

INTERGOVERNMENTAL AGREEMENT

BETWEEN THE CITY OF COLORADO SPRINGS AND THE PIKES PEAK AREA COUNCIL OF GOVERNMENTS TO ESTABLISH MUTUALLY BINDING PROCEDURES FOR THE “DESIGN PLANNING OF THE EAST US HIGHWAY 24 AND PETERSON ROAD/BOULEVARD INTERCHANGE IMPROVEMENTS”

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 Area Council of Governments (“PPACG”), a quasi-governmental organization of the State of Colorado. The City and the PPACG may be referred to collectively as “Parties” or each individually as “Party.”

RECITALS

WHEREAS, the continued growth in El Paso County has created additional traffic; and

WHEREAS, the PPACG and City desire to address problems caused by an increase in traffic volume near the north entrance to Peterson Space Force Base, recognized by the PPACG in the course of implementing the Colorado Springs Regional Joint Land Use Study signed March 2019; and

WHEREAS, the PPACG has received funding from the federal Office of Local Defense Community Cooperation (OLDCC) for preliminary engineering (30% design) and environmental clearance for the reconstruction of the Peterson Road/Boulevard (Peterson Rd) and East US Highway 24 (Hwy 24) interchange up to Peterson Space Force Base. The grant agreement is attached hereto as **Exhibit A**. It is PPACG’s intention, through this Agreement, to pass a portion of the OLDCC funding and local match amount to the City for performing services on behalf of PPACG; and

WHEREAS, the City of Colorado Springs Public Works Department has agreed to lead the development of the Peterson Rd and Hwy 24 interchange on behalf of the City, El Paso County Public Works Department, the Colorado Department of Transportation, and the PPACG; and

WHEREAS, the City may use other local, non-federal funds to complete the engineering efforts for the Peterson Rd and Hwy 24 interchange, separate from this 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. Peterson Rd and Hwy 24 Interchange Preliminary Engineering and Environmental Clearance (NEPA).

a. City Obligations:

- i. The City shall develop the contents of an RFP to engage a consultant, with the participation of the City's Public Works Department staff, to accomplish the following:
 1. Preliminary engineering (30% design) including, but not limited to, survey, geotechnical and environmental investigation, and public engagement.
 2. Environmental Clearance (NEPA), anticipated to be a categorical exclusion.
 3. The proposed RFP will be reviewed and input sought from the PPACG, the Defense Mission Task Force, El Paso County and local transportation stakeholders to form a working group to collaborate on the design planning work, and the OLDCC will review the RFP before it is published.
- ii. The City shall develop and advertise the RFP, and will work with the PPACG, the Defense Mission Task Force, and El Paso County in evaluating and selecting said consultant.
- iii. The City will administer the consulting contract on behalf of the PPACG.
- iv. The City, with the input from the PPACG, the Defense Mission Task Force, and El Paso County, will manage the performance of the contract by the selected consultant(s).
- v. The City shall provide monthly status reports to PPACG and shall provide documentation needed to pay the City the up to \$381,000, \$342,900 from the OLDCC grant and \$38,100 local match amount, minus the monetary amount in-kind services stated below.
- vi. As part the OLDCC non-federal match requirement of \$38,100, the City shall provide at least \$18,660 of in-kind services to the PPACG in the form of staff time, provision of mapping and geospatial data as required. Additional in-kind or cash contributions by the City may be made available in support of the OLDCC grant non-federal match requirement.
- vii. The City shall invoice PPACG for all services provided on a monthly basis.

b. PPACG Obligations

- i. PPACG agrees to provide to the City an amount of up to \$362,340, which includes \$342,900 of OLDCC funds and \$19,440 of local match, to pay for the preliminary engineering and environmental clearance work by selected consultant(s).

- ii. PPACG shall assist the City in developing and advertising the RFP and assist the City with the evaluation of proposals and the selection of a consultant.
 - iii. PPACG shall pay invoices submitted by the City within 30 days of invoice date.
2. **Expected Deliverable.** The deliverable will be documentation and plans for the preliminary engineering and environmental clearance for the Peterson Rd and Hwy 24 interchange. The City, at its discretion and available funding, may advance engineering up to level of bid-ready construction documents.
3. **Effective Date and Term.** This Agreement shall become effective after it has been executed by the Board of the PPACG and the Colorado Springs City Council. This Agreement shall remain in full force and effect until March 31, 2023. This Agreement may be terminated at any time by mutual agreement of the Parties. At the end of the term, the Parties may coordinate to determine if any extension or amendments to this Agreement are warranted and possible based on current circumstances.
4. **Amendment.** This Agreement may be amended in writing by mutual agreement by the Parties' designated individuals identified to receive notice within Paragraph 8 of this Agreement.
5. **Timeline.** The Parties shall work towards achieving the following milestones by the dates listed. If any of the following dates proves to be unattainable the Parties shall use best efforts in determining the new most appropriate date for that milestone.
 - a. December 14, 2021- Signed IGA between PPACG and the City of Colorado Springs
 - b. December 14, 2021 - Development of an RFP completed by City and reviewed by PPACG and OLDCC
 - c. December 15, 2021 - Issuance of the RFP
 - d. March 1, 2022 - Selection and hiring of a consulting firm to perform the work of the RFP
 - e. March 1 to March 31, 2023 - Time period for consultant to complete the scope of work of the RFP
6. **Remedies.** The Parties agree and acknowledge that this Agreement creates no separate cause of action in law or in equity, unless otherwise set forth herein. The Parties agree that any cause of action is limited to the other Party's breach of this Agreement, and any remedy sought shall be limited to performance of a duty or obligation as contemplated under this Agreement. In the event of a lawsuit, each Party agrees to be solely responsible for its own respective costs, inclusive of respective attorneys' fees

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 PPACG 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:

To the City of Colorado Springs:

City of Colorado Springs, Public Works Department, City Engineer
with copy to the Director of Public Works
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

To the Pikes Peak Area Council of Governments:

Executive Director
15 S 7th Street
Colorado Springs, CO 80905

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 PPACG, 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 PPACG.
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 PPACG (or the Executive Director if designated by the Chair) for the PPACG 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 PPACG and the City and constitutes the entire Agreement between the Parties. All other representations or statements previously made, whether verbal or written, are merged herein.
20. **Liability.** 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 either PPACG or the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution.
21. **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 PPACG 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 PPACG 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 PPACG 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.
22. **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 PPACG as of the date both Parties execute this Agreement, provided for below.

CITY OF COLORADO SPRINGS

BY: _____
John W. Suthers, Mayor

Date: _____

ATTEST:

City Clerk

Approved as to form:

Office of the City Attorney

PIKES PEAK AREA COUNCIL OF GOVERNMENTS

BY: _____

Andy Gunning
Executive Director

Date: _____

ATTEST/NOTARY:

[Name, Position]

Approved as to form:

PPACG Attorney