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Chuck Broerman
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RESOLUTION NO. 18-390

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

RESOLUTION TO APPROVE SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FOUNTAIN, COLORADO AND EL PASO COUNTY, COLORADO REGARDING THE EL PASO COUNTY EMERGENCY SERVICES AUTHORITY

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1)(e) and 30-11-107(1)(e), the Board of County Commissioners of the County of El Paso, State of Colorado (hereinafter "Board"), has the legislative authority to represent the County and manage the business and concerns of the County; and

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 "BoCC"), has the express statutory authority, pursuant to C.R.S. §30-11-107(1)(q), to "organize, own, operate, control, direct, manage, contract for, or furnish ambulance services"; and

WHEREAS, the BoCC 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 BoCC entered into an intergovernmental agreement with the City of Fountain on April 1st, 2014 which created a separate public entity, the El Paso County Emergency Services Authority for purposes of ensuring a coordinated effective and efficient emergency management system, including the provision of ground emergency ambulance services through a contract, and this IGA was amended for the first time on June 24th, 2014; and

WHEREAS, the ESA now desires to amend the IGA to decrease the size of the ESA Board, allow for alternate board members for the Emergency Room Physician Representatives, allow more flexibility in meeting schedules, and update the scope of the ESA Board to allow for inclusion of non-emergency pre-hospital community needs; and

WHEREAS, the ESA Board recommended approval of these amendments at its regularly scheduled meeting on August 1, 2018, and the City of Fountain approved these amendments at its meeting scheduled on August 14th, 2018; and

WHEREAS, the BoCC deems that it is in the best interests of the public health, safety, convenience and welfare to continue providing ground emergency ambulance services and finds these amendments to be in furtherance thereof.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of El Paso County, Colorado, that the attached Second Amended and Restated Intergovernmental Agreement Regarding the El Paso County Emergency Services Authority, including its Appendix A, are hereby approved and ratified.

DONE THIS 23 day of October, 2018 at Colorado Springs, Colorado.

ATTEST:

By: Chuck Broerman,
County Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

By: Darryl Glenn,
President

RESOLUTION 18-044

SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT REGARDING THE EL PASO COUNTY EMERGENCY SERVICES AUTHORITY

THIS SECOND AMENDED INTERGOVERNMENTAL AGREEMENT, ("Second Amended Agreement") is entered into by and between the CITY OF FOUNTAIN, a Colorado home rule city and municipal corporation ("Fountain"), and EL PASO COUNTY, STATE OF COLORADO ("County"), collectively referred to as the "Parties" with an effective date of 23 Oct 18

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 services (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 ("BoCC"), has the express statutory authority, pursuant to C.R.S. §30-11-107(1)(q), to "organize, own, operate, control, direct, manage, contract for, or furnish ambulance services"; and

WHEREAS, the BoCC 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, Fountain, 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 City Code provisions, and the applicable state statutes referenced above and Title 31 C.R.S.; and

WHEREAS, more specifically Fountain 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, the Parties acknowledge that Fountain operates its own ambulance service through the Fountain Fire Department; 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 responsibilities 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 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 effective April 1, 2014; and

WHEREAS, the consolidation and coordination of the provision of such emergency services benefits the taxpayers and citizens of the Parties as well as the ultimate consumer; and

WHEREAS, the Parties, in furtherance of their objectives, based membership on the governing board of the ESA of representatives of government, professionals from the medical and emergency services community, and citizens from the community; and

WHEREAS, the April 1, 2014 Intergovernmental Agreement designated Emergency Room Physician Representatives from Memorial Hospital and Penrose Hospital as joint appointees of the BoCC and Fountain, subject to same term limits as other appointees; and

WHEREAS, the Parties deem it in the best interests of the Parties, the ESA, Memorial Hospital, and Penrose Hospital, for the Emergency Room Physician Representatives to be appointed by their respective hospitals without term limits, subject to the approval of the Parties; and

WHEREAS, the Parties intend by entering into this Second Amended Agreement that the El Paso County Emergency Services Authority shall continue to 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 Second Amended Agreement shall not become binding and effective unless and until approved by the City Council of the City of Fountain, State of Colorado and the Board of County Commissioners of the County of El Paso, State of Colorado; 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 Second Amended Agreement for the purpose of modifying the ESA;

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

ARTICLE ONE
GENERAL PROVISIONS

1.1 El Paso County Emergency Services Authority. The Parties agree the ESA is an independent legal entity, separate and distinct from the Parties. The jurisdictional boundaries of the ESA shall comprise the corporate boundaries of the City of Fountain, 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 "ESA 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 ESA Service Area unless such municipality, fire protection or metropolitan district and the ESA agree by formal written agreement to such inclusion within the ESA Service Area.

1.2 Governing Board. The ESA shall be governed by a eight (8) member Board of Directors ("ESA Board") which shall have the power to provide the functions, services and facilities for which the ESA is formed, as set forth more fully herein.

1.3 Purpose. The ESA will serve the purpose of providing ambulance service and other related emergency medical services, as set forth in Article Six below, Scope of Services, together with such other services which are incidental and/or necessary to perform those services expressly set forth herein. The ESA'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 ESA 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.

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

1.5 Duration of the Second Amended Agreement. This Second Amended Agreement shall be in effect from the time it is fully executed by the Parties and shall continue until and unless revised, cancelled or terminated by one of the Parties as provided in Article Eight below, Termination. This Second Amended Agreement may be terminated by either party hereto, by providing written notice of termination as provided in Article Eight.

ARTICLE TWO
ORGANIZATIONAL STRUCTURE

2.1 Board of Directors Composition. The ESA's governing Board shall be comprised of eight (8) members who shall serve without compensation but may be reimbursed for their actual expenses incurred in serving the ESA. The following members shall be appointed to the Board. Under no circumstances shall the Parties appoint any person to serve on the ESA board who is an agent, employee, director, officer, member, principal, partner (general or limited), stockholder, or contractor of the Ambulance Contractor and/or who has any type of financial interest of whatsoever kind or nature in the Ambulance Contractor. It shall be the duty of the Contract Administrator to maintain a current list of all ESA Board member appointments, alternates, and terms.

One (1) Citizen Representative who is a resident of El Paso County and may also be a resident of Fountain jointly appointed by the BoCC and the Fountain City Council

One (1) El Paso County resident who is currently employed or has previously been employed as a certified EMT or paramedic, appointed jointly by the BoCC and the Fountain City Council

One (1) Emergency Room Physician Representative recommended by Memorial Hospital, subject to approval by the BoCC and the Fountain City Council and one Emergency Room Physician alternate designated by the sitting Emergency Room Physician Representative representing Memorial.

One (1) Emergency Room Physician Representative recommended by Penrose Hospital, subject to approval by the BoCC and the Fountain City Council and one Emergency Room Physician alternate designated by the sitting Emergency Room Physician Representative representing Penrose Hospital

Two (2) Representatives appointed by the Pikes Peak Fire Chiefs Forum, subject to approval by the BoCC and the Fountain City Council

One (1) County Commissioner Representative and alternate County Commissioner Representative, appointed by the BoCC

One (1) Fountain City Council Representative and Alternate Fountain City Council Representative or official designee from the City of Fountain, appointed by the Fountain City Council

PHASE OUT OF ELIMINATED SENIOR CITIZEN REPRESENTATIVE:

The Senior Citizen Representative duly appointed during the effective period of the First Amended Agreement shall continue to serve as a voting member through December 31, 2018. On January 1, 2019, the person serving as Senior Citizen Representative shall automatically be appointed to the position of Citizen Representative under this Second Amended Agreement with the time served previously being carried over into the term of the Citizen Representative position.

2.2 Ex-Officio Board Members. The ESA Board may appoint ex-officio members of the Board as is deemed necessary by the ESA 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/Vacancies. The County Commissioner Representative, Elected Official Representative from Fountain, Emergency Room Physician Representatives, and chiefs of fire districts shall be appointed as described above and are not subject to term limits, however, no elected official who is no longer in elected office shall be permitted to continue in service. All other members shall be subject to two (2) two (2) year terms of service for a total of four (4) consecutive years.

Any vacancy in a position held by a Commissioner or Elected Official Representative from Fountain shall be filled by the elected body appointing the position within ninety (90) days of the vacancy taking place. Any vacancy in a position held by appointees from the Fire Chief's Forum, Memorial Hospital, or Penrose Hospital shall be filled by the appointing body within ninety (90) days of the vacancy taking place, subject to approval of the BoCC and Fountain City Council, To the extent any other vacancy occurs, or a term expires, the BoCC and the Fountain City Council jointly shall take action to fill the vacancy for the unexpired or new term within ninety (90) days of the vacancy or expiration of the term. A Director whose term has expired may serve until a successor is appointed. 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.

2.4 Removal of ESA Board Members. The County Commissioner Representative, Elected Official Representative from Fountain, Emergency Room Physician Representatives, and fire district chiefs shall serve at the discretion of their respective appointing bodies. Other members of the ESA shall serve at the discretion of the BoCC and the Fountain City Council and may be removed by joint action of the BoCC and the Fountain City Council at any time for any or no reason. An ESA Board member may resign by giving notice to the ESA Board Chair or Secretary. Notice of removal or resignation of an ESA Board member shall be given to the Parties and the ESA Board.

2.5 Voting and Quorum. Each member of the ESA Board shall have one (1) vote. A quorum of the ESA Board shall consist of at least five (5) of the ESA Board members. No official action may be taken by the ESA Board on any matter unless a quorum is present. The affirmative vote of a majority of the ESA Board members present at the time of the vote shall be required for the ESA Board to take any action.

2.6 Amended Bylaws, Rules and Regulations. *Appendix A*, attached and incorporated by reference, are Amended Bylaws, Rules and Regulations which shall govern the conduct of the ESA Board. The ESA Board may modify or adopt additional Bylaws and Rules and Regulations as necessary for the conduct of the ESA, so long as such Bylaws and Rules and Regulations are consistent and not in conflict with the provisions of this Second Amended Agreement. Modified or additional bylaws, rules and regulations adopted by the ESA Board shall not be in force until they are formally approved by the BoCC and Fountain City Council.

2.7 Officers of the ESA Board. The ESA Board shall elect a Chair, Vice Chair, 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 Chair shall preside over all ESA Board meetings and sign all contracts or agreements on behalf of the ESA, except contracts or agreements which may be signed by officers delegated that responsibility by the ESA Board or by this Second Amended Agreement, and shall perform such other duties as may be authorized by the ESA Board.

B. The Vice Chair shall perform all of the Chair's duties in the absence of the Chair and such other duties as may be authorized by the ESA Board.

C. The Secretary shall attest to all contracts or agreements signed by the Chair, Vice Chair, or other officers of the ESA, except routine purchase orders which need no attestation; shall keep and maintain the minutes and records of the ESA; and shall perform such other duties as may be authorized by the ESA Board.

D. The Treasurer shall keep and maintain the financial books and records of the ESA and sign routine purchase orders which need no attestation; and shall perform such other duties as may be authorized by the ESA Board.

2.8 ESA Board Executive Committee. The ESA Board shall appoint an Executive Committee made up of the ESA Board Chair, Vice Chair, Secretary, and Treasurer. In the event the Commissioner Representative does not hold the office of Chair, Vice Chair, Secretary, or Treasurer, the Commissioner Representative, or Alternate Commissioner Representative in the Commissioner Representative's absence, shall also be appointed as a full voting member of the Executive Committee. The Executive Committee shall be authorized to supervise and manage ESA staff in administering the ground ambulance service contract. Authority of the Executive Committee shall include but not be limited to: reviewing and signing grant applications, or authorizing the Contract Administrator or designee to do so, signing documentation on behalf of the ESA or authorizing the Contract Administrator or Contract Administrator's designee to do so, and authorizing regular contract related expenditures, subject to the limitations contained in Article Three, below.

2.9 Meetings. Meetings of the ESA Board and its Executive Committee shall be held at the call of the Chair and shall be conducted in accordance with the following requirements:

A. At its first annual meeting the ESA Board shall set the dates, times and locations of regular meetings for that calendar year. Any regular meeting may be canceled by the Chair, or in the absence of the Chair, by the Vice Chair, for good cause. Good cause to cancel any regular meeting shall include, but not be limited to, lack of a quorum or lack of official ESA business.

B. The ESA Board's Executive Committee may establish any regular meeting schedule it deems fit and may, upon the call of one of its members and any two (2) ESA Board Executive Committee members, hold special meetings.

C. All regular and special meetings held by the ESA Board, the ESA Board's Executive Committee, and any other subcommittees at which 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. §§24-6-401, *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.

D. The ESA Board shall keep minutes of its proceedings showing the presence or absence of each ESA 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 ESA 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 ESA

3.1 Plenary Powers. For the purposes set forth in Article Six, Scope of Services, and except as otherwise limited by this Second Amended Agreement, the ESA, 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 Second Amended Agreement. The ESA shall act through its Board, its officers and employees as authorized by the ESA Board pursuant to the Bylaws and Rules and Regulations. The ESA shall not have the power to levy taxes nor to incur debt on behalf of either Party. The ESA 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 Six, Scope of Services, the ESA's powers shall be those powers delegated by the Parties through this Second Amended 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 ESA 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 ESA subject to the limitations herein;

C. To sue and be sued in the ESA's own name;

D. To hire and fire agents, employees, consultants, professionals and volunteers pursuant to the Bylaws and Rules and Regulations of the ESA;

E. To provide for the furnishing of services, privileges, or public works, including buildings, improvements or other facilities, necessary for purposes of this Second Amended Agreement;

F. To fix, maintain, and revise fees, rates, rents, and charges for functions, services, or facilities provided by the ESA subject to the review and final approval of the Parties;

G. To provide a level of service for the service area of the ESA 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 Second Amended 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 Five, Budgets/Funding/Debt;

I. To prepare and implement a pay and benefits compensation plan for all employees of the ESA;

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 Section 2.7 above;

K. To adopt, modify, and amend operating procedures and guidelines for the conduct of the ESA's internal and external affairs;

L. To create standing and ad hoc subcommittees of the ESA to address particular issues or projects related to the purpose of the ESA;

M. To enter into agreements with the Parties for the purpose of securing any necessary professional, administrative, or support services, with the understanding that the Contract Administrator will be a County staff member appointed by the County Administrator;

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 ESA 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 ESA; and

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

3.3 Spending Authority. The ESA is limited in its spending authority to the annual total budget recommended by the ESA Board and approved by the Parties. Annual expenditures shall not exceed revenues, including any reserve funds, as approved by the ESA Board. The ESA 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 ESA effective upon the execution of an intergovernmental agreement between the ESA and the municipality, fire protection or metropolitan district (a "Participating Agency"). The rights and obligations of a Participating Agency and its relationship with the ESA 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 ESA should utilize the present personnel resources of the County and not employ its own personnel. Specifically, the ESA's Contract Administrator will be a County staff member appointed by the County Administrator. The use of any additional personnel of any party shall be by appropriate arrangement of the ESA and the Parties.

4.2 Employment Status. The ESA 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 ESA, by and through its fee system with said contractor, from receiving funding from the Ambulance Contractor for purposes of providing compensation and benefits to any employee of the ESA. The ESA shall be solely responsible for establishing personnel policies, rules and regulations for its employees, in accordance with this Second Amended Agreement. Any liability or other financial obligation incurred or caused by the ESA, its Board, officers, agents or employees, shall be exclusively the responsibility of the ESA.

4.3 Compliance with Law. The ESA 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 ESA shall maintain such levels of workers' compensation coverage as mandated by state law.

4.4 Indemnification. The ESA 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 ESA 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 ESA shall comply with the provisions of Title 24, Article 18, Parts 1 and 2, of the Colorado Revised Statues.

ARTICLE FIVE
BUDGETS/FUNDING DEBT

5.1 Annual Budget. No later than August 15 of each year, the ESA shall notify the Parties of any proposed change in the level of service to be provided by the ESA for the next fiscal year. No later than October 1 of each year, the ESA 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, 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 ESA 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 the Parties on such forms as each may prescribe. The submission should be made to each Party's budget office, where final approval of the ESA's budget shall be by the BoCC and Fountain City Council during their respective budget process.

5.2 Parties' Contributions Fountain shall not be obligated to nor be expected to make any monetary contributions to the ESA. Funding for the ESA is anticipated to be paid by the ambulance service contractor awarded a contract to provide ambulance service by the ESA, and by the BoCC and such other funding as may be available. If the BoCC disapproves of its requested contribution, for whatever reason, the BoCC shall notify in writing Fountain and the ESA of such disapproval on or before November 1. If the ESA and the BoCC cannot agree on the recommended contribution by December 1, then the budget of the ESA for the next year shall be the prior year's 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 BoCC's contribution, as adjusted for inflation, shall remain the same as in the prior year. If either Fountain or the BoCC is dissatisfied with the ESA's adopted budget pursuant to this subsection they shall have the right to terminate this Second Amended Agreement pursuant to Article Eight below, Termination.

5.3 Supplemental Contributions. In the event of an unforeseen or unanticipated event, which results in the need for additional funds, the ESA Board shall prepare a supplemental or

amended budget and present a request for supplemental contributions from the BoCC to the BoCC for its 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 the BoCC to provide a monetary contribution to the ESA, the BoCC agrees to remit to the ESA quarterly, in advance, its allocated one quarter (1/4) share of the total estimated annual costs and expenses of the ESA. The ESA Board is authorized to approve other arrangements for payments by the BoCC.

5.5 Books and Records. The ESA 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 ESA. The ESA'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, the BoCC's private contributions, revenue generated by the ESA's activities or any other revenue received by the BoCC. The ESA's books and records shall be open to inspection upon reasonable notice during normal business hours to the Parties. The ESA Board shall provide for the auditing of all books and accounts and other financial records of the ESA 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 ESA Board. The audit shall be presented to the Parties no later than thirty (30) days after receipt of the audit report by the ESA Board.

5.6 Annual Appropriation of Funds. Notwithstanding anything in this Second Amended Agreement to the contrary, financial obligations of the BoCC to make payments to the ESA 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 one of the Parties' obligations under this Second Amended 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 this Second Amended Agreement, and such termination shall not be deemed a default or breach of this Second Amended Agreement by such Party. This subsection 5.6 shall control and supersede all other provisions of this Second Amended Agreement inconsistent therewith. It is the intention of the Parties that the annual appropriation requirements set forth in this Second Amended Agreement shall bring this Second Amended Agreement and any renewals into compliance with Article X, Section 20, of the Colorado Constitution .and any applicable City Charter provisions.

5.7 Debt of the Parties. To the extent that the BoCC incurs debt to support its contribution to the ESA, such debt shall remain exclusively a debt of the BoCC incurring the debt, and shall not be the responsibility of the ESA.

ARTICLE SIX

SCOPE OF SERVICES

6.1 Enumerated Services. Except as otherwise limited by this Second Amended Agreement, the ESA 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 ESA, including but not limited to the following. Notwithstanding any provisions that may be interpreted to the contrary, the Parties agree that this Scope of Services shall only apply to emergency or 911 related services.

A. Development and implementation of a ground emergency ambulance service provider system which will best serve the pre-hospital needs of the ESA Service Area, taking into consideration sole source, "failsafe franchise," and other similar systems which do not require local government subsides.

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 Second Amended Agreement, at such frequency as deemed necessary and desirable by the ESA 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 the Parties.

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 ESA may enter into additional agreements with the Parties for the purpose of securing any necessary professional, administrative and support services in accordance with this Second Amended Agreement.

6.3 Withholding Services. Except as otherwise provided in this Second Amended Agreement, the ESA, acting through its Board, may not withhold services from any portion of the ESA 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 ESA Board may recommend to the Parties the development and implementation of additional pre-hospital 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 ESA shall not have the authority to provide such additional services without the written approval of the Parties; which mutual approval shall be by amendment to this Second Amended Agreement prescribing any conditions, restrictions and limitations to the ESA Board's exercise thereof. Any amendment to this Second Amended Agreement concerning the provision of the additional pre-hospital services shall, at a minimum, address the Parties' composite representation on the ESA Board, and the Parties' level of funding or contributions regarding such additional emergency services.

ARTICLE SEVEN
EXCLUSION OF FOUNTAIN AMBULANCE SERVICES

Acknowledgement of Ambulance Services by the City of Fountain. The Parties acknowledge and agree the City of Fountain provides its own ambulance services for emergency transport through the Fountain Fire Department which ambulance services are funded by the City of Fountain.

Response Area of Fountain Ambulance Services. In providing ambulance services, the City of Fountain may provide ambulance services in any area whether within or outside of the corporate limits of the City of Fountain which is a response area of the Fountain Fire Department without authorization from the ESA and transport a patient without regard to any jurisdictional boundaries to a destination to discharge the patient.

ESA Shall have No Authority over Fountain Ambulance Services. The ESA shall have no authority over ambulance services provided by Fountain. Ambulance Services provided by Fountain shall be solely governed by Fountain. Fountain shall determine all aspects of its ambulance services including but not limited to rates, charges, and conditions of service.

Mutual Aid or Other Agreements. The City of Fountain may enter into mutual aid agreements or any other agreements with ambulance providers or ambulance contractors whether or not such ambulance service providers or ambulance contractors are members of the ESA including the use of ambulances from other ambulance service providers or ambulance contractors without authorization of the ESA.

Selection of Physician-Advisor The City of Fountain may select its own physician-advisor to act as physician-advisor to The City of Fountain which may be a different person than the physician-advisor for the ambulance contractor with the ESA.

7.6 No Ambulance Services by Ambulance Contractor within the City of Fountain. No emergency transport ambulance services shall be provided by the Ambulance Contractor selected by the ESA within the city limits of the City of Fountain as now existing or subsequently changed without the written consent of the City of Fountain.

ARTICLE EIGHT
TERMINATION

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

A. The Party intending to terminate this Second Amended Agreement provides, unless otherwise provided herein, at least six (6) months written notice to the other Parties; 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 Second Amended Agreement may not be terminated so long as the ESA 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.

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

8.3 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 ESA 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 Second Amended Agreement or other written agreement by the Parties.

C. Any other assets remaining upon termination of the ESA, after the payment of lawful debts and other encumbrances on the assets, shall become property of the County.

8.4 Wind-up and Liquidation. In the event of termination of this Second Amended Agreement, the ESA Board shall wind-up and liquidate the assets of the ESA. In addition, any debts of the ESA 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 ESA will continue to provide those services then being provided by the ESA in accordance with this Second Amended Agreement.

8.5 Non-Appropriation of Funds. To the extent possible, the provisions of this Article Seven shall govern a Party's non-appropriation of funds as set forth in Subsection 5.6 above, Annual Appropriation of Funds.

ARTICLE NINE
MISCELLANEOUS PROVISIONS

9.1 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: Chair, Board of County Commissioners
200 S. Cascade Avenue, Suite 100
Colorado Springs, CO 80903
With a copy also provided to the Administrative Services Director at the above address.

Fountain: City Manager
Fountain City Council
116 S. Main St.
Fountain, CO 80817

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

9.3 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 Second Amended Agreement. Neither this Second Amended 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.

9.4 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 Second Amended Agreement as a whole and all other clauses or provisions shall be given full force and effect.

9.5 Binding Effect. The provisions of this Second Amended Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.6 Assignment and Delegation. No Party shall assign any of the rights, nor delegate any of the duties, created by this Second Amended Agreement without the written consent of the other Party.

9.7 Parties in Interest. Nothing in this Second Amended 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 Second Amended Agreement, this Second Amended Agreement being intended to be for the sole and exclusive benefit of the Parties. This Second Amended Agreement shall not be construed to create a duty as a matter of law or contract for the provision of emergency services in the County or Fountain by either the ESA or the Parties, nor shall this Second Amended Agreement be construed as creating a benefit enforceable for any person. Nor shall this Second Amended Agreement be construed to create a duty as a matter of law or contract for either of the Parties or the ESA to assume any liability for injury, property damage, or any other damage that may occur by any action or non-action taken, or service provided to the public or any person, as result of this Second Amended Agreement.

9.8 No Personal Liability of Party Officials. No covenant or agreement contained in this Second Amended Agreement or any formal action of the ESA 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.

9.9 Governing Law. This Second Amended 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.

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

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

EL PASO COUNTY, COLORADO

By: _____
Darryl Glenn, President
Board of County Commissioners
El Paso County

ATTEST:

By: _____
El Paso County Clerk and Recorder

18-390A

APPROVED AS TO FORM:

By: _____
Steven Klaffky
County Attorney's Office

CITY OF FOUNTAIN, COLORADO

By: _____
Mayor
City of Fountain

APPROVED AS TO FORM:

By: _____
Troy Johnson
City Attorney's Office
The City of Fountain

ATTEST:

By: _____
Fountain City Clerk

APPENDIX A

BYLAWS, RULES, AND REGULATIONS OF THE EL PASO COUNTY EMERGENCY SERVICES AUTHORITY

ARTICLE I.
BACKGROUND AND PURPOSE

These Amended and Restated Bylaws ("Bylaws") are adopted pursuant to Section 2.6 of the Intergovernmental Agreement ("IGA") creating the El Paso County Emergency Services Authority ("ESA"). These Bylaws are intended to supplement the provisions of the IGA.

ARTICLE II.
BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the "ESA" shall be conducted by a Board of Directors ("Board") as outlined in Article 2 of the IGA, which shall exercise the powers of the ESA as set forth in the IGA.

Section 2. Ex-Officio Members. The Board may appoint ex-officio members as deemed necessary by the Board and as outlined in the IGA.

Section 3. Appointments. The Representatives and Alternate Representatives from the Fountain City Council, El Paso County Board of County Commissioners ("BoCC"), and Fire Chiefs Forum shall be appointed by their respective appointing bodies. The Fire Chiefs Forum appointees are subject to approval of the BoCC and Fountain City Council. All other Directors shall be appointed jointly by the BoCC and the Fountain City Council. The provisions of this section apply whenever an ESA Board member vacancy occurs, either by the expiration of a Director's term or otherwise. Vacancies occurring through the removal or resignation of a Director must be filled as soon as possible, but not more than ninety (90) days following the notice of removal or resignation.

Section 4. Terms. The term of office for each Director other than Representatives and Alternate Representatives from Fountain City Council, BoCC, and the Pikes Peak Fire Chiefs Forum Representatives shall be two (2) years. A Director whose term has expired may serve until a successor is appointed, but in no case may an elected official serving as a Director who no longer holds elected office continue in service.

Section 5. Term Limits. Each Director other than Representatives and Alternate Representatives from Fountain City Council, BoCC and the Pikes Peak Fire Chiefs Forum Representatives shall serve no more than two (2) consecutive terms, for a total of four (4) consecutive years. If a person is appointed to fill one-half or less of a term of office, the person shall be permitted to serve an additional two (2) full terms.

Section 6. Removal of Directors. The County Commissioner Representative and Elected Official Representative from Fountain shall serve at the discretion of their respective bodies. Other members of the ESA shall serve at the discretion of the BoCC and the Fountain City

Council and may be removed jointly by the BoCC and the Fountain City Council at any time for any or no reason. An

ESA Board member may resign by giving notice to the ESA Board Chair or Secretary. Notice of removal or resignation of an ESA Board member shall be given to the Director so removed and the ESA Board.

ARTICLE III. MEETINGS

Section 1. Regular Meetings. Regular meetings shall be held regularly at a date, time, and location to be determined by the Chair at the previous meeting. Regular meetings may be canceled by the affirmative vote of the majority of Board members present at a meeting where a quorum is present, or by the Chair for good cause. Lack of a quorum shall always be considered good cause.

Section 2. Order of Business. The order of business at regular Board meetings shall be:

A. Call to Order. The Chair shall call the Board to order and determine whether a quorum is present.

B. Approval of Minutes. The minutes of the preceding meeting shall be submitted for approval and shall be approved by a majority vote of those present, pending any corrections by Directors.

C. Old Business. The Board shall hear and act upon those items which were postponed from previous meetings.

D. New Business. The Board shall hear and act upon those items appropriately placed on the agenda.

E. Adjournment. Upon the completion of all items on the agenda, the Chair shall declare the meeting to be adjourned.

Section 3. Special Meetings. Special meetings may be held upon the call of the Chair or of any three (3) Directors.

Section 4. Meetings of the Executive Committee. The ESA Board's Executive Committee may establish any regular meeting schedule it deems fit and may upon the call of one of its members and any two (2) ESA Board Executive Committee members hold special meetings. The Executive Committee has the authority to review and sign grant applications, or authorize the Contract Administrator or Contract Administrator's designee to do so, sign documentation on behalf of the ESA or authorize the Contract Administrator or Contract Administrator's designee to do so, and authorize regular contracts or purchase orders up to $25,000. Contracts or purchase orders of $25,000 or more are not valid or enforceable until approved by the ESA Board.

Section 5. Quorum. A quorum of the ESA Board shall consist of at least five (5) Directors. A quorum of the ESA Board's Executive Committee shall consist of at least three (3) Committee Members. No official action may be taken unless a quorum is present.

Section 6. Voting. Each Director shall have one vote. Ex-officio members shall not be permitted to vote. The affirmative vote of a majority of Directors present at a meeting where a quorum is present is required for the Board to take any formal action.

Section 7. Rules of Order. Regular and special meetings of the Board shall be conducted according to Robert's Rules of Order.

Section 8. Attendance. A Director's failure to attend three (3) or more regular or special meetings in a twelve-month period constitutes grounds to recommend the removal of said Director.

Section 9. Work Sessions. The Chair may from time to time call work sessions for the purpose of receiving information, hearing presentations and discussing information. No official or formal action may be taken at such work sessions.

Section 10. Open Meetings Requirements. All regular and special meetings and any subcommittee meetings 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. §§ 24-6-401, *et seq.* Notice of all regular and special meetings shall include an agenda and shall be posted at the El Paso County Administration Building, located at 200 S. Cascade, Colorado Springs, Colorado, no less than 24 hours prior to the meeting. Meeting notices may also be posted on the ESA's website, www.esaboard.org.

Section 11. Open Records Requirements. The Board shall keep minutes of its proceedings showing the presence or absence of each Director and the vote of each Director upon every motion. Failure to vote and any abstentions shall be noted in the minutes. Minutes and records of the Board shall be open to the public and subject to the Colorado Open Records Act, C.R.S. §§24-72-201, *et seq.*

ARTICLE IV. OFFICERS

Section 1. Officers. At the Board's first regular meeting of the calendar year, the Board shall elect a Chair, Vice Chair, Secretary, and Treasurer.

Section 2. Duties of Officers. Officers shall perform the duties customary for their office, including but not limited to the following:

A. The Chair shall preside over all Board meetings and sign all contracts or agreements on behalf of the ESA, except contracts or agreements which may be signed by officers delegated that responsibility by the Board, the Board's Executive Committee, or by the IGA, and shall perform other duties as authorized by the Board.

B. The Vice Chair shall perform all the duties of the Chair or the Treasurer in the absence of the Chair or the Treasurer, and such other duties as may be authorized by the Board.

C. The Secretary shall attest to all contracts or agreements signed by the Chair, Vice Chair, or other officers of the ESA, except routine purchase orders which need no attestation, shall oversee the keeping and maintenance of the minutes and records of the ESA, and shall perform such other duties as may be authorized by the Board.

D. The Treasurer shall sign routine purchase orders which need no attestation, shall oversee the keeping and maintenance of the financial books and records of the ESA, and shall perform such other duties as may be authorized by the Board.

Section 3. Absence of Chair and Vice Chair. In the absence of the Chair, the Vice Chair shall act as Chair. In the absence of both the Chair and Vice Chair, the Directors shall, provided that a quorum is present, elect by majority vote a temporary Chair to act until the Chair or Vice Chair appears.

Section 4. Vacancy of Chair. A vacancy of the office of Chair shall be filled by the Vice Chair, and a new Vice Chair shall be elected at the next regular meeting of the Board. The new Chair and Vice Chair shall then serve until elections at the first meeting of the following year.

ARTICLE V.
RECORD-KEEPING

The Contract Administrator or Contract Administrator's designee shall keep all records of the Board under the oversight of the Secretary and the Treasurer. Subject to the direction of the Board, the Contract Administrator or Contract Administrator's designee shall prepare all correspondence of the Board, receive and file all materials referred to the Board and copies of all e-mail and written correspondence of the Directors, send out all notices required by law, prepare and keep agendas, minutes, and files of the Board's proceedings, keep and maintain the financial books and records of the ESA, and perform other duties as assigned by the Board.

ARTICLE VI. BUDGETING

Section 1. Annual Budget. No later than October 1 of each year, the Board shall submit a recommended budget for the next fiscal year to the Fountain City Council and the Board of County Commissioners for their review and approval.

Section 2. Budget Submittal Requirements. The recommended annual budget and any supplemental budget requests shall conform to and be submitted in accordance with the requirements outlined in the IGA.

ARTICLE VII.
CONTINGENCY ACTIONS

Section 1. Procedures. In the event of a contingent action involving the provision of emergency ambulance services, the following procedures shall apply:

A. The Contract Administrator or Contract Administrator's designee shall notify the Chair of the contingent situation.

B. The Chair or his/her designee shall contact all Directors, advisory members, and ex-officio Members to convene a special meeting. Public notice of the meeting shall be given in compliance with the Colorado Open Meetings Law.

C. At the special meeting, the Board shall review the contingent situation and consider possible actions in accordance with the emergency ambulance services contract. The Board shall take such action as is necessary to ensure the adequate provision of emergency ambulance to the extent practicable.

D. Directors shall keep appropriate elected officials informed.

Section 2. Information to be Available. For the purpose of implementing this Article:

A. Directors and ex-officio members shall keep their respective agencies and the contract administrator advised of their availability and emergency contact information at all times.

B. The Contract Administrator shall have available for Board use, the City of Fountain and El Paso County, an Emergency Operations Plan and current roster of all County emergency ambulance service providers with a list of equipment.

ARTICLE VIII. AMENDMENT OF BYLAWS

These Bylaws may be amended or repealed by the affirmative vote of at least two-thirds of the Directors at any regular or special meeting of the Board where a quorum is present, subject to final approval by Fountain City Council and the BoCC.