

INTERGOVERNMENTAL AGREEMENT
Urban Area Security Initiative
City of Brighton
500 South 4th Ave.
Brighton, Colorado 80504
MOOEM-201952164

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“Denver”) and City of Brighton, located at 500 South 4th Ave. Brighton, Colorado 80504 (“Agency”).

RECITALS

- A. In 2002, the Homeland Security Act established the Homeland Security Grant Program. Denver has been identified as an eligible candidate of the Urban Area Security Initiative (“UASI”) program since the 2003 funding cycle.
- B. Denver’s continued eligibility has been determined through an analysis of relative risk to terrorism faced by the 100 most populous Metropolitan Statistical Areas (“MSAs”) in the United States. Federal guidance mandates award by the state to the designated local recipient identified in congressional appropriations.
- C. The purpose of the UASI program is to assist high-threat, high-density Urban Areas in efforts to build, sustain, and deliver the capabilities necessary to prevent, protect against, mitigate, respond to, and recover from acts of terrorism. UASI funding can be used to enhance preparedness for other catastrophic events, e.g., hurricanes and wildfires as long as such use of the funds has a nexus to preventing, preparing for, protecting against, and responding to terrorism.
- D. Participation in the UASI program requires that all parties fully implement the National Incident Management System (“NIMS”) and National Preparedness Doctrine to include development across the Core Capabilities as defined by FEMA’s National Preparedness Goal of 2015 or future iterations thereof.
- E. The U.S. Department of Homeland Security (DHS) requires high-risk Urban Areas to complete a Threat and Hazard Identification Risk Assessment (“THIRA”) every three years and Stakeholder Preparedness Review (SPR) annually and to prioritize grant funding to support closing capability gaps identified in this process.
- F. Agencies entering into this Agreement are considered by Denver as project awardees.

NOW, THEREFORE, the parties hereby agree as follows:

1. The Recitals are hereby expressly incorporated into this Agreement.

2. PURPOSE

The purpose of this Agreement is to provide for the distribution of UASI grant funds for

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

3. DEFINITIONS.

- a. *Capability and Capabilities* refer to the Core Capabilities across 5 mission areas defined by FEMA's National Preparedness Goal of 2015 or future iterations thereof.
- b. *Core City* is defined by the UASI grants as the City and County of Denver.
- c. *Core County* is defined by the UASI grants as the City and County of Denver.
- d. All references to *Grant Agreement(s)* or *grant agreement(s)* means the Colorado Department of Public Safety, Division of Homeland Security and Emergency Management ("DHSEM") Agreement between Denver and the Colorado Department of Public Safety, including amendments thereto, and any earlier and later agreements, through which U.S. DHS UASI grants were or are passed through from the State to Denver that are used to fund this Agreement.
- e. *Incident* or *Incidents* mean emergencies resulting from man-made, technological or natural hazards or threats including all terrorist attacks involving chemical, biological, radiological, nuclear, explosive (CBRNE), incendiary, electromagnetic, or cyber weapons.
- f. *Include, includes, and including* are to be read as if followed by the words "without limitation" unless specifically qualified by words of limitation.
- g. *Fiscal Risk Assessment* refers to a document completed by the Project Awardee that is used by the City and County of Denver to determine if the Project Awardee has the financial and administrative ability to maintain and support any goods and services they may receive through the UASI grant process.
- h. *Mission Area(s)* are defined by national Preparedness Goal 2015 as Protection, Prevention, Mitigation, Response, and Recovery.

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- i. *Party* and *parties*, regardless of whether capitalized, refer only to the named parties to this Agreement.
- j. *POETE* means Planning, Organization, Equipment, Training and Exercise activities.
- k. *Project Awardee* means a North Central All-Hazards Region Jurisdiction or Agency that receives a subaward from the Denver UASI program to carry out part of this program.
- l. *SPR* means Stakeholder Preparedness Review as defined by Comprehensive Preparedness Guide 201 version 3 published in May 2017 or future iterations thereof.
- m. *State* means the State of Colorado.
- n. *State Administrative Agency Point of Contact* means the person designated by the Governor of the State of Colorado to be responsible for the management of the UASI program or such other person of the State agency, department, or division duly designated by the State.
- o. *TEPW* as defined by the Colorado Division of Homeland Security and Emergency Management is the Training and Exercise Plan Workshop.
- p. *THIRA* means Threat and Hazard Identification and Risk Assessment as defined by Comprehensive Preparedness Guide 201 version 3 published in May 2017 or future versions thereof.
- q. *UASI* means Urban Area Security Initiative.
- r. *U.S. DHS* means the United States Department of Homeland Security.
- s. *Urban Area* means the City and County of Denver and surrounding governmental and quasi-governmental jurisdictions that provide homeland security, emergency management, or capabilities defined under the National Preparedness Goal.

4. ROLES AND RESPONSIBILITIES.

- a. Denver, as the Core City and County of the UASI program, within the State of Colorado:
 - i. Is the fiscal agent and fiduciary authority of the UASI program award, and thereby solely responsible for ensuring compliance with 2 CFR 200

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- Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards Uniform Guidance issued by the Federal Office of Management and Budget (“OMB”), including review of fiscal risk on the Agency and determining eligibility for current and future UASI funding.

- ii. Shall serve as the sole procurement and coordination agency for goods and services provided under the UASI program, unless Denver determines a joint procurement and/or coordination process is beneficial for completing a UASI-funded activity. Procurement and/or coordination of goods and services shall be made in accordance with the budget and Denver’s own procurement laws, regulations, and policies.

b. Agency shall:

- i. Complete a Denver fiscal risk assessment prior to receiving UASI grant funded goods and services, if required.
- ii. Participate in the UASI THIRA/SPR process, including completion of provided forms and requests for information
- iii. Comply with all terms of each grant agreement and UASI grants from which it receives any goods and services, including reimbursement for any reason.
- iv. Make available for inspection and monitoring all goods provided by the UASI grant program and provide any related maintenance records or documentation.
- v. Concur that this Agreement does not warrant or guarantee entities will receive any specific amount of goods, services, or reimbursement. The Agency understands that it may receive goods, services, or reimbursement depending upon the approved budget and the Agency’s ability to take advantage of the goods and services in a timely manner.
- vi. Participate in UASI regional planning and inter-agency coordination activities.
- vii. Assign a project point of contact to act as the Agency representative for all aspects of any UASI funded goods and services that directly involve the Agency.

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- viii. Accept title to and/or delivery of goods at the place designated by the purchase order or contract, and assume the risk of loss, in accordance with the terms applicable to a particular shipment or delivery of equipment or other tangible goods.
- ix. Notify the UASI program staff upon receipt of goods and services, including providing any documentation requested by UASI staff and tagging equipment with UASI tags as provided for by the UASI program office.
- x. Accept goods or services provided to it under this Agreement; provided that the Agency shall retain all legal and equitable rights and remedies against a vendor, supplier, or manufacturer for non-conforming or defective goods or services.
- xi. Repair and maintain all equipment and other tangible goods provided to Agency under this Agreement in good working order for the reasonably expected life-cycle of such equipment and other tangible goods, ordinary use, wear and tear excepted, and to prevent them from becoming spoiled, deteriorated, defective, lost, stolen or obsolete.
- xii. Maintain all records on equipment and tangible goods that may be required by the terms of the UASI grant agreements, State and Federal laws, rules and regulations, or by Denver, including but not limited to maintenance records, depreciation schedules, physical location, and condition reports.
- xiii. Provide all supplemental documentation that may be required by Denver, including but not limited to completed inventory request forms as provided by the UASI, police reports for stolen equipment or goods, advanced written notification requesting permission to transfer, sell, or dispose of equipment or other tangible goods procured with UASI funds.
- xiv. Respond to Incidents utilizing the equipment and other tangible goods provided for, or reimbursed under this Agreement, including replacement of supplies and equipment acquired in accordance with this Agreement, and utilizing trained personnel as requested and reasonably available.
- xv. Participate in the annual UASI TEPW and complete requested documentation for the workshops.

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- xvi. Make its personnel and equipment or other tangible goods procured with funds from UASI grants reasonably available for training and exercise, and response to Incident based on requests from any UASI entity, the State, or U.S. DHS.
- xvii. Make its personnel, trained through UASI funded Train-the-Trainer courses, reasonably available to the region to provide additional trainings as requested.
- xviii. Test and train appropriate responsible persons, and participate in regional trainings and exercises, on use of equipment and other tangible goods in simulated exercises, including those done independently and through the Urban Area.

Funding activities:

- xix. Provide a cash match as agreed to in the Agency's submitted grant application(s). The Agency shall pay this amount directly to Denver, prior to Denver beginning procurement. The Agency will pay the match invoice within thirty (30) days of receipt of the invoice from Denver. Failure to pay within thirty (30) days of receiving the match invoice under this Agreement shall constitute a material breach of this Agreement.

- 5. **APPROPRIATIONS.** Denver's obligations under this Agreement or any renewal extend only to monies appropriated for the purpose of this Agreement by the Denver City Council, paid into Denver Treasury, and encumbered for the purposes of this Agreement. By execution of this Agreement, neither party irrevocably pledges present cash reserves for payments in future fiscal years and this Agreement does not, and is not intended to, create a multiple-fiscal year direct or indirect debt or financial obligation of either party. Denver's obligations under this Agreement are further limited to the funds made available pursuant to the UASI Grant and budget approved by the Urban Area Working Group for fulfilling the purposes of this Agreement.
- 6. **TAXES, CHARGES, AND PENALTIES.** Denver shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Denver's Revised Municipal Code.
- 7. **EXECUTIVE AND LIAISON.** Denver's point of contact for the UASI grants is the Executive Director of the Mayor's Office of Emergency Management and Homeland Security ("Director"), who will serve as Chair of the Urban Area Working Group. During the term of this Agreement, eligible entities shall fully coordinate all activities

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and obligations related to or arising out of this Agreement with Denver, including the Director, or as otherwise directed by Denver.

8. **TERM AND TERMINATION.** The term of the Agreement is from date of full execution and terminates on December 31, 2025. Denver may terminate this Agreement, or any part thereof, for the reasons and in the manner provided in any UASI Grant funding this Agreement.
9. **DISCLAIMER OF WARRANTIES.** **THE GOODS PROVIDED BY DENVER UNDER THIS AGREEMENT ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND FROM DENVER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY DENVER, ITS AFFILIATES, OR ITS CONTRACTORS, OR THEIR RESPECTIVE EMPLOYEES WILL CREATE ANY WARRANTY FROM DENVER. DENVER IS NOT RESPONSIBLE FOR ANY DEFECTS OR DAMAGES RESULTING FROM MISHANDLING, ABUSE, MISUSE, ACCIDENT, ELECTRICAL POWER SURGES OR CURRENT FLUCTUATIONS, FORCE MAJEURE EVENT, IMPROPER STORAGE OR OPERATION, INCLUDING USE IN CONJUNCTION WITH EQUIPMENT ELECTRICALLY OR MECHANICALLY INCOMPATIBLE WITH OR OF INFERIOR QUALITY TO THE SUPPLIED GOODS OR FAILURE TO MAINTAIN THE ENVIRONMENTAL CONDITIONS SPECIFIED BY THE MANUFACTURER OR LICENSOR. ANY WARRANTIES ASSOCIATES WITH THE GOODS ARE SOLELY THOSE PROVIDED BY THE MANUFACTURER OR SELLER OF THE GOODS DIRECTLY TO AGENCY.**
10. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event will performance by a party constitute or be construed to be a waiver by that party of any breach of term, covenant, or condition or any default that may then exist on the part of the other party, and the tender of any such performance when any breach or default exists (or is claimed to exist) impairs or prejudices any right or remedy available to the other party with respect to the breach or default. No assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of this Agreement is or may be construed to be a waiver of any succeeding or other breach.
11. **CONFLICT OF INTEREST.** No employee of either party has or may have any personal or beneficial interest whatsoever in the services or property described herein. The Agency shall not knowingly hire or contract for services with any employee or officer of Denver that would result in any violation of the Denver Revised Municipal

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Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.8, 1.2.9, 1.2.12.

- 12. STATUS OF PARTIES.** Neither party is an employee of the other; no officer, employee, agent or contractor of one party is an officer, employee, agent, or contractor of the other party for any purpose, including unemployment compensation and workers' compensation.
- 13. EXAMINATION OF RECORDS.** The Agency shall retain for at least three (3) years from the date of submission of the final expenditure report or until equipment has depreciated in value below \$5000.00, whichever is longer, all records related to this Agreement, including documentation and records for equipment, other tangible goods, funding, or services provided for under this Agreement and expenses incurred arising out of this Agreement. Any duly authorized representative of the federal government, state government or Denver, including Denver's Auditor or his representative have upon reasonable notice access to and the right to examine any directly pertinent books, documents, papers and records of entities related to this Agreement, until the expiration of three (3) years after the end of the State of Colorado fiscal year that includes the end of the UASI grant agreement(s). In the event any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three-year period, the Agency shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the three-year period, whichever is later.
- 14. ASSIGNMENT AND SUBCONTRACTING.** Agency covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Executive Director of the Office of Emergency Management. Any attempts by Agency to assign or transfer its rights hereunder without such prior written consent of the Executive Director shall, at the option of said Executive Director, automatically terminate this Agreement and all rights of Agency hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Executive Director. A change in control of Agency shall not constitute an assignment hereunder.
- 15. NO THIRD-PARTY BENEFICIARY.** The enforcement of this Agreement, and all rights of action relating to enforcement, are strictly reserved to the parties. Nothing in this Agreement gives or allows any claim or right of action by any person or other entity on this Agreement, including subcontractors and suppliers. Any person who or other entity other than the parties that receives services or benefits under this Agreement is an incidental beneficiary only.
- 16. GOVERNING LAW; VENUE.** Each term, provision, and condition of this Agreement is subject to the provisions of Colorado law, the Charter of the City and County of Denver, and the ordinances, and regulations enacted pursuant thereto.

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Unless otherwise specified, any general or specific reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders (including memoranda thereto), or contracts, means statutes, laws, regulations, charter or code provisions, ordinances, and executive orders (including memoranda thereto) and contract as amended or supplemented from time to time and any corresponding provisions of successor statutes, laws, regulations, charter or code provisions, ordinances, or executive orders (including memoranda thereto) and contracts. Venue for any legal action relating to or arising out of this Agreement will be in the District Court of the Second Judicial District of the State of Colorado.

- 17. SEVERABILITY.** Except for the provisions of this Agreement requiring appropriation of funds, if a court of competent jurisdiction finds any provision of this Agreement or any portion thereof to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.
- 18. PARAGRAPH HEADINGS.** The captions and headings set forth in this Agreement are for convenience of reference only and do neither define nor limit its terms and may not be construed to do so.
- 19. SURVIVAL OF CERTAIN PROVISIONS.** The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Agency's obligations to indemnify Denver, shall to the extent permitted by law, survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
- 20. NOTICES.** Notices concerning termination of this Agreement, alleged or actual, violation(s) of the terms or conditions of this Agreement, and notices of similar importance, as well as bills, invoices, or reports required under this Agreement, must be mailed by United States mail, postage prepaid, if to the Agency at its address written above, and if to Denver at the addresses listed below. Notices must be delivered by prepaid U.S. mail and become effective three (3) days after deposit with the U.S. Postal Service. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but these substitutions are not effective until actual receipt of written notification.

City and County of Denver
Mayor's Office of Emergency Management

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101 W Colfax Ave. 7th Floor
Denver, Colorado 80202
Attn: UASI Program Manager

With copies of termination and violation notices to:

Office of the Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

- 21. COLORADO GOVERNMENTAL IMMUNITY ACT:** Neither party shall have any liability or responsibility to anyone for any act or omission of the other. Each party will be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* Nothing in this Section or any other provision of this Agreement or any Exhibit shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City or Agency may have under the Colorado Governmental Immunity Act or to any other defenses, immunities, or limitations of liability available to the City or Contractor by law.
- 22. DISPUTES.** All disputes of any nature between Denver and the Agency regarding this Agreement will be resolved by the administrative hearings pursuant to Denver Revised Municipal Code 56-106(b)-(f). For purposes of that procedure, the Executive Director of the Office of Emergency Management is the Denver official to render a final determination.
- 23. ORDER OF PRECEDENCE.** In the event of any conflict between the terms contained in the numbered sections, including subparts to them, of this Agreement and those of any exhibit such that the full effect cannot be given to both or all provisions, then the terms contained in the numbered sections, including subparts to them, of this Agreement control.
- 24. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** This Agreement is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment has any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement.

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

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