

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE UNIVERSITY OF COLORADO COLORADO SPRINGS
AND THE CITY OF COLORADO SPRINGS AND THE PIKES PEAK RURAL
TRANSPORTATION AUTHORITY**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”), dated for reference this _____ day of _____, 20____, is made by and between the Regents of the University of Colorado, a body corporate, acting on behalf of the University of Colorado Colorado Springs (“University”), the City of Colorado Springs, a home rule city and Colorado municipal corporation (“City”), and the Pikes Peak Rural Transportation Authority (“PPRTA”). The University, City and PPRTA shall be referred to herein as the “Parties”.

WHEREAS, this Agreement is entered into pursuant to §29-1-203, C.R.S., and Article XX of the Colorado Constitution; and

WHEREAS, the University has created designs to provide a two-lane road that provides connection between Eagle Rock Road and Stanton Road (the “Spine Road”) and associated improvements, including, but not limited to, bikes lanes and a water quality detention pond; and

WHEREAS, the Parties desire to identify responsibilities of each Party in regard to the Spine Road and associated improvements; and

WHEREAS, the Parties desire to identify and describe the location for the Spine Road that will be owned and maintained by the City as public right-of-way; and

WHEREAS, the Parties intend this Agreement to address these matters; and

NOW, THEREFORE, in consideration of the mutual promise set forth herein, the Parties agree as follows:

1. University Obligations:

- a. University shall convey to the City the parcel of land to be used for the Spine Road located to the south and east of Eagle Rock Road and referenced in the quitclaim deed and legal descriptions attached and made a part of this Agreement (Exhibit A) at no cost to the City. The City agrees that the University will reserve a non-exclusive perpetual easement over the Spine Road that is consistent with the City’s ownership interest in the Spine Road to allow University the rights to access and maintain the University’s fiber line which will be located underneath the Spine Road. The general location of the fiber line is shown in Exhibit B, attached to this Agreement.
- b. University shall convey to the City two (2) permanent easements to be used for the wing walls for the culvert referenced in the permanent easement documents attached and made a part of this Agreement (Exhibits C and D) at no cost to the City.

- c. University shall contract to construct and complete construction of the Spine Road and associated improvements per City approved specifications.
- d. University shall contract to construct the water quality detention pond on University property and shall be responsible for its maintenance.
- e. Future further expansion of the Spine Road will be the responsibility of University. Any area of future expansion will be conveyed to the City as additional right-of-way in the form of a quitclaim deed from University to City.
- f. University agrees to provide snow plowing services for the Spine Road as-needed at its sole cost.
- g. Installation of ADA compliant sidewalks along Spine Road will be the responsibility of the University at its sole cost. If sidewalks are installed by the University adjacent to the Spine Road, the University will convey a Public Improvement Easement to City for said sidewalk locations
- h. Any signage for the University of Colorado at Colorado Springs shall be at the cost of the University and subject to approval by the City.
- i. University shall install street light conduits and bases as part of the project

2. City Obligations:

- a. The City agrees to contribute up to fifty percent (50%) of the cost of construction of Spine Road in an amount not to exceed one million dollars through funding from PPRTA, provided, however, the following improvements shall not be funded by the City's contribution:
 - i. The cost of installing the University's Fiber lines; and
 - ii. If University desires landscaping, they will pay the cost to install and maintain said landscaping.
- b. Upon final inspection and approval by the City, the City shall take ownership and maintenance responsibilities of the Spine Road.
 - i. City agrees to maintain the pavement, traffic signs, markings, drainage inlets, pipes in the road and to the detention pond and the box culvert for the Spine Road.
 - ii. The City will install and maintain street lights.

3. **PPRTA Provisions/Obligations.** The construction of the Spine Road is considered by the City to fall under “Roadway Safety and Traffic Operations Phase I (Colorado Springs: Citywide)”, which is an approved PPRTA capital improvement project. This Agreement is a contract, binding upon the Parties only when signed by PPRTA, University, and City, contingent upon appropriation of funds as prescribed in Paragraph 5 below. This Agreement constitutes a contract for a PPRTA/City Capital Project (as that term is defined in the Second Amended and Restated Intergovernmental Agreement for Pikes Peak Rural Transportation Authority Funded Capital Projects, Maintenance Programs and City-Sponsored Transit). The PPRTA Funded Projects Special Provisions attached hereto as Exhibit E apply to this Agreement and are incorporated herein by this reference.
4. **Representatives and Notice.** To enhance direct communications between our organizations, a primary and alternate contact person will be assigned for each party. The Parties agree to communicate on a regular basis. Any notice or other documents or materials required or permitted to be delivered by this Agreement shall be deemed properly delivered upon receipt by the Party to whom the documents or materials are to be delivered. Notices may be hand delivered, sent by first-class mail, return receipt requested, with postage prepaid, or transmitted by electronic facsimile. Notices shall be addressed and delivered as follows:

City of Colorado Springs:

Mike Chaves, P.E.
Engineering Manager
Public Works Department/ City Engineering Division
30 S. Nevada Avenue, Suite 403
Colorado Springs, CO 8901-1575
Phone 719-385-5408
mchaves@springsgov.com

The University of Colorado at Colorado Springs:

University of Colorado Colorado Springs

Sherry Reed
Project Manager
1420 Austin Bluffs Pkwy
Colorado Springs, CO 80918
719-225-3758
sreed25@outlook.com

Pikes Peak Rural Transportation Authority

Rick Sonnenburg
Pikes Peak Rural Transportation Authority
15 South 7th Street

Colorado Springs, CO 80905
719-471-7080, ext. 138
rsonnenburg@ppacg.org

5. **Appropriations.** Performance of the City’s obligations under this Contract is expressly subject to appropriation of funds by the PPRTA Board. 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 or the Board of Directors of the PPRTA, 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 or the PPRTA 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 or the PPRTA, as applicable. 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
6. **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.
7. **CORA.** The Parties acknowledge that the University, the City and the PPRTA are subject to the Colorado Open (Public) Records Act, C.R.S. § 24-72-201 et seq.
8. **Entire Agreement.** This Agreement, together with all appendixes attached, constitutes the entire Agreement between the Parties, and all other representations or statements made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties.
9. **Governmental Immunity.** Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to the University, the City or the PPRTA under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
10. **Headings.** The headings of the several articles and sections 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.

11. **Amendment.** No amendment or modification of the Agreement shall be valid unless expressed in writing and executed by the parties in the same manner as the execution of this Agreement.
12. **Jurisdiction and Venue.** Court jurisdiction shall exclusively be in the District Court for El Paso County Colorado.
13. **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.
14. **No 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.
15. This Agreement is non-binding until such time as City Council passes a resolution approving this Agreement.
16. This Agreement is non-binding until such time as The Board of Regents of the University of Colorado approves this Agreement.
17. This Agreement is non-binding on the PPRTA until such time as it is approved by the Board of Directors of the PPRTA.

IN WITNESS WHEREOF, the Parties have caused this Intergovernmental Agreement to be executed as of the date first written above. By the signature of its representatives below, each party affirms that it has taken all necessary action to authorize its representatives to execute this document.

CITY OF COLORADO SPRINGS

John W. Suthers
Mayor of Colorado Springs

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Senior Attorney
Office of the City Attorney

PIKES PEAK RURAL TRANSPORTATION AUTHORITY

_____ Date: _____

APPROVED AS TO FORM:

Attorney for PPRTA

THE REGENTS OF THE UNIVERSITY OF COLORADO

_____ Date: _____
Venkat Reddy, Chancellor
University of Colorado at Colorado Springs

APPROVED AS TO FORM:

University Counsel

EXHIBIT E

PPRTA FUNDED PROJECTS SPECIAL PROVISIONS

PPRTA Funding Special Provision: Joint Contracts – City of Colorado Springs (the “City”) and the Pikes Peak Rural Transportation Authority (the “PPRTA”).

This Agreement is a three-party agreement between the University, the City, and the PPRTA. The parties therefore agree to the following:

1. Conflicts: This PPRTA Special Provision shall supersede any contrary provision of this Agreement.
2. Parties: The University acknowledges and understands that this Agreement is funded in whole or in part by the PPRTA and administered by the City. Both the City and the PPRTA are Parties to this Agreement.
3. Payments: The University acknowledges and understands that all or a portion of the payments under this Agreement shall be made to the University by the PPRTA. PPRTA funding obligations shall be paid by PPRTA warrants. In the event there is joint City / PPRTA funding, then payment to the University shall consist of warrants from the City and warrants from the PPRTA. The University agrees to accept all payments made or proffered by the PPRTA under this Agreement.
4. OMITTED.
5. Insurance: The Parties agree and understand that the University shall not name any Party as an additional insured. However, the University agrees to issue a contract amendment to its existing construction contract and to extend the Insurance Requirements found in Exhibit G “University Insurance Requirements – A” to include naming the PPRTA and the City as additional insureds for all provisions requiring the Contractor to name the University as an additional insured.
6. Law: This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Home Rule City; the Resolutions and Rules and Regulations of the PPRTA. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado. The Parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in, the City of Colorado Springs, El Paso County, State of Colorado. The University shall ensure that the University and the University’s employees, agents, officers and subcontractors are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.
7. Appropriation and availability of funds: In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City’s obligations under this

Agreement is expressly subject to appropriation of funds by the City Council for this Agreement and the availability of those appropriated funds for expenditure. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this Agreement, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then the City and the PPRTA may terminate this Agreement without compensation to the University. Performance of the PPRTA's obligations under this Agreement are expressly subject to appropriation of funds by the PPRTA and the availability of those funds for the payment of obligations incurred under this Agreement. Further, in the event that PPRTA funds are not appropriated in whole or in part sufficient for performance of the PPRTA's obligations under this Agreement, or appropriated funds may not be expended due to legal limitations or non-availability, then the City and the PPRTA may terminate this Agreement without compensation to the University.

8. **Indemnification:** The Parties agree and understand that the University shall not indemnify any Party. However, the University agrees to issue a contract amendment to its existing construction contract and to extend the General Conditions Article 53.H."Indemnification" of the construction contract to include the PPRTA and the City as third-party beneficiaries to such construction contract for the purpose of enforcing indemnification. Specifically, Article 53.H. "Indemnification" will be amended to state:

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, the City of Colorado Springs, its employees and agents, and the Pikes Peak Rural Transportation Authority, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees, to the extent such claims are caused by any negligent act or omission of the Contractor, its employees, agents, subcontractors or assignees pursuant to the terms of this Contract, but not to the extent such claims are caused by any negligent act or omission of, or breach of contract by, the State, its employees and agents, the City of Colorado Springs, its employees and agents, the Pikes Peak Rural Transportation Authority, its employees, agents, other contractors or assignees, or other parties not under control of or responsible to the Contractor.

9. **Governmental Immunity:** Nothing in this Agreement or in any actions taken by the University, the City or the PPRTA pursuant to this Agreement 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, Sections 24-10-101, et seq., C.R.S.

10. **Warranties:** All warranties provided by the University under or pursuant to this Agreement to the City shall also apply to the PPRTA.

11. **Final Payment:** Final payment under this Agreement shall be made in accord with the terms of this Agreement, except that final payment shall be made by the PPRTA, and the making and acceptance of final payment shall constitute a waiver of all claims by the University against the City and the PPRTA.

12. Termination or default of Agreement: In all Agreement provisions giving the City the right to terminate, for convenience or otherwise, or giving the City rights in the event of default by the University, the term City shall also apply to the PPRTA.

13. Agreement Changes: Any changes to the Agreement, including but not limited to additions and/or deletions, which are not insignificant to the scope, design and requirements of the Agreement shall be subject to prior approval of the PPRTA.