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MEMORANDUM OF AGREEMENT
FOR
TRANSPORTATION PLANNING AND PROGRAMMING
IN THE
PIKES PEAK TRANSPORTATION MANAGEMENT AREA
BY AND BETWEEN

**The Pikes Peak Area Council of Governments, the City of Colorado Springs and the Colorado
Department of Transportation**

This Memorandum of Agreement (MOA) is made this _____ DATE _____ by and between the Pikes Peak Area Council of Governments (“PPACG”) as the Colorado Springs Metropolitan Planning Organization (“MPO”), City of Colorado Springs, a Colorado municipal corporation and home rule city, by and through its transit operator Mountain Metropolitan Transit (“City”) and the Colorado Department of Transportation (“CDOT”) and shall serve as the Metropolitan Planning Agreement (MPA) in accordance with 23 CFR 450.

WITNESS THAT

WHEREAS, pursuant to federal statutes, and as a requirement for obtaining federal transportation funds, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have established regulations requiring each metropolitan area to utilize a continuing, cooperative, and comprehensive performance based multimodal transportation planning process; and

WHEREAS, federal statutes and regulations require that the state and metropolitan planning organization (MPO) have fully coordinated transportation planning processes with a minimum twenty-year planning horizon; and

WHEREAS, state statute establishes a coordinated statewide and regional transportation planning process that requires a minimum twenty-year transportation plan for each transportation planning region that includes the metropolitan area of an MPO; and

WHEREAS, PPACG is the designated MPO and Transportation Management Area (TMA) pursuant to 23 USC 134 and 49 USC 5303 et seq. and continues to carry out its responsibilities in accordance with 23 CFR 450, 420 and 490, and 43-1 Part 11, C.R.S.; and

WHEREAS, PPACG is responsible for regional transportation and air quality planning on behalf of its member governments within a geographic area boundary that includes seven cities and towns and portions of El Paso and Teller Counties; and

WHEREAS, the Counties and Municipal Corporations in the PPACG MPO area exercise the powers set forth in Article XIV, Section 18(2) of the Colorado Constitution and Part 2 of Article 1 of Title 29, C.R.S., as amended, the PPACG shall promote regional transportation and transportation related air quality planning, cooperation and coordination among federal, state and local governments and between levels of government within the MPO.

WHEREAS, pursuant to section 43-1-106, C.R.S., as amended, the powers and duties of the Colorado Transportation Commission include formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state, advising and making recommendations to the Governor and the General Assembly relative to transportation policy, promulgating and adopting the CDOT's budgets and programs, including construction priorities, and nothing contained in this MOA shall be construed to abrogate or delete the exercise of the statutory powers and duties of the Colorado Transportation Commission as the appropriate state agency under state and federal law to review and take action on all matters within the scope of its statutory responsibilities; and

WHEREAS, the Colorado Transportation Commission has authorized the CDOT to implement Colorado Transportation Commission policy and direction and enter into all contracts and agreements with other units of government and to take such other actions as may be necessary to comply with federal laws and regulations; and

WHEREAS, the pertinent federal regulations require an agreement between each MPO, public transit providers, and CDOT that specifies the responsibilities for cooperatively carrying out transportation planning and programming, including activities related to transportation system performance; and

WHEREAS, it is the desire and intent of the parties to fulfill the pertinent federal requirements for the PPACG pursuant to this MOA, while recognizing and preserving the policies and statutory responsibilities of the CDOT, the City and PPACG; and

NOW, THEREFORE, BE IT RESOLVED THAT the parties hereto do mutually agree as follows:

A. PARTIES

The parties to this agreement are the PPACG, the City of Colorado Springs by and through its transit operator Mountain Metropolitan Transit, and the Colorado DOT, governed by the Colorado Transportation Commission.

B. APPLICABILITY

This MOA applies to the continuing, cooperative, and comprehensive performance based multimodal metropolitan transportation planning and programming process required to be carried out in the Pikes Peak Transportation Management Area by 23 USC Section 134 and 49 USC 5303, et seq. and 43-1 Part 11, C.R.S., as implemented by the applicable regulations in order for the region to qualify for federal transportation funds and meet state regional transportation planning requirements.

C. PURPOSE

This MOA is established to define the specific roles and responsibilities of the PPACG, CITY, and CDOT for metropolitan transportation planning and programming within the boundaries of the transportation management area, to implement applicable statutes and regulations, and to ensure that a cooperative transportation planning and programming process is established between PPACG, the City, and CDOT in the PPACG metropolitan planning area.

D. PARTICIPANT RESPONSIBILITIES

PPACG, in cooperation with CDOT and the operators of publicly owned transit services, is responsible for the metropolitan transportation planning and programming process within the boundaries of the PPACG MPO. This responsibility includes preparing and adopting, in a manner consistent with this MOA, all required Regional Transportation Plans (RTPs), Transportation Improvement Programs (TIPs), Unified Planning Work Programs (UPWPs) and documents of the metropolitan transportation planning and programming process.

PPACG, the City and CDOT hereby agree to carry out and actively participate in the continuing, cooperative, and comprehensive performance based multimodal metropolitan transportation planning and programming process in accordance with applicable federal and state law and regulations. The parties to this MOA also agree to cooperate to establish effective mechanisms to meet the needs of the metropolitan transportation planning and programming process and to fulfill commitments established pursuant to this MOA. While it is recognized that the parties are ultimately bound by the actions of their respective agencies, they commit to present within their organizations the recommendations resulting from the metropolitan transportation planning and programming process.

The parties agree that metropolitan transportation planning and programming processes leading to the development and adoption of RTPs and TIPs, may change to respond to changes in the law, restructuring within their respective organizations, or to reflect prior experience.

E. GENERAL RESPONSIBILITIES AND PRODUCTS OF THE PLANNING PROCESS

The Colorado Transportation Commission and the CDOT have a continuing duty of performance based multimodal planning for the statewide transportation system, promulgating rules and regulations for the statewide transportation planning process, identifying potential transportation issues of statewide interest, reconciling conflicts between regional transportation plans and transportation improvement programs, and consolidating regional plans and programs into a comprehensive statewide plan and statewide transportation improvement program (STIP). In carrying out its duties, the CDOT will coordinate, cooperate and partner with PPACG on activities within the PPACG planning region.

PPACG is the agency responsible for performance based multimodal metropolitan transportation planning and programming for the PPACG transportation planning region pursuant to state and federal law and regulation. PPACG will carry out its responsibilities with a process deemed appropriate by the PPACG Board of Directors and consistent with applicable laws and regulations. In carrying out its duties, PPACG will coordinate and partner with the City and CDOT on transportation planning and programming activities.

PPACG and the CDOT will coordinate on performance data, measures, targets, and reporting mechanisms within the MPO planning region that are necessary to meet the requirements of federal statute and regulations as outlined in Section F of this MOA below.

PPACG and the CDOT will coordinate, as appropriate, public involvement for regional and statewide transportation plans and TIPs. The CDOT will coordinate its project prioritization and programming process with the PPACG RTP and TIP development processes to ensure that the CDOT projects identified for the TIP are consistent with the adopted PPACG RTP and have met air quality conformity if necessary.

1. Unified Planning Work Program (UPWP)

PPACG, in cooperation with the CDOT and operators of publicly owned transit, shall develop UPWPs that meet the requirements of 23 CFR Part 420, subpart A. The UPWP documents the transportation planning activities to be performed within the metropolitan planning areas. The UPWP includes various tasks with descriptions, cost estimates, sources of funding, schedules, deliverables, identification of the lead agency, and the federal, State, and matching fund sources. The UPWP is the basis for the Consolidated Planning Grant (CPG) that provides the FHWA and FTA funds for planning activities and is implemented through a contract between the CDOT and PPACG. The UPWP may also include the planning related work that will be accomplished using other funds outside of CPG funds.

Once the UPWP is approved by the policy body of the MPO, it is submitted to the CDOT for review, along with an assurance of Title VI compliance and a certification regarding federal lobbying. The UPWP is approved by the FHWA and FTA upon CDOT's recommendation. Amendments are subject to review and approval and will include reasons for changes, scope revisions, and funding revisions. The CDOT will review and comment on draft UPWPs and amendments to determine eligibility of proposed expenditures. The CDOT will also review and comment on progress, status of expenditures, and reports as appropriate.

See the MOA Implementation Guidance document for a more detailed UPWP timeline.

2. Regional Transportation Plan (RTP)

PPACG will develop and approve the fiscally constrained RTP at least every four years and will establish a schedule and framework for its development in cooperation with the CDOT and the public transit operators. PPACG will develop the RTP in consultation with federal, state, and local officials responsible for planning affected by transportation. For the purpose of developing the RTP, PPACG, the CDOT, and the publicly owned transit providers shall cooperatively develop funding estimates that are reasonably expected to be available to support RTP implementation. The parties to this MOA shall also cooperatively make recommendations on assumptions used in long-range revenue projections and in the allocation of those revenues in program distribution to the Colorado Transportation Commission. For the RTP, PPACG will use the jointly developed Colorado Transportation

Commission approved revenue projections and program distribution for federal and state transportation funds administered by CDOT. PPACG in conjunction with local communities and transit providers will project local funds available for transportation to ensure adequate match. The CDOT will review and provide written comments, addressing at least fiscal constraint and air quality conformity on the draft RTP in time for the comments to be evaluated and acted upon prior to the draft RTPs being released to the public for comment.

The parties to this MOA will collaborate so that all federal or state funded transportation projects and/or programs in the PPACG transportation planning region are included in PPACG's RTP. Some agency programs will be addressed in the RTP as a pool or pools. The parties agree that all parties requires flexibility to respond to program needs (such as maintenance, operations, and asset management) as they arise so that CDOT, in cooperation with its planning partners, can balance system performance levels on a statewide basis. Inclusion of these program funds in the RTP will be considered planning estimates, not a guarantee or specific commitment of dollars to be spent in the PPACG region.

PPACG will develop the process and timeline for project prioritization and selection for each RTP. The CDOT will participate in the development, review and approval of the project prioritization and selection process. The PPACG will approve projects to be included in its RTP and follow the air quality conformity determination procedures outlined in Section 5 Air Quality Conformity Determinations.

When amending an RTP, PPACG will ensure fiscal constraint and air quality conformity are maintained. The CDOT also will review and comment on RTP amendments for fiscal constraint and any potential conformity or transportation issues. PPACG will also complete the federally required Environmental Justice and Environmental Mitigation review.

The parties will report events that may significantly impact RTPs as soon as they become known. These events or conditions include additional funding, problems, delays, or adverse conditions that will materially affect the revenue, schedule, or scope of a project. This disclosure will be accompanied by a statement of the action contemplated to resolve the situation.

3. Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP)

PPACG will develop and approve its TIP in cooperation with local members, the City, and the CDOT. PPACG will develop the TIP financial plan in cooperation with the CDOT, transit providers and local communities and consistent with Colorado Transportation Commission approved revenue projections and program distribution of federal and state funds.

PPACG, in cooperation with the CDOT, local communities, and the publicly owned transit providers, shall establish the TIP development schedule. The CDOT and PPACG will work cooperatively to synchronize the TIP, the STIP, and the RTP as much as possible.

The CDOT will ensure all federally or state funded state transportation projects are included in the PPACG TIP. Some CDOT programs will be identified in the TIP as a pool or pools. Inclusion of these program funds in the TIP will be considered planning estimates, not a guarantee or specific commitment of dollars to be spent in the PPACG region. The CDOT shall provide projects with project improvements and limits that make up the pool and update them when they change with the understanding that they may change as an administrative modification.

PPACG will ensure its TIP is fiscally constrained, meets air quality requirements, and projects in it are consistent with the RTP and with the required Environmental Justice analysis. The CDOT will review and provide written comments, addressing fiscal constraint and air quality conformity on the draft TIP in time for the comments to be evaluated and acted upon prior to public release of the draft TIP for comment.

Federal regulations require the Governor to approve all TIPs. When the TIP is ready for approval of the Governor, PPACG submits its TIP to the CDOT for review of fiscal constraint and adherence to planning regulations. Once fiscal constraint and adherence to planning regulations are verified, the CDOT will prepare a packet for the Governor's review and signature to approve the TIP and transmit such approval to FHWA and FTA. The submittal of the TIP to the CDOT should include a resolution of PPACG adopting the TIP, an Air Quality Control Commission (AQCC) conformity determination concurrence if required, and a signed statement self-certifying that the planning process was conducted in accordance with all applicable requirements. Once TIPs are approved by the MPO and the Governor, they are incorporated into the draft STIP without change, either directly or by reference.

The CDOT relies on the PPACG TIP public involvement process to ensure the public has been provided timely and adequate notification of programming changes to TIP projects. FHWA and FTA have agreed that the MPO public involvement process for developing and amending the TIP may be used as the public process for adopting said changes into the STIP. Once projects are included in an MPO approved TIP amendment, the CDOT will verify fiscal constraint. Any amendments requiring air quality conformity findings should include a confirmation from the Air Quality Control Commission (AQCC) and the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (APCD).

Federal regulations require the Governor, or designee, approve TIP Amendments. TIP amendments should be forwarded to the CDOT Region and the CDOT Headquarters STIP Manager, where a packet is prepared for the Executive Director's signature as the Governor's designee. Once the signature is obtained, a copy of the approval and packet is forwarded to FHWA/FTA for their concurrence.

The CDOT, in cooperation with PPACG, will ensure all contract scopes of work for all projects using federal funds carried out within the boundaries of the PPACG MPO are consistent with PPACG's TIP.

Please see the attached MOA Implementation Guidance document, which outlines the agreed upon process for TIP and STIP Amendments specific to PPACG.

4. Annual Listing of Obligated Projects

In cooperation with the CDOT and public transit providers, PPACG, no later than 90 calendar days following the end of the program year, shall develop an annual listing of obligated projects for which funds under 23 USC or 49 USC Chapter 53 were obligated in the preceding program year, in accordance with 23 CFR 450.334. The listing shall be consistent with information contained in the TIP. See the MOA Implementation Guidance document for a more detailed timeline.

5. Air Quality Conformity Determinations

PPACG is subject to the conformity determination procedures as outlined in the Colorado AQCC's Regulation No. 10 (Criteria for Analysis of Conformity, as amended); federal regulations 40 CFR 93 that set forth policy, criteria, and procedures for demonstration and assuring conformity of transportation related activities; and the most recent MOAs regarding air quality conformity determination procedures between PPACG and CDPHE.

If required, PPACG will run the regional travel demand model when preparing a new RTP and TIP, or amendment to the RTP and TIP that affects air quality conformity. Results will be provided to the CDPHE Air Pollution Control Division (APCD), or their designee, to run a regional air quality emissions model.

PPACG will convene an interagency consultation group (ICG) composed of staff from the CDOT, FHWA, FTA, CDPHE, EPA, and PPACG to perform technical reviews of air quality information if appropriate as well as other aspects of conformity. Once the ICG is satisfied with the technical results, PPACG will make the regional air quality conformity determinations.

Upon adoption or amendment of the RTP or TIP, PPACG will transmit the conformity finding documents to AQCC for their concurrence. Once the AQCC has concurred with the conformity, PPACG will transmit the conformity finding and RTP or TIP documents to the FHWA and FTA. The FHWA and the FTA issue the U.S. Department of Transportation conformity determination on the PPACG RTP and TIP with concurrence from the EPA.

The parties will report events that might have significant impact on conformity determinations as soon as they become known. These events or conditions include problems, delays, or adverse conditions that will materially affect the revenue, schedule or scope of a project and assumptions used in transportation demand and air emissions models. This disclosure will be accompanied by a statement of the action contemplated to resolve the situation.

6. Title VI, Public Involvement, and Limited English Proficiency (LEP) Plans

As a steward of federal funds, the CDOT is required to monitor MPOs in Colorado for compliance with Title VI of the Civil Rights Act of 1964. PPACG is subject to the FHWA Title VI program requirements, including the development of Title VI Plans, Public Involvement Plans, and LEP Plans, as described in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, 23 CFR Part 200, FTA Circular 4702.1B and LEP Executive Order 13166.

7. Americans with Disabilities Act (ADA)

PPACG and the CDOT shall comply with the ADA requirements in both transit and highway planning programs, Section 504 and 28 CFR §35. PPACG, the City and the CDOT shall coordinate in regards to ADA Transition Plan monitoring and identify the access and mobility needs of ADA populations in the planning process. PPACG and the CDOT shall analyze the impacts to ADA populations when considering multimodal access and mobility performance improvements in regional and statewide transportation plans, TIP, and STIP.

F. PERFORMANCE MANAGEMENT IN PLANNING

The performance based planning process established in Moving Ahead for Progress in the 21st Century Act (MAP-21) and continued in Fixing America's Surface Transportation Act (FAST Act) (23 U.S.C 119) requires that PPACG and the CDOT develop transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning. 23 USC 150(c) establishes requirements for performance measures and targets for safety, infrastructure condition, system performance, freight, and air quality. The CDOT, PPACG, and the City shall jointly agree upon and develop specific targets for the metropolitan planning area related to transportation performance data. PPACG and the CDOT transportation plans shall include performance targets that address performance measures and standards and a System Performance Report. Planning documents requiring performance reporting include:

- Long-Range Metropolitan transportation plans (RTP);
- Metropolitan Transportation Improvement Program (TIP);
- Statewide Transportation Improvement Program (STIP); and
- State asset management plans under the National Highway Performance Program (NHPP).

PPACG and the CDOT will report to USDOT progress toward attainment of performance targets and critical outcomes, as established in 23 USC and requirements specified in 23 CFR 450 and 23 CFR 490.

Memorandums of Understanding (MOUs) will be developed to provide additional procedural details associated with each of the performance measures. These MOUs will be included in the Implementation Guidance as appendices to this MOA.

G. AMENDMENT, TERMINATION, AND SUPERSESSION OF AGREEMENT

This MOA will be reviewed at least every four years. It may be amended whenever deemed appropriate by written agreement of all parties.

Any party to this MOA may terminate it by a 60-day written notice to the other parties. If this occurs, the parties agree to consult further to determine whether the issues can be resolved and the agreement re-implemented in an amended form.

This agreement supersedes the MOA between PPACG and the CDOT dated July 14, 2006 and the MOA between PPACG and the City dated September 8, 2010.

H. DISPUTE RESOLUTION

The parties to this MOA, along with FHWA and FTA staff, will make every attempt to resolve differences at the lowest staff level possible and in a timely manner. Differences not resolved at the staff level will be addressed at the Executive Director level. Policy issues not settled at the Executive Director level will be taken to the PPACG Board of Directors and the Colorado Transportation Commission for resolution.

Attachment: MOA Implementation Guidance