

A RESOLUTION APPROVING THE 2021 DELEGATION AGREEMENT BETWEEN THE PUEBLO AREA COUNCIL OF GOVERNMENTS (PACOG) AND THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION FOR TRANSPORTATION PLANNING SERVICES, AUTHORIZING THE CHAIR OF THE COUNCIL TO EXECUTE THE SAME, AND AUTHORIZING AND DIRECTING THE URBAN TRANSPORTATION PLANNING DIVISION TO ADMINISTER THE AGREEMENT IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

WHEREAS, the Pueblo Area Council of Governments (PACOG), as the designated Metropolitan Planning Organization (MPO) and Transportation Planning Region (TPR) for the Pueblo region, has prepared and adopted a biennial Unified Planning Work Program (UPWP) and estimated budget for fiscal years 2020 and 2021 which includes provisions for the receipt and expenditure of urban and rural transportation planning grant and local funds; and

WHEREAS, PACOG has developed an agreement and contract with the City of Pueblo (CITY) for the performance of the tasks defined in the FY 2020-2021 UPWP and PACOG budget for the year 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE PUEBLO AREA COUNCIL OF GOVERNMENTS THAT:

SECTION 1:

The Agreement for Transportation Planning Services for 2021 effective January 1, 2021, between the Pueblo Area Council of Governments (PACOG) and the City of Pueblo, a Municipal Corporation, to provide certain transportation and planning services, a copy of which is attached and incorporated into this Resolution, is hereby approved.

SECTION 2

The Chair of the PACOG Board is hereby authorized to execute said Agreement for Transportation Planning and Improvement Services for 2021.

SECTION 3

The PACOG Board hereby authorizes and directs the City Urban Transportation Planning Division to administer the 2021 delegation agreement of the FY 2020-2021 UPWP in compliance with all applicable federal, state, and local laws, regulations, and official policies.

PASSED AND ADOPTED this 27th day of August, 2020 by the PACOG Board.



Chairperson, Pueblo Area Council of Governments

ATTEST:



PACOG Recording Secretary

**AGREEMENT FOR TRANSPORTATION PLANNING
AND IMPROVEMENT SERVICES FOR 2021**

THIS AGREEMENT (Agreement) is made and entered into effective the 1st day of January 2021, by and between the Pueblo Area Council of Governments, hereinafter referred to as "PACOG", the City of Pueblo, a Colorado Municipal Corporation, hereinafter referred to as "CITY".

WITNESSETH THAT:

WHEREAS, PACOG serves as the Metropolitan Planning Organization (MPO) for the Pueblo Urban Area, and the Transportation Planning Region (TPR) for all of Pueblo County,

WHEREAS, PACOG is eligible to receive funds to perform the work tasks for these activities and has entered one or more agreements with the State of Colorado and/or the U.S. Department of Transportation for transportation planning and improvement projects whereby funding may be made available to PACOG under provisions of said agreements, and statutes, laws and regulations referenced in said agreements; and

WHEREAS, CITY has the authority, capacity, and ability to undertake such transportation planning and improvement projects; and

WHEREAS, PACOG desires to contract with CITY to provide services, activities, and project execution required of PACOG under the aforesaid agreements through the City of Pueblo Urban Transportation Planning Division (UTPD), and others.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth herein, the parties hereto do mutually agree as follows:

1. WORK TASKS; RESPONSIBILITIES OF CITY

(a) CITY agrees to satisfactorily perform and complete, using its own employees, employees of Pueblo County (herein after referred to as "COUNTY" or such consultants or contractors selected by PACOG in accordance with the regulations and policies of the Colorado Department of Transportation (CDOT) and the Federal Highway Administration (FHWA), the planning services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the amended FY 2020-2021 Unified Planning Work Program adopted by PACOG Resolution 2020-019 on August 19, 2020. incorporated herein by reference, in full compliance with all provisions of this Agreement.

(b) CITY is authorized to have pre-approved staff from COUNTY work mutually with CITY staff, and consultants to complete work for services, activities, and project execution required of PACOG as identified in the Scope of Work included as Appendix A attached hereto and incorporated herein by this reference.

(c) CITY represents that it: (i) has the requisite authority and capacity to perform the services and work contemplated in the FY 2020-2021 UPWP, as amended, and; (ii) that it is a home rule city and political subdivision of the State of Colorado; (iii) that it is fully aware of and understand its duty to perform all functions and services in accordance with the regulatory requirements set forth in 23 CFR Parts 420 and 450 and 49 CFR Part 18 and those identified

in the Memorandum of Agreement (MOA) adopted by PACOG on March 22, and incorporated herein by reference, in full compliance with all the provisions of this Agreement.

2. RESPONSIBILITIES OF PACOG

PACOG shall designate a representative who will be authorized to make all necessary decisions required of PACOG on behalf of PACOG in connection with the performance of this Agreement and the disbursement of funds in connection with the program. In the absence of such a designation, the City Manager and the Pueblo County Attorney, acting jointly, shall be deemed as PACOG's authorized representative.

3. CITY'S COMPENSATION AND METHOD OF PAYMENT

(a) PACOG will pay to CITY, an amount up to that specified in subparagraph (d) of this paragraph as full compensation for all services and work to be performed or undertaken by CITY under this Agreement which is within the FY 2020-2021 UPWP, as amended. Payment of funds to CITY are subject to the following requirements, which shall be conditions precedent to payment: (i) that CITY staff time has been expended for eligible activities or CITY has obligated or expended funds for eligible approved expenditures, (ii) that CITY is not in default of any material provisions of this Agreement nor applicable law or regulation, (iii) that CITY has submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items, (iv) that, if required by the terms or conditions of an applicable financial assistance agreement, CITY has certified with each payment or reimbursement request compliance with the requirements identified in the MOA and that all staff time and obligations or expenditures for which payment is sought were made for and in furtherance of an approved project or work and are an eligible use of assistance under the law and regulations applicable to such assistance, and (v) that PACOG has timely received from CDOT and local agency matches sufficient funds to make the payment or reimbursement hereunder.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable regulations including but not limited to those contained in the MOA and those set forth in 49 CFR Part 18, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the FY 2020-2021 UPWP, as amended.

(c) Expenses for pre-approved COUNTY staff time and other eligible reimbursable expenses shall be paid to the COUNTY following the submittal and approval of invoices detailing the eligible reimbursement items.

(d) PACOG shall pay to CITY for services covered by the FY 2020-2021 UPWP, as amended a sum not to exceed the amounts identified in the FY 2021 PACOG budget (\$890,202) and/or rates set forth in those documents as incorporated herein by reference and as may be amended in writing, in full compliance with all the provisions of this Agreement.

(e) In the event PACOG requests or authorizes work beyond or in addition to that set forth in the FY 2020-2021 UPWP, as amended, PACOG shall pay additional compensation to the CITY. The amount of such additional compensation shall be negotiated, but in the event the parties fail to negotiate or are unable to agree regarding compensation, CITY shall be compensated

for staff time and its costs at the rates set forth in paragraph (d), above, and for the work of subcontractors and consultants in an amount equal to the reasonable actual cost to CITY.

4. TERM OF AGREEMENT.

The term of this Agreement shall be from January 1, 2021 to December 31, 2021 unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT.

(a) For Cause. This Agreement may be terminated by PACOG for cause, including any nonperformance by CITY, upon thirty (30) days written notice to CITY including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the PACOG's governing body at a regular or special meeting of same whose decision shall be final. The determination of the PACOG as to the cause of termination and the appropriateness thereof shall be final and binding upon both PACOG and the CITY. Cause for termination shall mean any material failure by CITY to comply with any term of this Agreement.

(b) For Convenience. This Agreement may be terminated for convenience in accordance with the provisions of 49 CFR 18.44. This Agreement shall automatically terminate at the end of its term as well as in the event of any suspension, reduction, or non-receipt of the financial assistance or State or Federal grant funds by PACOG.

(c) Post Termination Procedures. In the event of termination, CITY shall cease further work and CITY shall be entitled to receive just and equitable compensation for satisfactory work performed through the date of termination for which compensation has not previously been paid nor reimbursement made.

6. ASSIGNABILITY.

This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party. Any assignment or attempted assignment made in violation of this provision shall, at the non-assigning party's election, be deemed void and of no effect whatsoever.

7. CONFLICT OF INTEREST.

CITY certifies that neither it nor any members of its City Council, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. CITY shall avoid all conflicts of interest which are prohibited by applicable federal regulations, if any, including but not limited to those set forth in 49 CFR 18/36(b)(3) as presently promulgated and as same may be revised from time to time in the future.

8. CITY RECORDS.

CITY shall maintain records as to services provided, reimbursable expenses incurred in performing the Work Tasks, and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by the PACOG's auditor and acceptable to COOT and FHWA. CITY agrees to comply with all applicable uniform administrative requirements described or referenced in applicable state or federal regulations, including those set forth in the MOA as a part of this Agreement. PACOG, COOT, the Comptroller General of the United States, the Inspector General of the U.S. Department of Transportation, and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers, electronic media, and records of CITY which relate to this Agreement for the purpose of making an audit or examination. Upon completion of the work and end of the term of this Agreement, the PACOG may require that a copy of all of CITY's financial records relating to this Agreement to be turned over to PACOG.

9. MONITORING ANDEVALUATION.

PACOG shall have the right to monitor and evaluate the progress and performance of CITY to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with CDOT's, FHWA's, FTA's, PACOG's and other applicable monitoring and evaluation criteria and standards. PACOG may quarterly review CITY performance using on-site visits, progress reports required to be submitted by CITY, audit findings, disbursement transactions and contact with CITY as necessary. If requested, the CITY shall furnish to the PACOG periodic but not less frequently than quarterly program and financial reports of its activities in such form and manner as may be requested by the PACOG. CITY shall fully cooperate with PACOG relating to such monitoring and evaluation.

10. CITY FILES AND INFORMATION REPORTS.

CITY shall maintain files, including electronic media, containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances, activity reports, and program income, if any. These records shall be retained by CITY for a period of three years after the completion of the Work Tasks.

11. INDEPENDENCE OF CITY.

Nothing herein contained nor the relationship of CITY to PACOG, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make CITY or any of CITY's agents or employees the agents or employees of the PACOG. CITY shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

12. LIABILITY: INSURANCE.

As to PACOG, CITY agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including the loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by CITY or by the conditions created thereby; provided, however, that nothing in this paragraph is intended, nor should it be construed, to create or extend any right, claims or benefits or assume any liability for or on

behalf of any third party, or to waive any immunities or limitations otherwise conferred under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et. seq. CITY shall provide and maintain Workers' Compensation insurance coverage or self-insurance on its employees complying with the requirements of State law.

13. SPECIAL REQUIREMENTS APPLICABLE TO IMPROVEMENTS TO PROPERTY.

(a) In addition to all procurement requirements otherwise applicable to CITY pursuant to any other provision of this Agreement or pursuant to any Requirement of law or regulation incorporated in this Agreement by reference, if any portion of the funds provided to CITY under this Agreement are to be used for making improvements to real property, including new construction, rehabilitation, or remodeling, then in such event CITY shall comply with all requirements of this Paragraph 13.

(b) No improvements shall be undertaken to real property with funds (or reimbursement) provided hereunder unless and until: (i) plans and specifications therefore have been prepared by either a registered Professional Engineer in good standing and duly licensed to practice in the State of Colorado or an Architect duly licensed and authorized to conduct a practice of architecture in the State of Colorado; and (ii) all construction contracts for improvements for which payment is sought from PACOG shall have been awarded only after an open, competitive bidding process which allows qualified contractors to reasonably participate.

(c) If this Paragraph 13 is applicable, no disbursement of funds to CITY shall be made by PACOG hereunder unless and until all conditions precedent to payment specified elsewhere in this Agreement have been satisfied and CITY files with PACOG's designated representative a written request for payment signed by an architect, engineer, or an officer of CITY that certifies (i) that the amounts included in the request for payment have not been included in any prior request for payment, and (ii) that the improvements listed therein for which payment is sought have been completed in accordance with the approved plans and specifications therefor.

(d) In every contract for construction of improvements for which payment or reimbursement from PACOG is to be provided under this Agreement, CITY shall include a contract clause or clauses, requiring the contractor, and all of the contractor's subcontracts of all tiers, to comply with the applicable requirements of the Davis-Bacon Act and implementing regulations, and to pay all laborers and mechanics engaged in work upon the improvements at the prevailing wage rates for such work as determined by the U.S. Department of Labor.

14. EQUAL EMPLOYMENT OPPORTUNITY.

In connection with the performance of this Agreement, CITY shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by PACOG and the State of Colorado under 23 U.S.C. 324 and 29 U.S.C. 794 and the provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the U.S. DOT implementing regulations (49 CFR 27,37, and 38) as certified in the FY 2021-19 UPWP.

15. ENTIRE AGREEMENT; AMENDMENTS.

The provisions set forth in this Agreement, and all documents as incorporated herein by reference, in full compliance with all the provisions of this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provision of this Agreement, shall be binding unless made in writing and executed by the duly authorized officers of CITY and PACOG.

16. SIGNATURES.

The persons signing this Agreement on behalf of each party represent and warrant that such persons and their respective party have the requisite power and authority to enter, execute and deliver this Agreement and this Agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

IN WITNESS, WHEREOF, CITY and PACOG have executed this Agreement effective as of the date first above written and under the laws of the State of Colorado.

ATTEST:

PUEBLO AREA COUNCIL OF GOVERNMENTS


Secretary

By 
Chairperson

ATTEST:

CITY OF PUEBLO

City Clerk

By _____
Mayor Gradisar, City of Pueblo

APPENDIX A

SCOPE OF WORK

CITY is authorized to pre-approved staff from COUNTY to work mutually with CITY staff, and consultants to complete work for transportation planning services, activities, and project execution required of PACOG for planning services and items of work including all labor and materials encompassed within or reasonably necessary to accomplish the assigned tasks and functions described in the amended FY 2020-2021 Unified Planning Work Program adopted by PACOG Resolution 2019-019 on August 13 2020..

PROFESSIONAL FEE SCHEDULE

CITY shall compensate the COUNTY for the Scope of Services, approved by CITY, in accordance with paragraph 3.C. above, in the following manner:

1. An hourly fee comprised of the employee's hourly rate and benefits, excluding administrative and overhead charges, for the completion of approved work documented and approved from invoices submitted by COUNTY.
2. Reimbursement of qualifying additional expenses authorized for the satisfactory performance and completion, of the planning services and items of work in accordance with the regulations and policies of the Colorado Department of Transportation (CDOT) and the Federal Highway Administration (FHWA), encompassed within or reasonably necessary to accomplish the tasks and functions described in the amended FY 2020-2021 UPWP, as amended adopted by PACOG Resolution 2020-019 on August 13, 2020.
3. The Scope of Work for COUNTY staff that is subject to approval by CITY shall be specifically for eligible transportation planning activities that include work tasks the following tasks identified in the FY 2020-2021 UPWP:
 - i) Initiate discussions with MPO stakeholders regarding the creation of a Pueblo Regional Transportation Authority (RTA) or other dedicated funding sources for transportation.
 - ii) Integrating transit, bicycle and pedestrian planning into all transportation planning efforts.
 - iii) Review proposed major county subdivision proposals, zoning changes, site plans, planned developments and land use issues for impacts to the transportation system and require amendment of the PACOG Long Range Transportation Plan.
 - iv) Assist PACOG members by providing information and other assistance with transportation funding grant applications.

- v) Participate in professional training and conferences via teleconferencing, e-mail discussion lists, and webinars.
- vi) Attend FHWA/FTA training programs and other transportation conferences for technical or professional training.
- vii) Meet with FHWA and COOT monthly for MPO updates and discussion
- viii) Assist in providing accurate and current information for the PACOG MPO/TPR website.
- ix) Prepare demographic data as needed for transportation modeling used for special studies and/or project consultants.
- x) Analyze and document current and updated traffic count data for the Pueblo area.
- xi) Analyze and document current and updated collision data for trends and recommended solutions to reduce crash rates.
- xii) Review transit system expansion and route service in planning projects and sub-area studies.
- xiii) Obtain, update, convert, refine, and maintain surface roadway systems data for the Pueblo area. This includes national highway system, state highway system, county and local roadways.
- xiv) Obtain, update, convert, refine, and maintain transit systems data for the Pueblo area. This includes updating of route and stop location changes.
- xv) Utilize the PACOG Travel Demand Model program to run scenarios involving roadway improvements and construction on new transportation routes to evaluate costs and benefits.