MEMORANDUM OF UNDERSTANDING BETWEEN THE COLORADO SPRINGS POLICE DEPARTMENT, THE EL PASO EPSO SHERIFF'S OFFICE, AND 4TH JUDICIAL DISTRICT MEMBER LAW ENFORCEMENT AGENCIES REGARDING THE INVESTIGATION OF PEACE OFFICERS' USE OF DEADLY FORCE

PARTIES:

This Memorandum of Understanding (hereafter "MOU") is between the City of Colorado Springs, a Colorado municipal corporation and home rule city, by and through the Colorado Springs Police Department ("CSPD"), the El Paso County Sheriff's Office ("EPSO"), and the 4th Judicial District Member Law Enforcement Agencies ("Member Agencies") listed below:

Fourth Judicial District Attorney's Office, Fountain Police Department, Calhan Police Department, Green Mountain Falls Police Department, Manitou Springs Police Department, Monument Police Department, Palmer Lake Police Department, Colorado State Patrol, Cripple Creek Police Department, Teller County Sheriff's Office, Woodland Park Police Department.

For purposes of this MOU, each Party may be referred to as a "Party" or collectively as "Parties".

PURPOSE:

Peace officer involved shooting investigations involving the discharge of a firearm by a peace officer that results in injury or death are required to be conducted pursuant to Colorado Revised Statute § 16-2.5-301.

This MOU specifies procedures for investigating peace officer involved shootings and other uses of deadly force by a peace officer which results in the death of another person. A Deadly Force Investigation Team ("DFIT") comprised of either CSPD or EPSO investigators will conduct a neutral, impartial and thorough investigation of all peace officer involved shootings and other uses of deadly force, as defined above, concerning the Parties' law enforcement personnel.

COOPERATION:

The Parties will fully cooperate with an investigation completed by the DFIT team, when the Parties' personnel act with deadly force. All Parties are committed to this process because it allows for a transparent investigation and assessment of the actions of the Parties involved law enforcement personnel. The cooperation is necessary in order to

assess the peace officers' actions and apply the actions to law as established by the United States Constitution and the Colorado State Constitution.

TERM:

This MOU shall be for a term commencing on December 31, 2015 and ending December 31, 2020. The MOU shall automatically be extended and renewed for another period of five years from the expiration date and can be extended for a second five year renewal term if mutually agreed to by the Parties to the MOU. Any Party may terminate its participation in this MOU upon thirty (30) days written notice to the other Parties.

PROCEDURES:

1. Subject Matter of Investigation: The DFIT team will investigate matters where, when acting in official capacity, a Parties' law enforcement personnel:
    a. discharges his/her service weapon and the discharge causes either bodily injury, serious bodily injury or death to another person or
    b. uses other deadly force that causes the death of another person.

    Matters that occur when off duty may be investigated by the DFIT team, upon request and agreement by the DFIT team.

2. Incidental Matters of Investigation: Should there be ancillary investigations, such as, but not limited to, an on-going investigation outside of the deadly force incident, that investigation shall remain with the original investigating agency. The DFIT team will investigate and gather facts only about the use of force incident, to include the preceding events of the incident.

3. Matters discretionary for investigation:
    a. Shots discharged by accident that are not an attempted use of deadly force will be investigated by Parties pursuant to their policies and procedures. However, if the accidental discharge results in serious bodily injury or death to an individual not employed by a Party, the DFIT team will conduct the investigation.
    b. Not all uses of Tactical Vehicle Interventions (TVI's) will be considered deadly force. CSPD, EPSO, or the Member Agencies' supervisors will consider the circumstances surrounding the TVI, injuries sustained and the intent of the officer. A discussion may occur between the Member Agencies, the CSPD Violent Crimes Lieutenant and the EPSO on-call Investigations Lieutenant to discuss the specifics of the incident and determine the need for a response by a DFIT team.
    c. Not all deaths that occur inside the criminal justice center will be considered a deadly force incident. (example: inmate suicide, medical reasons) A discussion may occur between the CSPD Violent Crimes Lieutenant and the EPSO Commander or Chief regarding whether the circumstances necessitate a response by the DFIT team.

d. Deaths that occur as a result of a vehicular collision will not be investigated by the DFIT team. The member agency may request the CSPD major accident team or the State Patrol major accident team to investigate. EPSO does not investigate major vehicular collisions.

4. Notification of DFIT Team: The DFIT team will be summoned as soon as possible after the knowledge that a use of force incident has occurred. For those matters involving use of force, but not involving the discharge of a weapon, the DFIT team will be notified. Notification of the DFIT team will be pursuant to the policies and procedures of involved law enforcement agency. If the coroner is needed, the DFIT team supervisor will summon the coroner.

5. Duties of the DFIT Team:
   a. Ensure a thorough and impartial investigation of all incidents within the scope of the DFIT's responsibilities, in accordance with applicable laws, standards of procedure, and policies.
   b. Ensure that proper investigation procedures are followed, evidence is collected and preserved, and reports are generated in a timely manner.
   c. Ensure that the DFIT and the Office of the District Attorney share information and collaborate on decisions regarding, but not limited to, release of evidence, witness identification, witness interviews and other significant legal matters.
   d. Provide, as soon as possible, a confidential briefing to the involved law enforcement agency and its liaison team, and to the member agency command staff, as requested regarding the use of force incident. Provide updates as needed, or reasonably requested.
   e. Refer the completed investigation to the Office of the District Attorney for legal review. The involved law enforcement agency shall be notified at the time the investigation is presented.
   f. Ensure that any Brady material, or Rule 16 material is preserved, and communicated, as appropriate, to the Office of the District Attorney.
   g. At the conclusion of the investigation, and finding by the District Attorney, provide any requested documents to the involved law enforcement agencies' Professional Standards Unit. Participate in any critical incident review meetings, as requested.

6. Investigations: Shall be conducted pursuant to the provisions of this MOU in conjunction with the involved law enforcement agencies written policies and procedures concerning the use of deadly force.

Applicable Law:

This MOU is subject to, and shall be interpreted and performed under, the laws of the State of Colorado, El Paso County Ordinances, Rules and Regulations, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs.

Court jurisdiction for any dispute arising out of this MOU shall exclusively be in the El Paso County District Court for Colorado's Fourth Judicial District.

Liability:

Each Party agrees to be responsible for its own liability incurred as a result of its participation in the MOU. In the event any claim is litigated, each Party will be responsible for its own expenses of litigation or other costs associated with enforcing this MOU. No provision of the MOU shall be deemed or construed to be a relinquishment or waiver of any kind of the application limitations of liability provided to the Parties by the Colorado Governmental Immunity Act, C.R.S. § 21-1—101, *et. seq.* and Article XI of the Colorado Constitution.

Appropriation of Funds:

1. In accord with the Colorado Constitution, Article X, Section 20, performance of any of EPSO's obligations under this MOU is expressly subject to appropriation of funds by the El Paso County Board of County Commissioners. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the EPSO's obligations under this MOU, or appropriated funds may not be expended due to Constitutional spending limitations, then that EPSO may terminate this MOU without compensation to the other Parties.

2. In accord with the Colorado Constitution, Article X, Section 20, and Section 7-60 of the Charter of the City of Colorado Springs, performance of CSPD's obligations under this MOU is expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of CSPD's obligations under this MOU, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then CSPD may terminate this MOU without compensation to the other Parties.

3. In accord with the Colorado Constitution, Article X, Section 20, performance of the Member Agencies obligations under this MOU are expressly subject to appropriation of funds by their legislative bodies. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the Member Agencies' obligations under this MOU, or appropriated funds may not be expended due to Constitutional spending limitations, then the Member Agencies may terminate this MOU without compensation to the other Parties.

GENERAL PROVISIONS:

1. It is expressly understood and agreed that this MOU is for the benefit of the Parties only, and nothing contained herein shall give or allow any claim or right of action by any other third person or entity on or under this MOU. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this MOU,

receiving services or benefits under or resulting from this MOU shall be deemed to be incidental beneficiaries only.

2. This MOU, together with all exhibits attached hereto, constitutes the entire agreement between the Parties, and all other representations or statements heretofore made, verbal or written, are merged herein, and this MOU may be amended only in writing, and executed by duly authorized representative of the Parties hereto.

3. In the event of a dispute between the Parties, the Parties agree that they will use their best efforts to informally resolve that dispute through consultation and communication between the Parties.

4. The headings used in this MOU are inserted only as matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this MOU and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

El Paso County Sheriff's Department:

By: _____ this 17th day of December, 2015
Bill Elder, Sheriff

APPROVED AS TO FORM: _____
EPSO Attorney

Colorado Springs Police Department:

By: _____ this 16 day of December, 2015
Pete Carey, Police Chief

APPROVED AS TO FORM: _____
CSPD Attorney

Member Law Enforcement Agency Signature Page reference

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The appointed representative of the Identified Agency, referred to as Law Enforcement Member Agency, hereto executes and agrees to this MOU. An addendum may be part of this MOU as indicated below:

An addendum is included and labeled: _____

An addendum is not included. DAM (initial here)

This MOU becomes effective on date of signature by representative of Member Agency.

For the 4th Judicial District Attorney's Office:

DM 12/31/15

Daniel May
District Attorney