

INTERGOVERNMENTAL AGREEMENT

BETWEEN THE CITY OF COLORADO SPRINGS AND THE PIKES PEAK RURAL TRANSPORTATION AUTHORITY REGARDING THE STATE OF COLORADO GRANT FOR THE THREE TRAILS CROSSING PROJECT

This Intergovernmental Agreement (“Agreement”) is made by and between the City of Colorado Springs, a home rule city and Colorado municipal corporation (“City”), and the Pikes Peak Rural Transportation Authority (“PPRTA”), a body corporate and political subdivision of the State of Colorado. The City and the PPRTA may be referred to collectively as “Parties” or each individually as “Party.”

RECITALS

WHEREAS, in July 2022, pursuant to PPRTA Board Policy 31, the Board of Directors of the PPRTA approved serving as the applicant on behalf of the City for a State-funded Multimodal and Mitigation Opportunity Fund (“MMOF”) grant for the Three Trail Crossings Project which will improve the Homestead Trail crossing at Dublin Boulevard, the Woodmen Trail crossing at Rangewood Road and the Skyline Trail crossing at Mirage Drive (“Project”); and

WHEREAS, the MMOF grant was awarded to PPRTA in the amount of \$853,000, and is intended to be applied to the following Priority A Project approved by the PPRTA’s voters at the general election held on November 6, 2012: ON-STREET BIKEWAY IMPROVEMENTS PHASE I (COLORADO SPRINGS: CITYWIDE). The local match amount of \$853,000 is included in the City’s current PPRTA budget. The total grant award of \$1,706,000 and terms for the grant administration are set forth in the draft intergovernmental agreement between PPRTA and the State of Colorado as attached hereto and incorporated herein as **Exhibit A** (“PPRTA-CDOT IGA”); and

WHEREAS, the Parties have previously entered into that certain Second Amended and Restated Intergovernmental Agreement for Pikes Peak Rural Transportation Authority Funded Capital Projects, Maintenance Programs and City-Sponsored Transit Activities effective January 1, 2015 (Comprehensive IGA) which generally provides in Section 5.1 that the City shall administer all contracts for capital projects and that with certain exceptions, all capital contracts shall have both the PPRTA and the City as a party to them;

WHEREAS, the Parties desire to supplement the Comprehensive IGA in order to provide a mechanism for the receipt of the grant funds for the Project by the PPRTA and the management, administration, and implementation by the City of the Project and all requirements under the PPRTA-CDOT IGA.

NOW, THEREFORE, based on the recitals above and in consideration of their mutual promises contained herein and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Recitals:** All of the recitals set forth at the beginning of this Agreement are hereby incorporated in this Agreement as if fully set forth herein.

2. **City Obligations:**
 - i. The City shall implement and manage the PPRTA-CDOT IGA, assume responsibilities assigned to PPRTA under the PPRTA-CDOT IGA and shall faithfully and fully perform the same in accordance with the PPRTA-CDOT IGA.

 - ii. The City shall, to the extent permitted by law, indemnify, save and hold harmless the PPRTA, its governmental units, and its directors, employees, and agents against any and all claims, damages, liability, and court awards incurred under the PPRTA-CDOT IGA, which result from any act or omission by the City or its employees or contractors. This indemnification shall survive the termination or expiration of this Agreement.

 - iii. The City shall obtain environmental clearance (NEPA) required for the Project, anticipated to be a categorical exclusion.

 - iv. The City shall develop the contents of a Request for Proposal (RFP) to engage a consultant to obtain the NEPA clearance and to prepare the design of the three urban trail crossings that connect neighborhoods with commercial businesses as follows:
 1. Homestead Trail crossing Dublin Boulevard approximately ¼ mile east of Rangewood Drive
 2. Woodmen Trail crossing at Rangewood Road approximately ¼ mile north of Woodmen Road
 3. Skyline Trail crossing at Mirage Drive approximately ½ mile west of Union Boulevard

 - v. The City will administer all contracts related to the Project on behalf of the PPRTA as set forth in the Comprehensive IGA.

 - vi. The City shall develop an Invitation to Bid (IFB) or RFP for construction and administer the construction contract and applicable ancillary contracts (e.g., construction inspection, materials testing, public engagement, etc.) on behalf of PPRTA for the construction portion of the Project.

 - vii. The City shall provide quarterly status reports to PPRTA in accordance with PPRTA policies or as requested by the PPRTA Board.

- viii. The City will receive and approve all Project invoices pursuant to the terms of the contracts administered by the City for the Project. If PPRTA is providing the local match for the grant through an approved budgeted and appropriated source, then the City shall submit approved invoices to PPRTA monthly or as appropriate.
 - ix. The City shall submit reimbursement requests to CDOT on behalf of PPRTA for eligible costs. The funds received through the reimbursement request will be received by PPRTA.
 - x. The City shall maintain all documentation required for the grant awarded by the PPRTA-CDOT IGA and will be subject to audit if requested by CDOT or the PPRTA.
 - xi. If the Project receives supplemental grant funding beyond the initial value, the City must provide the local match. Likewise, the City is solely responsible for cost overruns on the Project. The cost overrun funds may come from the City's PPRTA budget.
 - xii. The City will own, operate and maintain the improvements that are part of the Project in accordance with the PPRTA-CDOT IGA. This obligation shall survive the termination of expiration of this Agreement.
3. **PPRTA Obligations:** The PPRTA will take or permit such actions as are reasonably necessary to be the grantee or "Local Agency" within the meaning of the PPRTA-CDOT IGA. The PPRTA will apply or permit to be applied the funds made available under the PPRTA-CDOT IGA to the Project, pursuant to the terms of the Comprehensive IGA and the PPRTA-CDOT IGA.
4. **Expected Deliverable.** The deliverable will be construction of the Project which shall be fully administered and managed by the City.
5. **Effective Date and Term.** This Agreement shall be become effective after it has been executed by the Board of Directors of the PPRTA and the Colorado Springs City Council. This Agreement shall remain in full force and effect until December 31, 2024 and shall automatically renew on January 1, 2025 for a one-year term and shall thereafter automatically renew each January 1 until the PPRTA-CDOT IGA is completed as determined by the State of Colorado. This Agreement may be terminated at any time by mutual agreement of the Parties.
6. **Amendment.** This Agreement may be amended in writing by mutual agreement by the Parties' designated individuals identified to receive notice within Paragraph 7 of this Agreement. If the PPRTA-CDOT IGA requires amendment, PPRTA shall consult with the City prior to entering any such amendment.

7. **Rights and Remedies Not Waived.** No assent, express or implied, by either Party to any breach of this Agreement by the other Party shall be held to be a waiver by such non-breaching Party of any later breach by the other Party. Neither the PPRTA nor the City shall be excused from complying with any provisions of this Agreement because of any failure to insist upon, or to seek compliance with, such provision.
8. **Notices.** All notices, demands, requests or other communications required under this Agreement shall be in writing and may be delivered via e-mail, facsimile, or U.S. mail. In the event facsimile transmission or other electronic means of notice is provided, the notice shall be deemed to be delivered upon its transmission and receipt of confirmation of its receipt at the business location of the receiving party. Notice shall be provided to the individual or staff member of the jurisdiction for which it is intended as follows:

If to the City:

City of Colorado Springs, City Engineer
30 South Nevada Avenue
Suite 401
Colorado Springs, CO 80903

With a copy to:

City Attorney
30 South Nevada Avenue
Suite 501
Colorado Springs, CO 80903

If to PPRTA:

Rick Sonnenburg, Secretary
Pikes Peak Rural Transportation Authority
15 S. 7th Street
Colorado Springs, Colorado 80905

With a copy to:

Jennifer L. Ivey
Icenogle Seaver Pogue, P.C.
4725 S. Monaco Street, Suite 360
Denver, Colorado 80237

9. **Governmental Immunity.** No term or conditions of this Agreement or any amendments thereto hereafter, shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions

of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., (C.R.S.), or the Federal Tort Claim Act, 28 U.S.C. 2671, et seq., as applicable.

10. **Assignments.** Neither Party shall assign its respective rights or obligations under this Agreement except upon the prior written consent and approval of the other Party
11. **Interpretation of Agreement.** Because this Agreement is the result of mutual negotiation and drafting, in the event this Agreement is deemed to be ambiguous or vague, the Parties agree with the rule of construction that “ambiguities shall be construed against the drafter” shall not apply
12. **Applicable Law, Jurisdiction and Venue.** This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, the City Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs, Colorado, applicable regulations of El Paso County, Colorado, and the PPRTA, and applicable federal law. Court jurisdiction and venue shall be exclusively in the District Court for El Paso County, Colorado.
13. **Limitations on Jurisdiction.** Nothing herein shall be construed so as to in any manner expand upon or limit the lawful jurisdiction and authority of either the City or the PPRTA.
14. **Modifications and Waivers in Writing.** No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained, except those specifically discussed, shall be valid unless in writing and duly executed by the party to be charged therewith.
15. **Invalidity of Terms.** This Agreement shall be void and of no further force or effect if a court of competent jurisdiction holds that any of the provisions of Paragraphs 1-4 of this Agreement are unenforceable in any material respect. If any term, claim, clause or provision of this Agreement (other than Paragraphs 1-4) shall be judged to be invalid, the validity and effect of any other term, claim, clause or provision shall not be affected, and such invalid term, claim, clause or provision shall be deemed from this Agreement in a manner to give effect to the remaining terms, claims, clauses or provisions.
16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which when taken together shall constitute one and the same Agreement
17. **No Third-party Beneficiaries.** 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.

18. **Consents/Approvals.** Wherever this Agreement calls for the consent or approval of any Party hereto, with respect to which consent or approval under this Agreement is not self-executing, in order to be effective, such consent or approval shall be in the form of written approval by the Chair of the Board of the PPRTA (or the Executive Director if designated by the Chair) for the PPRTA and in the form of written approval by the Mayor of Colorado Springs or designee for the City.
19. **Entire Agreement.** This Agreement is intended as the complete integration of the understanding between the PPRTA and the City and constitutes the entire Agreement between the Parties as supplemented by the PPRTA-CDOT IGA and the Comprehensive IGA. In the event of inconsistency between the terms of this Agreement and the Comprehensive IGA, this Agreement shall supersede and control. All other representations or statements previously made, whether verbal or written, are merged herein.
20. **Fiscal Obligations.** 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 PPRTA or 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 PPRTA or 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 PPRTA or the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance or resolution and budget and specifically as to the City, 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.
21. **Headings.** The headings of 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.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, this Intergovernmental Agreement is executed by the City of Colorado Springs and the PPRTA as of the date both Parties execute this Agreement, provided for below.

CITY OF COLORADO SPRINGS

BY: _____
Blessing A. Mobolade, Mayor

Date: _____

ATTEST:

City Clerk

Approved as to form:

Office of the City Attorney

PIKES PEAK RURAL TRANSPORTATION AUTHORITY

BY: _____
PPRTA, Chair

Date: _____

ATTEST/NOTARY:

[Name, Position]

Approved as to form:

PPRTA Attorney