

RESOLUTION NO. 23-003

A RESOLUTION APPROVING A REVISED MEMORANDUM OF AGREEMENT (MOA) BY AND BETWEEN THE PUEBLO AREA COUNCIL OF GOVERNMENTS (PACOG) AND THE STATE OF COLORADO THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR CONTINUING, COOPERATIVE, AND COMPREHENSIVE TRANSPORTATION PLANNING IN THE PUEBLO METROPOLITAN AREA AND TRANSPORTATION PLANNING REGION

WHEREAS, certain provisions of the previous MOA of May 2018 require modification in order to enhance continued public participation and to improve the transportation planning process in the Pueblo Metropolitan Planning Area and Transportation Planning Region; and

WHEREAS, a new MOA has been prepared which incorporates the necessary modifications with respect to applicability, objectives, participant responsibility, the urban transportation planning process, organization, and administration; and

WHEREAS, the new MOA further provides for definitions and procedures including, but not limited to: Preparation and endorsement of required documents, MPO governance, transportation and planning agency responsibilities, advisory commissions and committees and membership thereon, meetings, federal and state planning requirements, compliance with applicable laws and regulations, amendments to the agreement, and termination of agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE PUEBLO AREA COUNCIL OF GOVERNMENTS that:

SECTION 1:

The revised MOA is hereby incorporated into this resolution and approved. The Chair of the PACOG Board and the Co-Executive Directors are hereby authorized to sign and execute the revised MOA.

SECTION 2:

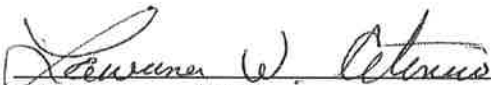
The Urban Transportation Planning Division is hereby authorized and directed to take all necessary actions to administer the revised MOA and any subsequent implementing contracts in compliance with all applicable federal and state laws and

regulations, and to transmit and receive executed copies of such documents with CDOT and other state and federal agencies.

SECTION 3:

This resolution shall become effective immediately upon passage and approval.

Introduced: February 23, 2023

Approved: 
Chairperson, Pueblo Area Council of Governments

ATTEST:


PACOG Recording Secretary

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02/23/2023

MEMORANDUM OF AGREEMENT FOR TRANSPORTATION PLANNING AND PROGRAMMING

BY AND BETWEEN

**THE PUEBLO AREA COUNCIL OF GOVERNMENT (PACOG) AND THE CDOT AND
THE PACOG TRANSPORTATION ADVISORY COMMISSION, AND PUEBLO
TRANSIT (PT)**

This Memorandum of Agreement (MOA) is made this _____
by and between the Pueblo Area Council of Governments (PACOG) and the Colorado
Department of Transportation (CDOT) and the Pueblo Transit (PT), 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 to engage the citizenry and support metropolitan community development; and

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

WHEREAS, state statutes establish 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, the PACOG is the designated MPO and TMA (*if applicable*) pursuant to 23 USC 134 and 135 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, the PACOG is responsible for regional transportation and air quality (*if applicable*) planning on behalf of its member governments within a geographic area boundary that includes the Pueblo metropolitan planning area including the Transportation Planning Region (TPR) which encompasses all of Pueblo County including the MPO; and

WHEREAS, pursuant to Title 30, Article 28, Part 105, C.R.S., as amended, the PACOG is empowered to make and adopt regional plans for physical development within its geographic area, including transportation and land use plans, and nothing contained in this MOA shall be construed to abrogate or delete the exercise of statutory powers and duties of a regional planning commission and, as a council of general purpose local governments, limit its ability under state and federal law to review and take action on all matters within the scope of its statutory responsibilities; and

WHEREAS, pursuant to Title 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, the PT, and the 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 PACOG pursuant to this MOA, while recognizing and preserving the policies and statutory responsibilities of the CDOT under its enabling legislation; and

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

A. PARTIES

The parties to this agreement are the PACOG, the PT and the CDOT, 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 for the PACOG by 23 USC Section 134 and 135 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 PACOG, the PT, and the CDOT for metropolitan transportation planning and programming within the boundaries of the metropolitan planning area, to implement applicable statutes and regulations, and to ensure that a cooperative transportation planning and programming process is established between the PACOG, the PT and the CDOT in the Pueblo Regional metropolitan planning area.

D. PARTICIPANT RESPONSIBILITIES

The PACOG, in cooperation with the CDOT and the operators of publicly owned transit services, is responsible for the metropolitan transportation planning and programming process within the boundaries of the PACOG. This responsibility includes preparing and adopting, in a manner consistent with this MOA, all required regional transportation plans (RTPs), transportation improvement programs (TIPs), and documents of the metropolitan transportation planning and programming process.

The PACOG, the PT, and the 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 in order 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 into a comprehensive statewide plan and statewide transportation improvement program. In carrying out its duties the CDOT will coordinate and partner with the PACOG on activities within the Pueblo metropolitan planning area including the Transportation Planning Region (TPR) which encompasses all of Pueblo County including the MPO.

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

The MPO and the CDOT will coordinate on performance data, measures, targets and reporting mechanisms within the Pueblo Regional metropolitan planning region that are

necessary to meet the requirements of federal statute and regulations as outlined in Section F of this MOA below.

The PACOG 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 PACOG RTP and TIP development process to ensure that the CDOT projects identified for the TIP are consistent with the adopted RTP.

1. Unified Planning Work Program (UPWP)

The MPO 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 and matching funds. 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 the MPO. 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 the CDOT 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.

2. Regional Transportation Plan (RTP)

The PACOG will develop and approve the fiscally constrained RTP at least as often as federally required and will establish a schedule and framework for its development in cooperation with the CDOT and the operators of public transit.

The PACOG will develop the RTP in consultation with federal and state officials responsible for planning affected by transportation. For the purpose of developing the RTP, the PACOG, the CDOT and the operators of publicly owned transit services 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, the PACOG will use the jointly developed Colorado Transportation Commission approved revenue projections and program distribution for federal and state transportation funds administered by CDOT. The CDOT will review and provide written comments, addressing at least fiscal constraint and air quality conformity (*if applicable*) 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 Pueblo metropolitan planning area are included in PACOG RTP. Some CDOT programs will be addressed in the RTP as a pool or pools. The parties agree that the CDOT requires flexibility to respond to program needs (such as maintenance, operations, and asset management) as they arise and to 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 PACOG area.

The PACOG 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 PACOG will approve projects to be included in its RTP and follow the air quality determination procedures outlined in Section E 5. Air Quality Conformity Determinations below (*if applicable*).

When amending an RTP, the PACOG will ensure fiscal constraint and air quality conformity (*if applicable*) are maintained. The CDOT also will review and comment on RTP amendments for fiscal constraint and any potential conformity or transportation issues.

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)

The PACOG will develop and approve its TIP in cooperation with local members, the PT and the CDOT. The PACOG will develop the TIP financial plan in cooperation with the CDOT and consistent with Colorado Transportation Commission approved revenue projections and program distribution of federal and state funds.

The PACOG, in cooperation with the CDOT and the operators of publicly owned transit services, shall establish the TIP development schedule. The CDOT and the PACOG will work cooperatively to synchronize the TIP, the STIP and the RTP.

The CDOT will ensure all federally or state funded transportation projects are included in the PACOG 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 PACOG. The CDOT shall provide projects that make up the pool and update them when they change with the understanding that they may change without an amendment.

The PACOG will ensure its TIP is fiscally constrained, meets air quality requirements (*if applicable*), and projects in it are consistent with the RTP. The CDOT will review and provide written comments, addressing fiscal constraint and air quality conformity (*if applicable*) 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, the PACOG 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 the PACOG BOD adopting the TIP, an Air Quality Control Commission (AQCC) conformity determination concurrence

(if applicable), 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 respective MPO 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 (if applicable).

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. 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 the PACOG, will ensure all contract scopes of work for all projects using federal funds carried out within the boundaries of the PACOG are consistent with the PACOG's TIP.

4. Annual Listing of Obligated Projects

In cooperation with the CDOT and operators of publicly operated transit services, the PACOG, 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.

5. Air Quality Conformity Determinations (*if applicable*)

The PACOG is not subject to the conformity determination procedures as outlined in the Colorado Air Quality Control Commission's (AQCC) 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 the PACOG and all MOA parties applicable to the MPO.

Should The PACOG become subject to the conformity determination procedures outlined above, the PACOG 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 Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (APCD), or their designee, to run a regional air quality emissions model. The results are provided to the CDOT, FHWA, FTA, and U.S. Environmental Protection Agency (EPA) for review, comments and concurrence.

The PACOG will coordinate with an interagency review team composed of staff from the CDOT, FHWA, FTA, CDPHE, EPA, Regional Air Quality Council (RAQC), and other government entities as required to perform technical reviews of air quality information. Once the interagency review team is satisfied with the technical results, the PACOG will make the regional air quality conformity determinations.

Upon adoption or amendment of RTP or TIP, the PACOG will transmit the conformity finding document along with the plan or TIP documentation to AQCC for their concurrence. Once AQCC has concurred with the conformity, PACOG will transmit the conformity finding to the FHWA and FTA. The FHWA and the FTA issue the U.S. Department of Transportation conformity determination on the PACOG 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. The PACOG is subject to the FHWA and FTA 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)

The PACOG and the CDOT shall comply with the ADA requirements in both transit and highway planning programs, Section 504 and 28 CFR §35. The PACOG, the PT and the CDOT shall coordinate ADA Transition Plan monitoring and identify the access and mobility needs of ADA populations in the planning process. The PACOG 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.

8. Colorado Greenhouse Gas (GHG) Planning Standard

As of January 30, 2022, the PACOG became subject to the GHG Planning Standard and emissions modeling process pursuant to 2 CCR 601-22. The CDOT and PACOG have entered into or will enter into a separate Intergovernmental Agreement regarding the execution of the PACOG model and the Environmental Protection Agency Motor Vehicle Emission Simulator (MOVES) model as required pursuant to 2 CCR 601-22.

Other PACOG and CDOT obligations regarding modeling and GHG mitigations measures are contained in 2 CCR 601-22.

F. PERFORMANCE REGULATIONS

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) and then the Infrastructure Investment and Jobs Act (IIJA) (23 U.S.C 119) requires that the PACOG 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, PACOG, and the providers of public transportation shall jointly agree upon and develop specific targets related to transportation performance data. The PACOG and the CDOT transportation plans shall include performance targets that address performance measures and standards and a system performance report. Plans requiring performance targets include:

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

The PACOG 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.

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 the PACOG and the CDOT dated May 24, 2018.

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 PACOG Board and the Colorado Transportation Commission for resolution.

**MEMORANDUM OF AGREEMENT
PUEBLO AREA COUNCIL OF GOVERNMENTS (PACOG)
SIGNATURE PAGE**

COLORADO DEPARTMENT OF TRANSPORTATION

By: _____
CDOT Division of Transportation Development Director Signature or Designee

Printed Name

Date: _____

PUEBLO AREA COUNCIL OF GOVERNMENTS

By: Lawrence W. Atencio
PACOG Chairman, Board of Directors Signature

Lawrence Atencio
Printed Name

Date: 2-23-2023

By: Eric Cosylson
PACOG MPO Director Signature

Eric Cosylson
Printed Name

Date: 2/23/23

PUEBLO TRANSIT (PT)

By: _____
PT Chairman, Board of Directors Signature

Printed Name

Date: _____

By: _____
PT Executive Director Signature

Printed Name

Date: _____