

RESOLUTION 176 - 22

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND THE PIKES PEAK AREA COUNCIL OF GOVERNMENTS (PPACG) IN SUPPORT OF THE SPECIALIZED TRANSPORTATION PROGRAM

WHEREAS, the City of Colorado Springs is the primary source of public transportation in the Pikes Peak region, providing fixed-route, complementary Americans with Disabilities Act (ADA) paratransit, and alternative commuting services; and

WHEREAS, the Pikes Peak Area Council of Governments (PPACG) currently receives and administers Area Agency on Aging (AAA) funds for seniors and has been designated by the Governor of Colorado as the regional recipient of 5310 funds for the Colorado Springs Urbanized Area; and

WHEREAS, the City administered the Specialized Transportation Program for the region until administration of the program was transferred to PPACG in January 2021; and

WHEREAS, the City and PPACG entered into an Intergovernmental Agreement on December 31, 2020 to ensure a smooth transition of specialized transportation services to sustain the needs of seniors and people with disabilities in the region. That original intergovernmental agreement will terminate at the conclusion of 2022; and

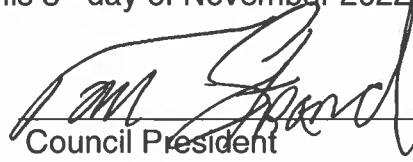
WHEREAS, the City and PPACG desire to extend the arrangement for the transfer of Pikes Peak Rural Transportation Authority (PPRTA) Transit funds for the Specialized Transportation Program through a new intergovernmental agreement.

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

Section 1. The City Council approves the Intergovernmental Agreement between the City of Colorado Springs, Colorado, and Pikes Peak Area Council of Governments regarding the transfer of Pikes Peak Rural Transportation Authority Transit funds for the Specialized Transportation Program.

Section 2. The mayor is authorized the execute, administer, amend and extend the intergovernmental agreement.

Dated at Colorado Springs, Colorado this 8th day of November 2022


Council President

ATTEST:


Sarah B. Johnson, City Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY
OF COLORADO SPRINGS, COLORADO, AND THE PIKES
PEAK AREA COUNCIL OF GOVERNMENTS**

This Intergovernmental Agreement ("IGA" or "Agreement"), dated for reference this 30th day of November, 2022, is made by and between the City of Colorado Springs, a Colorado home rule city and Colorado municipal corporation ("City") and the Pikes Peak Area Council of Governments ("PPACG"). City and PPACG may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the administration of the Pikes Peak Region's Specialized Transportation Program was transferred to PPACG from the City's Transit Division on January 1, 2021.

WHEREAS, the purpose of this IGA is to allow the transfer of an agreed upon amount of the Pikes Peak Rural Transportation Authority ("PPRTA") funds designated for the City's Transit Services Division to PPACG to be used to administer the Region's Specialized Transportation Program, in combination with 5310 funding.

WHEREAS, this IGA may be extended beyond 2023 to support the enhanced mobility of seniors and individuals with disabilities, providing transit services for the aging population and individuals with disabilities within the geographical region of the PPACG ("Specialized Transportation Program") upon mutual agreement of both Parties.

WHEREAS, the Mayor of Colorado Springs is authorized to execute, administer, amend, and extend the intergovernmental agreement on behalf of the City.

WHEREAS, this IGA is executed by the City and PPACG under authority of Colo. Const. Art. XX and Section 29-1-203, Colorado Revised Statutes.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth below, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above recitals are hereby incorporated by reference.
2. PPACG shall administer the Specialized Transportation Program for the region.
3. The City shall provide PPACG two hundred twenty thousand dollars (\$220,000) for the 2023 calendar year in support of the Specialized Transportation Program. If National Transit Database (NTD) reporting requirements are not met, this funding amount may be reduced to \$126,000 in 2024.
4. PPACG will continue to assist subrecipients in enrolling as NTD limited reporters. However, the City recognizes PPACG is dependent on FTA's timeline to assess each

subrecipient's program before FTA grants access. Once a subrecipient is enrolled, PPACG will monitor subrecipients to ensure accurate data is provided to NTD on a yearly basis.

5. PPACG shall not utilize the PPRTA funds to subsidize or fully pay for specialized transportation trips within the Mountain Metropolitan Transit ¼-mile ADA service area unless the trip is booked and carried out with an assistance level greater than door-to-door, defined as providing services beyond the threshold of the doorway at the origin or destination.
6. PPACG shall provide written notice to the subrecipients quarterly, making them aware of future budget reductions starting 2024 should they not meet NTD reporting efforts.
7. If PPACG has received its annual PPRTA allotment from the City and opts to withdraw from this IGA for convenience prior to the end of the year for which the funding was apportioned, PPACG shall repay to the City a prorated amount of that annual PPRTA funding. Proration will be calculated by dividing the annual PPRTA allotment by the number of days in the year and multiplying the quotient by the number of days left in the year after the termination date.
8. **Term and Extension.** The term of this agreement shall be January 1, 2023 through December 31, 2023. Upon mutual agreement the Parties may extend this agreement for an additional fifteen (15) years on a yearly basis. The City's Public Works Director or designee shall have authority to extend the Agreement on behalf of the City.
9. **Termination for Convenience.** Either Party may terminate this IGA for convenience upon forty-five (45) days prior written notice to the other Party. The notice of termination shall state the effective date of termination and may be subject to the terms set forth within Paragraph 6.
10. **Appropriations.** This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

11. **Choice of Law.** This Agreement is subject to, and shall be interpreted and performed under, the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs.
12. **CORA Acknowledgement.** PPACG acknowledges that the City is subject to the Colorado Open (Public) Records Act, C.R.S. § 24-72-201 et seq.
13. **Dispute Resolution.** Should disputes arise as to the performance of any obligations or services pursuant to this Agreement; the Parties agree to attempt informal resolution of the dispute pursuant to the following procedure:
 - a. Within thirty (30) days of the conclusion of any service provided pursuant to this Agreement, any party dissatisfied with the other party's performance of its obligations under this Agreement (the "Aggrieved Party") shall notify the other party in writing of the nature of the Aggrieved Party's dissatisfaction, outlining in detail the specific concerns of the Aggrieved Party and suggestions for resolution.
 - b. Any party receiving notice of dissatisfaction pursuant to the preceding paragraph shall contact the Aggrieved Party and arrange an in-person meeting to attempt to resolve the Aggrieved Party's dissatisfaction. Such meeting must be scheduled within thirty (30) days of receipt of the Aggrieved Party's notice of dissatisfaction.
 - c. The Parties agree to work in good faith to resolve all perceived disputes in order best protect the jurisdictions served by the Parties and to ensure this Agreement is not terminated unless continuation of this Agreement is no longer practicable.
14. **Entire Agreement.** This IGA, together with all exhibits attached, constitutes the entire IGA between the Parties, and all other representations or statements heretofore made, verbal or written, are merged herein, and this IGA may be amended only in writing, and executed by duly authorized representatives of the Parties.
15. **Expenditures and Fees of Each Party Deemed Expenditures of That Party.** It is agreed and understood for purposes of the Colorado Constitution, Article X Section 20, the Colorado Springs City Charter, and any other applicable laws, that any fees contributed or paid, or otherwise provided by either Party to this Agreement to another Party to this Agreement are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.
16. **Governmental Immunity.** Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.
17. **Headings.** The headings this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions or the interpretation or construction of the Agreement.

18. **Indemnification.** Each party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. 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 Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et. seq.* and Article XI of the Colorado Constitution.
19. **Independent Contractor.** In the performance of the obligations under this Agreement, the parties agree PPACG is at all times acting and performing as an independent contractor. The City shall neither have, nor exercise, any control or direction over the manner and means by which PPACG performs its obligations, except as otherwise stated in this Agreement. PPACG understands and agrees that its employees are not City employees. PPACG is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation for benefit to its employees under this Agreement. Further, it is expressly understood and agreed that PPACG employees are not entitled to any City payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits.
20. **Jurisdiction and Venue.** Court jurisdiction shall exclusively be in the District Court for El Paso County Colorado.
21. **Personnel Control and Liability.** Nothing in this Agreement shall be construed to place the personnel of either Party under the control or employment of the other Party. Each Party remains responsible for all pay, entitlement, employment decisions, and workers' compensation liabilities, for its own personnel. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does either Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.
22. **Severability.** If any provisions of this Agreement shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.
23. **Third Party Beneficiary.** It is specifically agreed between the parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third-party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement. In requiring insurance under this Agreement, the City specifically does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., as now written or amended in the future.

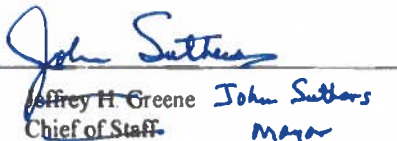
24. **Waiver.** A Party's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or either Party's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
25. **Assignment.** No Party shall assign or otherwise transfer any right or obligation under this Agreement without prior written consent of the other Party.
26. **Notice and Correspondence.** Notice required pursuant to this IGA shall be sent in writing by United States Mail, first class postage prepaid, or e-mail to the following:
- | | |
|---|---|
| <p>For PPACG:
 Andrew Gunning
 Executive Director
 15 S. 7th Street
 Colorado Springs, CO 80905</p> | <p>For The City:
 Lan Rao
 Acting Manager, Transit Services Division
 1015 Transit Drive
 Colorado Springs, CO 80903</p> |
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27. After execution of this IGA, the City Transit Services Division Manager and the PPACG Director are authorized to administer this IGA on behalf of their respective entities.
28. The Parties to this IGA represent or warrant to each other that they have the necessary authority to enter into this IGA and to perform their obligations and that this IGA does not conflict with any other IGA that any Party is subject to or to which it may be bound.
29. The signers of this document have the authority to bind the Parties to this IGA.

FOR THE PIKES PEAK AREA COUNCIL OF GOVERNMENTS

By: 
 Andrew Gunning
 Executive Director

Date: 12/7/2022

FOR CITY OF COLORADO SPRINGS

By: 
 Jeffrey H. Greene *John Suthors*
 Chief of Staff *Mayor*

Date: 1/6/2023

Approved as to form



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned above a horizontal line.

**Office of the City Attorney
City of Colorado Springs**