

RESOLUTION NO. 2156

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE MAYOR TO SIGN AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY
OF GOLDEN AND THE CITY AND COUNTY OF DENVER**

WHEREAS, the U.S. Department of Homeland Security awarded the Urban Area Security Initiative grants to Denver; and

WHEREAS, the purpose of the Urban Area Security Initiative ("UASI") grant is to allow the Denver Urban Area to prepare for and to enhance its capacity to prevent, mitigate, respond and recover from all Incidents and to improve the ability of local emergency personnel to respond to them; and

WHEREAS, the UASI grant contemplate that Denver and local governments will cooperate in the purchase of emergency responder equipment, planning, conducting and evaluating exercises, establish training, planning associated with the completion of the Urban Area Homeland Security Strategy, and management and administration associated with the implementation of the overall UASI for the benefit of the entire metro/urban area; and

WHEREAS, Denver and jurisdictions in the Denver Metropolitan Area have formed the Urban Area Working Group to achieve the purposes of the UASI grants; and

WHEREAS, the City of Golden has been determined by the UASI Working Group to be an eligible entity;

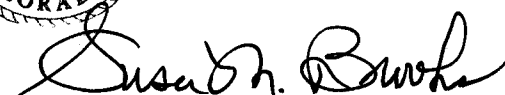
THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. The UASI grant will provide for the distribution of emergency response equipment, in the form of Self Contained Breathing Apparatus and related equipment purchased by Denver with UASI grant funds to the City of Golden in accordance with UASI grant agreements.

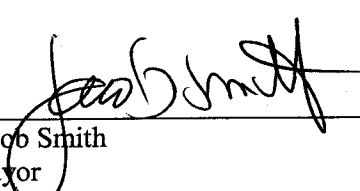
Section 2. The Mayor is authorized to sign the attached Intergovernmental Agreement between the City of Golden and the City and County of Denver.

Adopted the 20th day of October, 2011.





Susan M. Brooks, MMC
City Clerk

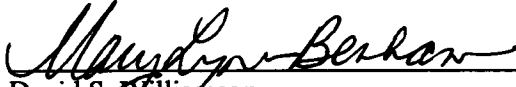


Jacob Smith
Mayor

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APPROVED AS TO FORM:

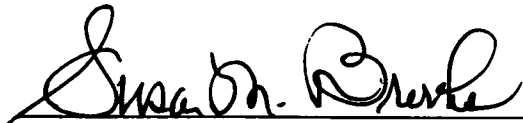


David S. Williamson
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular business meeting thereof held on the 20th day of October, A.D., 2011.



ATTEST:



Susan M. Brooks, City Clerk of the City of
Golden, Colorado

INTERGOVERNMENTAL AGREEMENT
(Urban Area Security Initiative)

THIS INTERGOVERNMENTAL AGREEMENT between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("Denver"), and the **CITY OF GOLDEN**, a municipal corporation of the State of Colorado (that municipal corporation, the "Non-jurisdictional Sub-grantee"; that intergovernmental agreement, the "Agreement").

RECITALS

A. The U.S. Department of Homeland Security ("U.S. DHS") awarded Urban Area Security Initiative ("UASI") grants to Denver that were passed through to Denver by various department of the State of Colorado, most recently the Governor's Office of Homeland Security ("OHS").

B. The purpose of the UASI grants is to allow the Denver Urban Area to prepare for and to enhance its capacity to prevent, mitigate, respond, and recover from all Incidents and if Incidents occur, to improve the ability of the State and local emergency personnel to respond to them.

C. The UASI grants contemplate that Denver and local governments will cooperate in the purchase of emergency responder equipment, planning, conducting and evaluating exercises, establishing training, planning associated with the completion of the Urban Area Homeland Security Strategy, and management and administration associated with the implementation of the overall Urban Area Security Initiative for the benefit of the entire urban area, including non-jurisdictional areas.

D. Denver and jurisdictions in the Denver Metropolitan Area have formed the Urban Area Working Group to achieve the purposes of the UASI grants.

E. The Non-jurisdictional Sub-grantee is not a member of the UASI Working Group and has been determined by the UASI Working Group to be an eligible entity. Consistent with the principles set forth in the UASI grants and the grant agreements, the parties enter this IGA.

NOW, THEREFORE, the parties hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to provide for the distribution of supplies, equipment, and other goods purchased by Denver with UASI grant funds to Non-jurisdictional Sub-grantee, and other benefits approved by the Working Group, and to further the purposes of the UASI grant program in accordance with UASI grant agreements. At the time of execution of this Agreement, the parties anticipate that the UASI Grant Agreement for FY 2010 will be used to fund acquisition of supplies, equipment, or other goods to be distributed to Non-jurisdictional Sub-grantee. This Agreement is subject to the terms of that UASI grant, a copy of which is incorporated and attached as Exhibit A. The parties also anticipate that future UASI grants might be used to fund acquisition of supplies, equipment, or goods supplies distributed to Non-jurisdictional Sub-grantee. If future UASI grants are used to fund such supplies, equipment,

or goods, the Director will provide a copy of those UASI grant agreement(s) to Non-jurisdictional Sub-grantee who in turn shall provide written confirmation to Denver's UASI Program Administrator within sixty (60) days of receipt any such UASI grant agreement that it agrees to be bound to the terms of such UASI grant agreements. This written confirmation must be signed by a person(s) duly authorized to validly bind Non-jurisdictional Sub-grantee. Non-jurisdictional Sub-grantee's failure to comply with these requirements is a material breach of this Agreement.

2. DEFINITIONS.

a. *Bylaws* means those of the Urban Area Working Group, including duly authorized and executed amendments thereto.

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 State of Colorado, Governor's OHS Urban Area Security Initiative Grant Program Grant Agreement with the City and County of Denver, 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 All-Hazard disasters or events natural or man-made, including all terrorist attacks involving chemical, biological, radiological, nuclear, or explosive ("CBRNE") devices.

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. *Master Contract* has the meaning set forth in Section 1.

h. *party* and *parties* refer only to a named party to this Agreement.

i. *State* means the State of Colorado.

j. *State Administrative Agency Point of Contact* means the person designated by the Director Governor's OHS Urban Area Security Initiative Grant Program or such other person of the State agency, department, or division duly designated by the State.

k. *Non-jurisdictional Sub-grantee* as used in this Agreement means the second party non-member jurisdiction entering this intergovernmental agreement with Denver.

l. *UASI* means Urban Area Security Initiative.

m. *U.S. DHS* means the United States Department of Homeland.

n. *Urban Area* means the City and County of Denver and the governmental or quasi-governmental jurisdictions contiguous to Denver and other jurisdictions approved by the Urban Area Working Group consistent with the Urban Area Working Group Bylaws that provide law enforcement, emergency medical services, emergency management, fire service, hazardous materials response, public works services, or public health services.

o. *Urban Area Working Group* consists of representatives as set forth in the Bylaws, as the same may be periodically amended. The Urban Area Working Group is responsible for coordinating development and implementation of all program elements, including the urban area assessment, strategy development, and any direct services that are delivered by U.S. DHS.

3. ROLES AND RESPONSIBILITIES.

a. **Core City and County:** In accordance with the budget and Denver's own procurement laws, regulations and policies, from time-to-time, Denver will procure, or cause to be procured, supplies, equipment, and services deemed necessary to enhance the security and preparedness of the Urban Area. Denver agrees to grant or provide supplies, equipment, exercises and training, or to reimburse operational expenses for designated heightened threat alert levels all as budgeted and approved by the Urban Area Working Group, to Non-jurisdictional Sub-grantee, subject to UASI grants being received under the Grant Agreement and appropriated by City Council. Exercise and training costs may include personnel expenses to backfill positions during such training and exercises, equipment and services deemed necessary to enhance the security and preparedness of the Urban Area.

b. **Non-jurisdictional Sub-grantee agrees:**

i. That if it has an obligation to provide a cash match, that it shall provide the amount required by the Urban Area Working Group and do so in accordance with the Director's written instructions.

ii. To do all things necessary to accept goods or services provided to it under this Agreement.

iii. To accept delivery of equipment and other tangible goods at the time and place designated by the Director, and assume the risk of loss, in accordance with the terms applicable to a particular shipment or delivery of equipment or other tangible goods.

iv. To maintain all equipment and other tangible goods to be provided to it 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.

v. To rotate and replace equipment and other tangible goods provided to it under this Agreement as necessary to prevent such equipment and other tangible goods from becoming spoiled; deteriorated, defective, lost, stolen, or obsolete.

vi. To respond to Incidents utilizing the equipment and other tangible provided for or reimbursed under this Agreement, including replacement supplies and equipment acquired in accordance with this Agreement, and utilizing trained personnel.

vii. To make its personnel and equipment or other tangible goods procured with funds from UASI grants, reasonably available for training and exercises, and responses to Incidents based on requests from any Urban Area Working Group member, OHS, or U.S. DHS.

viii. To test and train appropriate responsible persons on use of equipment and other tangible goods in simulated exercises, including those done independently and throughout the Urban Area.

ix. To submit requests for reimbursement of exercise, training and operational expenses, including overtime and backfill costs for personnel, and those costs associated with increased security measures during designated heightened threat alert levels on forms required by Denver and in accordance with the budget approved by the Urban Area Working Group.

x. That reimbursement of overtime, if any, is subject to the Urban Area Working Group's procedures and protocols and that Non-jurisdictional Sub-grantee shall submit requests for reimbursement of exercise and training expenses, including overtime and backfill costs for personnel, on forms required by Denver and in accordance with the budget approved by the Urban Area Working Group.

xi. To maintain all records that may be required by the terms of the UASI grant agreements, State and federal laws, rules and regulations, or by Denver.

xii. To provide all supplemental documentation that may be required by Denver.

xiii. That this Agreement does not warrant or guarantee that Non-jurisdictional Sub-grantee will receive any specific amount of equipment and other tangible goods, training, or reimbursement. Non-jurisdictional Sub-grantee understands that it may receive more or less equipment or other tangible goods, training or reimbursement depending upon the approved budget and Non-jurisdictional Sub-grantee's ability to take advantage of the training in a timely manner.

xiv. To comply with all terms of each grant agreement and UASI grants from which it receives any goods or services, including reimbursement for any reason.

4. APPROPRIATIONS. The City'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

Grant Agreement and budget approved by the Urban Area Working Group for fulfilling the purposes of this Agreement.

5. **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.

6. **COORDINATION AND LIAISON.** Denver's point of contact for the UASI grants is the Director of the Mayor's Office of Emergency Management and Homeland Security ("Director"), who will serve as Denver's representative to the Urban Area Working Group. During the term of this Agreement, Non-jurisdictional Sub-grantee shall fully coordinate all activities and obligations related to or arising out of this Agreement with Denver, including the Director, or as otherwise directed by Denver.

7. **TERM AND TERMINATION.** The term of the Agreement commences the date executed by the City as indicated on the City's signature page and expires on April 30, 2013. Denver may terminate this Agreement, or any part thereof, for the reasons and in the manner provided in any UASI grant agreement funding this Agreement. References in any of those UASI grant Agreements to the "Office" or "State" means the "City" and references to "Contractor" mean Non-jurisdictional Sub-grantee.

8. **DISCLAIMER OF WARRANTIES. THE GOODS PROVIDED BY THE CITY UNDER THIS AGREEMENT ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND FROM THE CITY, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY THE CITY, ITS AFFILIATES, OR ITS CONTRACTORS, OR THEIR RESPECTIVE EMPLOYEES WILL CREATE ANY WARRANTY FROM THE CITY. The City 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 Sub-grantee.**

9. **INDEMNITY.** To the extent authorized by law, Non-jurisdictional Sub-grantee shall indemnify, defend and hold Denver harmless against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Non-jurisdictional Sub-grantee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Agreement. By executing this Agreement containing this indemnity clause, the Non-jurisdictional Sub-grantee does not waive the operation of any law concerning its ability to indemnify. Nothing herein waives the rights, immunities, limitations, or defenses afforded the parties by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.* as may be amended from time to time.

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. Non-jurisdictional Sub-grantee shall not hire or contract for services with any employee or officer of Denver that would result in any violation of the Denver Revised Municipal 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. Each party is an independent contractor to the other. 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. Non-jurisdictional Sub-grantee shall retain for at least seven (7) years after the expiration of this Agreement 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 access to and the right to examine any directly pertinent books, documents, papers and records of Non-jurisdictional Sub-grantee related to this Agreement, until the expiration of seven (7) 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 seven year period, Non-jurisdictional Sub-grantee shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the seven year period, whichever is later.

14. ASSIGNMENT AND SUBCONTRACTING. Denver is not obligated or liable under this Agreement to any person or entity other than Non-jurisdictional Sub-grantee. Non-jurisdictional Sub-grantee shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement or subcontract performance obligations without obtaining express prior written consent and approval from Denver and the State of Colorado. Consent and approval may not be unreasonably withheld. Any attempt by the Non-jurisdictional Sub-grantee to assign its rights or obligations or subcontract performance obligations without this prior written consent will be void and, at Denver's option, automatically terminates this Agreement. In the event of any unauthorized assignment or any subcontracting: (i) the Non-jurisdictional Sub-grantee remains responsible to Denver; and (ii) no contractual relationship exists between the City and such assignee or subcontractor.

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. 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 statues, 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 State of Colorado Second Judicial District.

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, Non-jurisdictional Sub-grantee's obligations to provide insurance, if any, and to indemnify the City will 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 Non-jurisdictional Sub-grantee at its address written above, and if to the City 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 be effective until actual receipt of written notification.

City and County of Denver
Mayor's Office of Emergency Management Homeland Security
Program Administrator - Denver UASI
1437 Bannock Street Room 3
Denver, Colorado 80202
Attn: Lin Bonesteel

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. DISPUTES. All disputes of any nature between the City and Non-jurisdictional Sub-grantee 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 Director is the City official to render a final determination.

22. 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.

23. 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.

24. 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 Non-jurisdictional Sub-grantee 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.

25. COUNTERPARTS. This Agreement may be executed in counterparts, each of which when executed and delivered constitutes an original and together constitutes one and the same instrument.

26. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Non-jurisdictional Sub-grantee consents to the use of electronic signatures by Denver. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by Denver in the manner specified by Denver. 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.