colorado Revised Statutes.

## **ARTICLE FIVE**

## **BUDGETS/FUNDING/DEBT**

**5.1 Annual Budget.** No later than August 15 of each year, the Agency shall notify the Parties of any anticipated contribution by the Parties for the next year, including any proposed change in the level of service to be provided by the Agency for the next fiscal year. No later than October 1 of each year, the Agency Board shall prepare a proposed recommended annual budget for the next fiscal year and shall submit a copy of the same to the Parties for their review and approval by City Council and the Board of County Commissioners, the review and approval of which shall occur no later than December 15 of the relevant year for the following fiscal year. The proposed annual budget shall be balanced, shall conform with the requirements of the Local Government Budget Law of Colorado, C.R.S. §§29-1-101, et seq., and shall include, at a minimum, a detailed estimate of all proposed expenditures, anticipated revenues, and an estimate of the contributions, if any, to be made by the Parties. The proposed annual budget shall contain a statement of the level of service the Agency anticipates it will provide for the next fiscal year and shall identify any change in the level of service from the preceding year. Such budget shall be submitted to both the City of Colorado Springs and the County on such forms as each may prescribe. The submission should be made to each Party's budget office, where final approval of the Agency's budget shall be by the City Council of Colorado Springs and the Board of County Commissioners of El Paso County during their respective budget process.

**5.2 Parties' Contributions.** The monetary amount of the Parties' contributions shall be based on the level of service to be provided to each Party and a cost-benefit analysis as prepared by the Agency. If either Party disapproves of its requested contribution, for whatever reason, such Party shall notify in writing the other Party and the Agency of such disapproval on or before November 1. If the Agency and the Parties cannot agree on the recommended contribution by December 1, then the budget of the Agency for the next year shall be the prior years' operating budget plus an amount for inflation, as determined by such increase, if any, from the prior calendar year based on Article X, Section 20, of the Colorado Constitution, and the Parties' respective contributions, as adjusted for inflation, shall remain the same as in the prior year. Any party dissatisfied with the Agency's adopted budget pursuant to this subsection shall have the right to terminate its participation in this Agreement pursuant to Article 7, Termination.

**5.3 Supplemental Contributions.** In the event of an unforeseen or unanticipated event, which results in the need for additional funds, the Agency Board shall prepare a supplemental or amended budget and present a request for supplemental contributions to the Parties for their consideration. Any supplemental contribution request must be accompanied by documentation of the need for such request, options, and the impact of not funding said request.

**5.4 Payment of Annual Contributions.** If the Parties approve a budget that requires each Party to provide a monetary contribution to the Agency, each Party agrees to remit to the Agency quarterly, in advance, its allocated one quarter (1/4) share of the total estimated annual costs and expenses of the Agency. The Agency Board is authorized to approve other arrangements for payments by the City and the County.

**5.5 Books and Records.** The Agency shall provide for the keeping of accurate and correct books of account on an accrual basis in accordance with the Local Government Uniform Accounting Law, C.R.S. §§29-1-501, et seq., and generally accepted government accounting principles, showing in detail the capital costs, costs of special services, maintenance and operating costs, and all financial transactions of the Agency. The Agency's books of account shall correctly show any and all revenues, costs, expenses, or charges paid from or to be paid

by funds obtained from federal or state sources, each of the Parties contributions, private contributions, or revenue generated by the Agency's activities. The Agency's books and records shall be open to inspection upon reasonable notice during normal business hours to the Parties. The Agency Board shall provide for the auditing of all books and accounts and other financial records of the Agency on an annual basis in accordance with the Colorado Local Government Audit Law, C.R.S. §§29-1-601, et seq., by an independent Certified Public Accountant selected by the Agency Board. The audit shall be presented to the Parties no later than thirty (30) days after receipt of the audit report by the Agency Board.

**5.6 Annual Appropriation of Funds.** Notwithstanding anything in this Agreement to the contrary, financial obligations of the City and the County, respectively, to make payments to the Agency are expressly contingent upon funds for the intended purposes herein being appropriated, budgeted, and otherwise made available. In the event that funds are not appropriated, in whole or in part, sufficient for performance of either of the Parties' obligations under this Agreement, or appropriated funds may not be expended due to a Party's spending limitation, either under Article X, Section 20, of the Colorado Constitution or the City's Charter, as may be applicable, then the non-funding Party may terminate its participation in this Agreement, and such termination shall not be deemed a default or breach of this Agreement by such Party. This subsection 5.6 shall control and supersede all other provisions of this Agreement inconsistent therewith. It is the intention of the Parties that the annual appropriation requirements set forth in this Agreement shall bring this Agreement and any renewals into compliance with Article X, Section 20, of the Colorado Constitution and the applicable City Charter's provisions.

**5.7 Debt of the Parties.** To the extent the City and/or the County incur debt to support their contribution to the Agency, such debt shall remain exclusively a debt of either or both the City or the County, as the case may be, and shall not be the responsibility of the Agency.

## **ARTICLE SIX SCOPE OF SERVICES**

**6.1 Enumerated Services.** Except as otherwise limited by this Agreement, the Agency is established for the primary purpose of providing available coordinated and quality ground emergency ambulance services, together with such other services which are incidental and/or necessary thereto, for the service area of the Agency, including but not limited to the following. Notwithstanding any provisions that may be interpreted to the contrary, the Parties agree that these Scope of Services shall only apply to emergency or 911 related services. Under no circumstances shall non-emergency or non-911 related services be subject to the direction or control of the Agency, its Board or any employee, agent or contractor.

- A. Development and implementation of a ground emergency ambulance service provider system which will best serve the pre-hospital needs of the Agency Service Area, taking into consideration sole source, "failsafe franchise", and other similar systems which do not require local government subsidies.
- B. Development and implementation of ground emergency ambulance service criteria and standards, including by way of example only, performance standards, levels of service and delivery, required response times, financial oversight, and remedies of non-performance.

- C. Preparation and letting of a request for proposal(s) for a ground emergency ambulance service provider system consistent with this Agreement, at such frequency as deemed necessary and desirable by the Agency Board and the Parties, which will allow for and encourage open and competitive participation by all interested ambulance service providers.
- D. Evaluation and recommendation of any proposals obtained through the procurement set forth above for a ground emergency ambulance service provider system. Any contract, including, but not limited to, any amendment, extension or modification thereto, for ambulance services shall be subject to final approval by both the City Council and the Board of County Commissioners.
- E. Consideration and evaluation of the utilization of the Parties' current ground emergency ambulance services in lieu of, or as a supplement/addition to, the ambulance services to be provided.
- F. Submittal to the Parties of any recommended changes to state and local laws, rules and regulations governing the provision of ambulance services and the licensing of ambulance personnel, vehicles and services.
- G. Coordination with the public and other interested State and local governmental entities.
- H. Periodic status reports to the Parties.
- I. Public education and information.
- J. Development and implementation of incidental and/or necessary services related to the foregoing, including but not limited to, standardized data reporting and communications notification systems.

**6.2 Professional, Administrative and Support Services.** The Agency may enter into additional Agreements with the Parties for the purpose of securing any necessary professional, administrative and support services in accordance with this Agreement.

**6.3 Withholding Services.** Except as otherwise provided in this Agreement, the Agency, acting through its Board, may not withhold services from any portion of the Agency Service Area.

**6.4 Additional Services.** In conjunction with or subsequent to the implementation of the enumerated services set forth in subsection 6.1, the Agency Board may recommend to the Parties the development and implementation of additional emergency medical services. Any such recommendation shall provide, in detail and at a minimum, a descriptive narrative of the additional services being proposed, a work program and implementation schedule, the justification and public necessity for the same, other available options, a cost-benefit analysis both to the public and each of the Parties, and a financing plan. The Agency shall not have the authority to provide such additional emergency services without the written approval of both Parties; which mutual approval shall be by amendment to this Agreement prescribing any conditions, restrictions and limitations to the Agency Board's exercise thereof. Any amendment to this Agreement concerning the provision of the additional emergency services shall, at a

minimum, address the Parties' composite representation on the Agency Board, and the Parties' level of funding or contributions regarding such additional emergency services.

## **ARTICLE SEVEN TERMINATION**

**7.1 Termination by Notice.** This Agreement or any renewals thereof may be terminated by either of the Parties, provided that:

- A. The Party intending to terminate this Agreement provides, unless otherwise provided herein, at least six (6) months written notice to the other Party; and
- B. The effective date of termination shall be on December 31 of any calendar year, provided said termination shall be no sooner than six (6) months after service of the written notice of termination, and except that the Agreement may not be terminated so long as the Agency has financial indebtedness or other obligations outstanding, unless provision for full payment thereof by escrow or otherwise has been made pursuant to the terms of such financial indebtedness or obligations.

**7.2 Prior Appropriation of Funds.** The Parties agree that if funds are appropriated by either Party for the services being provided by the Agency, such funds will be contributed to the Agency as provided herein during the notice of termination period.

**7.3 Assets and Contributions.** After notice of termination, the Parties thereafter agree to negotiate a division of assets based upon the following guidelines:

- A. The Parties intend that such division of assets, to the extent possible, will ensure that each Party retains viable and adequate emergency service capabilities and will return each Party to the position such Party would have been in had the Agency not been created.
- B. Upon termination, those assets which were contributed by the Parties shall be returned to the contributing Party unless provided for differently in this Agreement or other written agreement by the Parties.
- C. Any other assets remaining upon termination of the Agency, after the payment of lawful debts and other encumbrances on the assets, shall be apportioned to the Parties in the quantity and to the extent of the percentage share of each of the Parties' contributions for the preceding fiscal year.

**7.4 Wind-up and Liquidation.** In the event of termination of this Agreement, the Agency Board shall wind-up and liquidate the assets of the Agency. In addition, any debts of the Agency shall not constitute debt or financial obligation or become the responsibility of the Parties. The Parties agree that during the notice of termination period, the Agency will continue to provide those services then being provided by the Agency in accordance with this Agreement.

**7.5 Non-Appropriation of Funds.** To the extent possible, the provisions of this Article 7 shall govern a Party's non-appropriation of funds as set forth in subsection 5.6, Annual Appropriation of Funds.

**ARTICLE EIGHT  
MISCELLANEOUS PROVISIONS**

**8.1 Notices.** Any notice required hereunder shall be given in writing and shall be sufficient if deposited in the United States Mail, postage prepaid, to:

County: Chairperson, Board of County Commissioners  
27 East Vermijo Avenue  
Colorado Springs, CO 80903

With a copy also provide to the Administrative Services Director at the above address.

City: Mayor, City of Colorado Springs  
P.O. Box 1575  
Colorado Springs, CO 80910-1575

With a copy also provided to the City Manager at the above address.

**8.2 Consent.** Whenever any provision of this agreement requires consent or approval of the Parties hereto, the same shall not be unreasonably withheld.

**8.3 Amendments.** No alterations, amendments or modifications hereof shall be valid unless executed by an instrument in writing by the Parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by an instrument in writing, and no prior, contemporary, or subsequent oral agreement shall have any validity whatsoever.

**8.4 Severability.** If any clause or provision herein contained shall be adjudged to be insubstantial and invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

**8.5 Binding Effect.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**8.6 Assignment and Delegation.** Neither Party shall assign any of the rights, nor delegate any of the duties, created by this Agreement without the written consent of the other Party.

**8.7 Parties in Interest.** Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person other than the Parties, any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the Parties. This Agreement shall not be construed to create a duty as a matter of law or contract for the provision of emergency services in the City or the County by either the Agency or the Parties, nor shall this Agreement be construed as creating a benefit enforceable for any person. Nor shall this Agreement be construed to create a duty as a matter of law or contract for any of the Parties or the Agency to assume any liability for injury, property damage, or any other damage that may occur by any action or nonaction taken, or service provided to the public or any person, as result of this Agreement.

**8.8 No Personal Liability of Party Officials.** No covenant or agreement contained in this Agreement or any formal action of the Agency Board shall be deemed to be a covenant or agreement of any elected or appointed official, officer, agent, servant or employee of any Party in his or her individual capacity.

**8.9 Governing Law.** This Agreement shall be subject to and shall be interpreted under the laws of the State of Colorado and the Parties' various Charters, Codes, Ordinances, Resolutions, and Rules and Regulations. Court jurisdiction shall be exclusively in the District Court for El Paso County, Colorado.

**8.10 Paragraph Headings.** The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

**8.11 Singular and Plural.** Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

BY:

  
Robert C. Bahnd 5/26/09  
County Clerk & Recorder Date

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

BY:

Jim Bonney 5/26/09  
Chairman Date

ATTEST:

BY:

\_\_\_\_\_  
City Clerk Date

BY:

\_\_\_\_\_  
Mayor Date

APPROVED AS TO FORM:

BY:

\_\_\_\_\_  
City Attorney Date

APPROVED AS TO FORM:

BY:

Chris Lewis 5/27/09  
County Attorney Date