



RESOLUTION NO. 20-420

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

**RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF EL PASO AND EL PASO COUNTY PUBLIC
HEALTH REGARDING THE CARES ACT LOCAL GOVERNMENT
DISTRUBUTIONS**

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1), 30-11-103 and 30-11-107(1), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board" or "County"), has the legislative authority to make all contracts and to exercise such other and further powers as are conferred by law; and

WHEREAS, C.R.S. § 29-1-203, provides authority for El Paso County to cooperate or contract with other governmental entities to provide any function, service or facility lawfully authorized to each of the cooperating or contracting government units, when deemed by the Board to be beneficial to the citizens of El Paso County; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak as a pandemic; and

WHEREAS, on March 11, 2020, the Governor of the State of Colorado, declared a State of Emergency by and through a verbal order and subsequent written Executive Order D 2020 003, allowing subsequent State emergency rulemaking regarding specific industries; and

WHEREAS, on March 13, 2020, the President of the United States declared the COVID-19 outbreak a national emergency; and

WHEREAS, on March 14, 2020, pursuant to C.R.S. § 24-33.5-709(1), the Chair of the El Paso County Board of County Commissioners issued a Local Disaster Declaration for El Paso County which was ratified by the Board on March 19, 2020; and

WHEREAS, the Board approved subsequent extensions of the Local Disaster Declaration effective up to and including December 31, 2020; and

WHEREAS, on March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, Div. A, Title V (the "CARES Act"), which established a \$150 billion Coronavirus Relief Fund (the "Fund"); and

WHEREAS, pursuant to the CARES Act, the United States Treasury ("Treasury")

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will make payments from the Fund to States and eligible units of local government; and

WHEREAS, El Paso County has a population in excess of 500,000 people and therefore is an eligible unit of local government under the CARES Act, and, as a result, the County may request direct payments from the Treasury of its portion of the Fund; and

WHEREAS, El Paso County elected to request direct payment of its share of the Fund from the Treasury on April 15, 2020, and on April 23, 2020, El Paso County received its CARES Act Funds from the Treasury; and

WHEREAS, Public Health is a governmental entity with authority to provide resources and services to citizens contemplated under the CARES Act as a result of public health emergencies within its respective boundaries; and

WHEREAS, the County and Public Health agree that Public Health's share of the CARES Act Fund shall be \$4,400,000.00, pursuant and subject to the terms of this Intergovernmental Agreement ("IGA"), attached hereto as Exhibit 1; and

WHEREAS, it is necessary that this IGA be approved by the Board in order to effectuate the transaction described herein.

NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby approves the Intergovernmental Agreement between the County of El Paso and Public Health regarding the CARES Act Fund.

BE IT FURTHER RESOLVED, that Mark Waller, Chair of the Board of County Commissioners, or Longinos Gonzalez, Jr., be and is hereby appointed and authorized to execute all reasonable and necessary documents on behalf of the Board in order to complete the transaction described herein.

DONE THIS 8th day of December, 2020, at Colorado Springs, Colorado.

ATTEST:

By:

Chuck Grodzinski, 1861
El Paso County Clerk and Recorder



BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By:

Mark Waller, Chair

**INTERGOVERNMENTAL AGREEMENT
CARES ACT LOCAL GOVERNMENT DISTRIBUTIONS**

THIS INTERGOVERNMENTAL AGREEMENT – EL PASO COUNTY PUBLIC HEALTH DEPARTMENT CAREs ACT DISTRIBUTION (the "Agreement"), dated for reference purposes only this _____ day of _____, 2020, is made by and between the COUNTY OF EL PASO, STATE OF COLORADO, a body politic and corporate (the "County") and EL PASO COUNTY PUBLIC HEALTH] ("Public Health"). The County and Public Health shall be referred to herein individually as a "Party" and collectively as the "Parties."

I. RECITALS

- A. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak as a pandemic; and
- B. On March 11, 2020, the Governor of the State of Colorado, Jared Polis, declared a State of Emergency by and through a verbal order and subsequent written Executive Order D 2020 003, allowing subsequent State emergency rulemaking regarding specific industries; and
- C. On March 13, 2020, the President of the United States declared the COVID-19 outbreak a national emergency; and
- D. On March 14, 2020, pursuant to C.R.S. § 24-33.5-709(1), El Paso County Board of County Commissioners Chair Mark Waller issued a Local Disaster Declaration; and
- E. On March 19, 2020, the El Paso County Board of County Commissioners ratified the Local Disaster Declaration for a period of 30 days; and
- F. On March 25, 2020, the El Paso County Board of Health declared a Public Health Emergency with respect to the presence of COVID-19 in El Paso County; and
- G. On March 28, 2020, President Trump approved Colorado's Disaster Declaration; and
- H. On April 14, 2020, El Paso County adopted a Resolution extending its previously issued Local Disaster Declaration for an additional 30 days; and
- I. On May 12, 2020, El Paso County adopted a Resolution extending its previously issued Local Disaster Declaration for an additional period of time, up to and including December 31, 2020; and
- J. The effect of a declaration of local disaster emergency is to activate the response and recovery aspects of any and all applicable local and interjurisdictional disaster and emergency plans and to authorize the furnishing of aid and assistance under such plans, as set forth in C.R.S. § 24-33.5-709(2);

and

- K. The conditions that spurred the local disaster emergency declaration have not abated, as the virus continues to spread within the community and has created a myriad of economic distresses and unanticipated costs in American society to individuals and families, to businesses, and to state and local governments addressing the pandemic's effects; and
- L. On March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, Div. A, Title V (the "CARES Act"), which established a \$150 billion Coronavirus Relief Fund (the "Fund"); and
- M. Pursuant to the CARES Act, the United States Treasury ("Treasury") will make payments from the Fund to States and eligible units of local government; and
- N. El Paso County has a population in excess of 500,000 people and therefore is an eligible unit of local government under the CARES Act, and, as a result, the County may request direct payments from the Treasury of its portion of the Fund; and
- O. El Paso County elected to request direct payment of its share of the Fund from the Treasury on April 15, 2020; and
- P. On April 23, 2020, El Paso County received its CARES Act Funds from the Treasury; and
- Q. Pursuant to Section 18(2) of Article XIV of the Colorado Constitution and C.R.S. § 29-1-203, as amended, Public Health and the County have the authority to enter into intergovernmental agreements and authorizes governments to cooperate by contracting with one another for their mutual benefit; and
- R. Public Health and the County are governmental entities, each with authority to provide resources and services to citizens contemplated under the CARES Act as a result of public health emergencies within their respective boundaries.

II. AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein contained, the Parties agree as follows:

1. The County's Funding. The County has requested and received its share of the Fund from the Treasury pursuant to the CARES Act. The County desires to distribute to Public Health within El Paso County a portion of the Fund as more particularly set forth herein.

2. Public Health's Share of the Fund. The County and Public Health hereby agree that Public Health's share of the Fund shall be \$4,400,000 ("Public Health Distribution Amount").
3. Fund Distribution. El Paso County shall distribute to Public Health the full amount by September 30, 2020.
4. Public Health's Obligation. By signing this Agreement, Public Health hereby certifies that the Public Health Distribution Amount will be used by Public Health only to cover those costs and expenses that are eligible expenses in compliance with the CARES Act. and:
 - a. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
 - b. were not accounted for in the budget most recently approved as of March 27, 2020, for Public Health; and
 - c. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (collectively "Eligible Expenses").
5. Use of Funds and Reporting.
 - a. Use of Funds. On or before December 30, 2020, Public Health shall use the Public Health Distribution Amount for Eligible Expenses in accordance with local, state and federal law, including all current and future Treasury guidance relating to the CARES Act. Because the CARES Act is recent legislation, the Parties anticipate that additional federal legislation, rules, and regulations may be promulgated regarding the expenditure and accounting requirements. All such laws, regulations, and guidance shall be collectively referred to as the "Cares Act Requirements." Further, as detailed in in Section 5.e below, Public Health agrees to return to the County by December 20, 2020, any amount it reasonably anticipates will be unused as of December 30, 2020, and it agrees to return to the federal government all unused amounts of the Public Health Distribution Amount in its possession as of December 30, 2020.
 - b. Expenditures and Accounting. The CARES Act imposes expenditure and accounting obligations upon local governments receiving CARES Act funds. Public Health is responsible for ensuring that it spends,

documents, and accounts for its portion of the CARES Act Fund received from the County in strict compliance with the CARES Act Requirements. Further, to the extent permitted by the CARES Act, if Public Health distributes CARES Act Funds to a separate entity, enterprise, agency, or any other public, private, or non-profit entity ("Third-Party"), Public Health is responsible for itself and the Third-Party meeting all Cares Act Requirements and the provisions in this Agreement. Public Health agrees to familiarize itself with all provisions of the CARES Act Requirements.

Public Health shall:

- 1) maintain an effective system of internal fiscal control and accountability for all CARES Act Funds and property acquired or improved with CARES Act Funds, and make sure the same are used solely for authorized purposes.
- 2) keep a continuing record of all disbursements by date, check number, amount, vendor, description of items purchased and line item from which the money was expended, as reflected in Public Health's accounting records.
- 3) maintain payroll, financial, and expense reimbursement records for a period of five (5) years after receipt of final payment under this Agreement.
- 4) permit inspection and audit of its records with respect to all matters authorized by this Agreement by representatives of the County or Federal Government at any time during normal business hours and as often as necessary.
- 5) inform the County concerning any funds allocated to Public Health that Public Health anticipates will not be expended during the term of this Agreement and permit the reassignment of the same by the County to other Subrecipients.
- 6) maintain complete records concerning the receipt and use of all CARES Act Funds.

c. Reporting. The Parties anticipate that the Office of Inspector General ("OIG") will audit the use of CARES Act Funds beginning in January 2021 or thereafter. In anticipation of the upcoming audit, Public Health agrees to provide to the County regular reporting of its use of the Public Health's Distribution Amount, including the following minimum requirements:

- 1) As per regular practices, El Paso County Financial Services will provide all financial support for Public Health in regards to spending of these funds. This includes issuing purchase orders, vendor payments, payroll, and reporting.
- 2) On or before January 20, 2021, Public Health shall review its records and ensure that the submitted records contain a complete record of all expenditures from the Public Health

Distribution Amount, including, but not limited to, date of expenditure, amount, vendor, description of expense, explanation of expense's connection to COVID-19.

3) The County will monitor the performance of Public Health against activities, goals and performance standards as required in the CARES Act and US Treasury requirements. In-house report monitoring will be conducted. Substandard performance as determined by the County will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by Public Health within a reasonable period of time after being notified by the County, suspension or termination procedures will be initiated.

4) If the federal government imposes additional documentation requirements on the County, Public Health agrees to timely provide to the County all information and documentation necessary for the County's compliance with such requirements as related to the Public Health Distribution Amount. Public Health acknowledges and agrees that the expenses submitted will only be submitted for CARES Act funding and will not be submitted for reimbursement or as expenses under any other federal government program, including but not limited to FEMA or another aid program regardless of its source.

5) None of the reporting requirements herein are intended to shift the responsibility of Public Health for ensuring that each dollar of its Public Health Distribution Amount is spent in compliance with CARES Act Guidance. The County will monitor Public Health spending and requires the above reporting to ensure the County has sufficient documentation for the OIG audit. In the event the OIG determines that Public Health spent any amount of its Public Health Distribution Amount on ineligible expenses, Public Health is solely responsible for any repayment of those funds to the Treasury.

6) The County may pursue such remedies as are available to it in accordance with US Treasury Guidance, including but not limited to suspension or termination of this Agreement, if Public Health materially fails to comply with any terms or conditions of this Agreement, which include, but are not limited to, the following:

- a). Failure to comply with any CARES Act Requirements, including any amendments or future guidance;

- b) Failure, for any reason, of Public Health to fulfill in a timely and proper manner its obligations under this Agreement;
 - c) Ineffective or improper use of funds provided under this Agreement;
 - d) Submission by Public Health to the County reports that are incorrect or incomplete in any material respect; or
 - e) Failure to take satisfactory corrective action as directed by the County.
- d. Audit. Public Health also agrees to fully and completely cooperate with the County and OIG in any audit of the CARES Act funding provided to Public Health pursuant to this Agreement. Public Health will be solely responsible for any and all audit costs, reimbursements, fines, fees, administrative costs, attorneys' fees resulting from Public Health's alleged use of CARES Act funding for any ineligible expense. This responsibility is in place regardless of whether directly incurred by Public Health or the County.
- e. Return of Unused Funds. The Parties acknowledge that the CARES Act requires Public Health to return all Funds that have not been spent as of December 30, 2020. To ensure that the maximum amount of CARES Act Funds are expended by this deadline for the benefit of El Paso County residents and businesses, Public Health agrees to work with the County to determine whether any of its Public Health Distribution Amount will not be expended as of December 30, 2020. To ensure that the maximum amount of funds are utilized by the deadline, Public Health agrees to return to the County the amount of its anticipated unused funds on or before December 20, 2020 so those funds may be reallocated by the County for use to fund other Eligible Expenses before December 30, 2020. Any unreturned, unused amount of the Public Health Distribution Amount in Public Health's possession as of December 30, 2020 must be returned to the Treasury per the CARES Act Requirements.
- f. Non-Compliance. In the event Public Health fails to comply with any of the requirements of the CARES Act with respect to the Public Health Distribution Amount, the federal government may seek reimbursement of such funds. If the federal government seeks reimbursement of all or a portion of the Public Health Distribution Amount spent by Public Health, Public Health shall be solely responsible for reimbursing said funds to the federal government. In addition, in the event the federal government seeks reimbursement of funds spent by Public Health as contemplated in this Section from the County, the County has the right, but not the obligation, to reimburse those funds to the federal government on Public Health's behalf, and Public Health shall reimburse the County for such expenditure within 30 calendar days of payment by the County.

6. **Term.** This Agreement begins on the date of full execution by the Parties to this Agreement and shall expire on June 30, 2021. The Parties, however, acknowledge all continuing performance obligations, such as identified in Section 9.g below, that may extend beyond the term of this Agreement. Public Health agrees to execute an extension of this Agreement timely and in good faith as may be necessitated.
7. **Public Health's Responsibility.** Public Health agrees that in the event Public Health (or anyone acting on its behalf) fails to perform the terms of the Agreement or fails to use the Public Health Distribution Amount in compliance with Cares Act Requirements, Public Health will, to the extent permitted by law, pay for any actions, claims, lawsuits, damages, charges or judgments, including costs and reasonable attorneys' fees incurred by the County in the defense thereof. The Parties agree that this responsibility arises upon Public Health's failure to perform under the Agreement or Cares Act Requirements regardless of which is formally named in any claim, legal action, charge, or judgment and further agree that the responsibility serves a public purpose serving a common constituency.
8. **Informational Obligations.** Each Party hereto will meet its obligations as set forth in C.R.S. § 29-1-205, as amended, to include information about this Agreement in a filing with the Division of Local Government; however, failure to do so shall in no way affect the validity of this Agreement or the remedies available to the Parties hereunder.
9. **Miscellaneous Provisions.**
 - a. **Notice.**
 - 1) "Key Notices" under this Agreement are notices regarding any default, dispute, or changes in the notice address. Key Notices shall be given in writing and shall be deemed received if given by: (i) confirmed electronic transmission (as defined in subsection (2) below) when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission, (ii) certified mail, return receipt requested, postage prepaid, three (3) business days after being deposited in the United States mail, or (iii) overnight carrier service or personal delivery, when received. For Key Notices, the parties will follow up any electronic transmission with a hard copy of the communication by the means described in subsection a(1)(ii) or a(1)(iii) above. All other daily communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notices shall be sent to the

address or email below:

Notice to Public Health shall be delivered to:

El Paso County Public Health
Susan Wheelan, Public Health Director
1675 W. Garden of the Gods Rd., Suite 2044
Colorado Springs, CO 80907
Email: susanwheelan@elpasoco.com

With a copy to:

El Paso County Attorney's Office
Lori Seago, Sr. Asst. County Attorney
200 S. Cascade Ave., Suite 150
Colorado Springs, CO 80903
Email: loriseago@elpasoco.com

Notice to the County shall be delivered to:

El Paso County Administrator Amy Folsom
200 South Cascade
Colorado Springs, Colorado 80903
Email: amyfolsom@elpasoco.com

with a copy to:

El Paso County Attorney Diana K. May
200 South Cascade
Colorado Springs, Colorado 80903
Email: dianamay@elpasoco.com

Jason Jacobson, Grant Analyst
200 South Cascade
Colorado Springs, Colorado 80903
Email: jasonjacobson@elpasoco.com

- 2) The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. The parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic transmission as a defense in any proceeding or action in which the validity of such notice or

communication is at issue and hereby forever waive such defense. For purposes of this Agreement, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions or texts.

- b. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Public Health agrees that if the Treasury issues additional guidance, rules or regulations, Public Health will agree to those terms and execute an Amended Agreement, if necessary.
- c. Recitals. The paragraphs contained in the section entitled "Recitals," above, are a material and integral part of this Agreement.
- d. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in the District Court for El Paso County, Colorado. Should any third-party initiate action in another venue, such action does not modify the Parties' responsibilities under this Agreement.
- e. Governmental Immunities.
 - 1) The Parties hereto intend that nothing herein shall be deemed or construed as a waiver by either Party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., *et seq.*) as now or hereafter amended or otherwise available at law or equity.
 - 2) The Parties agree that in the event any claim or suit is brought against either or both Parties by any third party as a result of the operation of this Agreement, both Parties will cooperate with each other, and with the insuring entities of both Parties, in defending such claim or suit.
- f. Modifications. No modification of this Agreement shall be effective unless agreed to in writing by Public Health and the County in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

- g. Continued Performance. Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that may require continued performance or compliance beyond the termination date of this Agreement shall survive such termination date and shall be enforceable as provided herein in the event of a failure by a party to perform or to comply under this Agreement.
- h. Appropriation. Notwithstanding any other term, condition, or provision herein, each obligation of the Parties stated in this Agreement is subject to the requirement of a prior appropriation of funds therefor by the appropriate governing body of Public Health and/or the County.
- i. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Electronic or facsimile delivery of a fully executed copy of the signature pages below shall constitute an effective and binding execution of this Agreement.
- j. Severability. If any clause or provision herein contained shall be adjudged to be 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.
- k. Successors and Assigns. Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.
- l. No Third-Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
- m. Assignment. This Agreement may not be assigned by any Party without the prior written consent of the other Party.
- n. Authorization. The Parties hereto stipulate and represent that all procedures necessary to authorize the execution of this Agreement have been performed and that the persons signing for each Party have been authorized to do so.
- o. Electronic Signatures. The Parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24 71.3 101 to -121.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the most recent signatory.

**COUNTY OF EL PASO,
STATE OF COLORADO**

Date _____

By _____
Chair, Board of County Commissioners

Attest:

COUNTY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Federal I. D. # 84-6000764



[ASSISTANT] COUNTY ATTORNEY

EL PASO COUNTY PUBLIC HEALTH

Date November 24, 2020

By 

Federal I. D. # 84-0609819

Title: Public Health Director