

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COLORADO SPRINGS POLICE DEPARTMENT,
THE EL PASO COUNTY SHERIFF'S OFFICE, THE COLORADO
BUREAU OF INVESTIGATION, THE 4TH JUDICIAL DISTRICT
ATTORNEY'S OFFICE, AND THE 4TH JUDICIAL DISTRICT MEMBER
LAW ENFORCEMENT AGENCIES
REGARDING THE INVESTIGATION OF INCIDENTS PURSUANT TO
COLORADO REVISED STATUTE § 16-2.5-301, AND INCLUDING
OTHER USES OF DEADLY FORCE BY PEACE OFFICERS.**

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"), the 4th Judicial District Attorney's Office ("Office of the District Attorney"), the Colorado Bureau of Investigation ("CBI"), and the 4th Judicial District Member Law Enforcement Agencies ("Member Agencies") listed below:

Fountain Police Department, Calhan Police Department, Green Mountain Falls Marshal's Office, 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, University of Colorado Colorado Springs, Pikes Peak Community College.

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 to a person, are required to be conducted pursuant to Colorado Revised Statute § 16-2.5-301.

This MOU specifies protocol for the investigation, evaluation, and review of shooting incidents that fall within the purview of Colorado Revised Statute § 16-2.5-301, and also includes by agreement of the parties investigations of other uses of deadly force by peace officers. A Deadly Force Investigation Team ("DFIT") will conduct a neutral, impartial, and thorough investigation of all such incidents concerning the Parties' law enforcement personnel. The agency or agencies that comprise the DFIT may include CSPD, EPSO, and/or CBI, depending on which agencies' personnel are directly involved in the incident.

COOPERATION:

The Parties will fully cooperate with an investigation completed by the DFIT, when the Parties' personnel discharges a firearm, and it results in injury or death to a person, as well as other uses of deadly force by peace officers. 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. Nothing in this MOU supersedes individual peace officers' rights as established by law and agency policy.

TERM:

This MOU shall be for a term commencing on March 1, 2021 and ending on December 31, 2025. 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.

PROTOCOL:

1. Subject Matter of Investigation: The DFIT will investigate matters where, when acting in an official capacity, a Parties' law enforcement personnel discharges a firearm that results in injury or death to a person pursuant to CRS § 16-2.5-301. Situations that fall within the purview of CRS § 16-2.5-301, for the purposes of this MOU, include situations in which a peace officer, acting in an official police capacity (whether on or off duty), shoots and injures or kills another person, in an environment other than range training. This includes accidental firearms discharge on or off duty if the peace officer was acting in an official police capacity. By agreement of the parties, this MOU also includes other uses of deadly force by peace officers that are not specifically covered by CRS § 16-2.5-301.

Should both CSPD and EPSO personnel discharge their firearms in the same incident resulting in a DFIT response, the on-call CSPD and EPSO Investigations Division lieutenants will discuss the specifics of the incident and determine which agency will fulfill command responsibilities for the DFIT. In addition, the Colorado Bureau of Investigation (CBI) agrees to provide personnel to participate and to provide review and/or recommendations of the DFIT investigation upon request, and if availability of resources allow. CBI may provide personnel initially for the first operational period following the incident, and thereafter may return to the jurisdiction as necessary to

appropriately provide review and/or recommendations of the investigation. As technology allows, CBI personnel may also engage with the agencies remotely during the investigation. CBI personnel will submit a report regarding their actions taken, and other pertinent information as needed.

2. Incidental Matters of Investigation: Should there be ancillary investigations, such as, but not limited to, an ongoing investigation outside of the incident, that investigation shall remain with the original investigating agency. The DFIT will typically investigate and gather facts only about the use of force incident, to include the preceding events of the incident.
3. Notification of DFIT: The DFIT will be summoned and respond as soon as possible after a qualifying incident has occurred. Notification of the DFIT will be pursuant to the policies and procedures of the involved law enforcement agency. If the coroner is needed, the DFIT supervisor will summon the coroner.
4. Duties of the DFIT:
 - 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.
 - i. Personnel who discharged their firearm in an incident under the purview of this MOU are interviewed at a date and time scheduled with the employee and/or the employee's attorney.
 - 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. Refer the completed investigation to the Office of the District Attorney for legal review in accordance with the filing procedures outlined by the District Attorney. The involved law enforcement agency shall be notified at the time the investigation is presented.
 - e. Ensure that relevant Brady material, and all Rule 16 material, is preserved and communicated to the Office of the District Attorney.
 - f. At the conclusion of the investigation, and finding by the District Attorney, provide any requested documents to the involved law enforcement agency. Participate in any critical incident review meetings, as requested.
5. Psychological services and/or victim advocacy services: When applicable, these services will be provided to the officers or deputies involved in the incident by the professionals employed or contracted by the involved law enforcement agency. Citizens who are determined to be victims of crimes enumerated in C.R.S. § 24-4.1-302 ("Victim Rights Act") will receive law enforcement-based victim advocacy services from the agency with command responsibility in the investigation.

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.
7. Case Filing Review: All DFIT investigations will be forwarded to the Office of the District Attorney for review. The Office of the District Attorney will render a written filing decision on presented DFIT investigations under the purview of this MOU after receiving the completed investigation and a thorough review of the same.

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 4th 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 or the Office of the District Attorney'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 or the Office of the District Attorney's obligations under this MOU, or appropriated funds may not be expended due to Constitutional spending limitations, then these Parties 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, the performance of CBI's and 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 CBI or 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.
5. This Memorandum of Understanding may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Colorado 4th Judicial District DFIT MOU
2021-2025

Office of the District Attorney:

By:  this 2 day of February, 2021
Michael J. Allen, District Attorney