

RESOLUTION NO. 23-001

A RESOLUTION APPROVING THE FY 2023 PUEBLO AREA COUNCIL OF GOVERNMENTS' DELEGATION AGREEMENT FOR REGIONAL LAND USE PLANNING AND ADMINISTRATION AND AUTHORIZING THE CHAIRPERSON OF PACOG TO EXECUTE SAME

BE IT RESOLVED by the Pueblo Area Council of Governments that:

SECTION 1.

The FY 2023 Delegation Agreement for Regional Land Use Planning and Administration ("Delegation Agreement") effective from January 1, 2023 through December 31, 2023, a copy of which is attached and incorporated herein by reference, having been approved as to form by the PACOG Attorney, is hereby approved.

SECTION 2.

The Chairperson of the Pueblo Area Council of Governments ("PACOG") is hereby authorized to execute said Delegation Agreement on behalf of PACOG.

SECTION 3.

The officers and staff of the PACOG are authorized to perform any and all acts consistent with this Resolution and the attached Delegation Agreement to implement the policies and procedures described therein.

SECTION 4.

This resolution shall become effective on the date of approval *nunc pro tunc* January 1, 2023.

INTRODUCED February 23, 2023

APPROVED:

A handwritten signature in blue ink, appearing to read "Lawrence W. Peterson", written over a horizontal line.

Chairperson
Pueblo Area Council of
Governments

ATTEST:

A handwritten signature in blue ink, appearing to read "Sawnya Stringer", written over a horizontal line.
PACOG Secretary

**AGREEMENT FOR REGIONAL LAND USE PLANNING
AND ADMINISTRATION**

THIS AGREEMENT ("Agreement") is made and entered into with an effective date of the 1st day of January, 2023, by and between the Pueblo Area Council of Governments, hereinafter referred to as "PACOG" and the County of Pueblo, a political subdivision of the State of Colorado, hereinafter referred to as the "County".

WITNESSETH THAT:

WHEREAS, the PACOG is an intergovernmental agency and independent legal entity whose purposes include coordinating various planning activities in the Pueblo region and undertaking various activities authorized by Ordinance No. 6144 of the City of Pueblo, Colorado, and the PACOG bylaws; and

WHEREAS, the County has the authority, capacity, and ability to undertake and provide for and on behalf of PACOG general administrative support services and regional land use and water quality planning services; and

WHEREAS, the PACOG desires to contract with County to provide said services and functions through County's Department of Planning and Development and its staff and, where appropriate, retained consultants and contractors.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth herein, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES; RESPONSIBILITIES OF COUNTY.

(a) County agrees to satisfactorily perform and provide, using its own employees and/or consultants or contractors, the administrative and planning services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the functions and activities described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference, in full compliance with all provisions of this Agreement.

(b) County represents that it: (i) has the requisite authority and capacity to perform the services and work contemplated in Exhibit "A"; (ii) that it is a political subdivision of the State of Colorado; and (iii) that it is fully aware of and understands its duty to perform all functions and services in accordance with general law and any applicable laws and regulations that apply to such work.

2. RESPONSIBILITIES OF THE PACOG.

The PACOG shall designate a representative of the PACOG who will be authorized to make all necessary decisions required of the PACOG on behalf of the PACOG in connection with the performance of this Agreement and the disbursement of funds in connection with the program. In the absence of such a designation, the City of Pueblo's Mayor and the Pueblo County Manager, acting jointly, shall be deemed as PACOG's authorized representative.

3. COUNTY'S COMPENSATION AND METHOD OF PAYMENT.

(a) The PACOG will pay to County an amount up to that specified in subparagraphs (b) and (c) of this paragraph as full compensation for all services and work to be performed or undertaken by County under this Agreement which is contemplated by the Scope of Services. Payment of funds to County is subject to the following requirements, which shall be conditions precedent to payment: (i) that County has expended staff time for eligible activities or has obligated or expended funds for eligible approved expenditures, (ii) that County is not in default of any material provision of this Agreement nor applicable law or regulation, (iii) that County has submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items, (iv) that, if required by the terms or conditions of any applicable financial assistance agreement, County has certified with each payment or reimbursement request compliance with the requirements applicable thereto and that all staff time and obligations or expenditures for which payment is sought were made for and in furtherance of an approved plan, program or work and are an eligible use of assistance under the law and regulations applicable to such assistance, and (v) that PACOG has budgeted and has on hand sufficient funds to make the payment or reimbursement hereunder.

(b) PACOG shall pay to County for services covered by the Scope of Services - Exhibit "A", a sum not to exceed \$98,095.00, computed in accordance with the budget and rates set forth in Exhibit "B" attached hereto.

(c) In the event PACOG requests or authorizes work beyond or in addition to that set forth in the Scope of Services - Exhibit "A", PACOG shall pay additional compensation to County. The amount of such additional compensation shall be negotiated, but in the event the parties fail to negotiate or are unable to agree regarding compensation, in that event, County shall be compensated for staff time and its costs at the rates set forth in Exhibit "B" and for the work of subcontractors and consultants in an amount equal to the reasonable actual cost to County.

4. TERM OF AGREEMENT.

The term of this Agreement shall be from January 1, 2023 to December 31, 2023 unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT.

(a) For Cause. This Agreement may be terminated by PACOG for cause, including any nonperformance by the County, upon thirty (30) days written notice to County including a statement of the reasons therefor, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the PACOG's governing body at a regular or special meeting of same whose decision shall be final. The determination of the PACOG as to the cause of termination and the appropriateness thereof shall be final and binding upon both PACOG and County. Cause for termination shall mean any material failure by County to comply with any term of this Agreement.

(b) For Convenience. This Agreement may be terminated by PACOG for convenience effective 90 days after notice of termination is given to County. In the event of such termination, County will be reimbursed for all work and services performed through the effective date of termination, subject to the limitations of Section 3 of this Agreement. This Agreement shall automatically terminate at the end of its term as well as in the event of any suspension, reduction or non-receipt of any financial assistance or grant funds by PACOG which are necessary to fund the services to be performed by County hereunder.

(c) Post Termination Procedures. In the event of termination, County shall cease further work and the County shall be entitled to receive just and equitable compensation for satisfactory work performed through the effective date of termination for which compensation has not previously been paid nor reimbursement made.

6. ASSIGNABILITY.

This Agreement shall not be assigned or transferred by either party without the prior written consent of the other party. Any assignment or attempted assignment made in violation of this provision shall, at the non-assigning party's election, be deemed void and of no effect whatsoever.

7. CONFLICT OF INTEREST.

The County certifies that other than the payment of salaries authorized in the County's 2021 fiscal year budget, neither members of its Board of County Commissioners, nor officers or employees of the County, have or will derive any personal or financial benefit from the activity or activities assisted pursuant to this Agreement. County shall avoid all conflicts of interest which are prohibited by any applicable state or federal regulations.

8. COUNTY RECORDS.

County shall maintain records as to services provided, and reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by the PACOG's auditor. The County agrees to comply with all applicable uniform administrative requirements described or

referenced in any applicable state or federal regulations. PACOG and its authorized representatives shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the County which relate to this Agreement for the purpose of making an audit or examination. Upon completion of the work and end of the term of this Agreement, the PACOG may require that a copy of all of County's financial records relating to this Agreement to be turned over to PACOG.

9. MONITORING AND EVALUATION.

The PACOG shall have the right to monitor and evaluate the progress and performance of the County to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with PACOG's and other applicable monitoring and evaluation criteria and standards. The PACOG may quarterly review the County's performance using on-site visits, progress reports required to be submitted by the County, audit findings, disbursement transactions and contact with the County as necessary. If requested, the County shall furnish to the PACOG quarterly program and financial reports of its activities in such form and manner as may be requested by the PACOG. County shall fully cooperate with PACOG relating to such monitoring and evaluation.

10. COUNTY FILES AND INFORMATION REPORTS.

The County shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances, activity reports, and program income, if any. These records shall be retained by the County for a period of three years after the expiration of the term of this Agreement.

11. INDEPENDENCE OF COUNTY.

Nothing herein contained nor the relationship of County to PACOG, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make County or any of County's agents or employees the agents or employees of the PACOG. County shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

12. LIABILITY; INSURANCE.

As to the PACOG, County agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by County or by the conditions created thereby; provided, however, that nothing in this paragraph is intended, nor should it be construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations otherwise conferred under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et. seq. County shall provide and maintain Workers' Compensation insurance coverage or self insurance

on its employees complying with the requirements of State law.

13. EQUAL EMPLOYMENT OPPORTUNITY.

In connection with the performance of this Agreement, County shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, disability, age or national origin. County shall endeavor to insure that applicants for employment and employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, ancestry, disability, age or national origin.

14. ENTIRE AGREEMENT; AMENDMENTS.

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provision of this Agreement, shall be binding unless made in writing and executed by the duly authorized officers of both the County and PACOG.

15. SIGNATURES.

The persons signing this Agreement on behalf of each party represent and warrant that such persons and their respective party have the requisite power and authority to enter into, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

IN WITNESS WHEREOF, the County and the PACOG have executed this Agreement effective the date first above written and under the laws of the State of Colorado.

ATTEST:

Sawanya Stringer
Secretary

PUEBLO AREA COUNCIL OF GOVERNMENTS

By *Lawrence W. Altman*
Chairperson

Date February 23, 2023

COUNTY OF PUEBLO

ATTEST:

Secretary

By _____
Chairman, Board of County Commissioners

[SEAL]

Date _____

EXHIBIT "A"

SCOPE OF SERVICES

I. Administration.

County will provide staff for PACOG including a Manager who shall be the County Director of Planning and Development and other clerical and support staff as needed. County staff will perform all administrative functions necessary to facilitate PACOG's regular and special meetings and the meetings of the standing and special committees of PACOG, including preparation of agenda materials, public notices, and distribution of materials. County will provide a recording secretary for meetings. The Manager shall also handle the day-to-day administrative tasks for PACOG assigned by PACOG or its Co-Executive Directors and within the confines of the PACOG budget allocated for such purposes.

II. Regional Land Use and Water Quality Planning.

County will perform the 2023 Regional Land Use and Water Quality Planning activities authorized by PACOG using County's staff within available appropriations and within the confines of the PACOG budget allocated for such purposes.

EXHIBIT "B"

I. Budget for Contract Services.

Regional Land Use Planning and Administration	\$49,395.00
604(b) Program--Update of Areawide Water Quality Management Plan and Watershed Plan	48,700.00
<i>(FY 2023 October 10, 2022 to September 30, 2023 - WQMP = \$23,700)</i>	
<i>(FY 2023 January 1, 2023 to December 31, 2023 - Watershed Plan = \$25,000)</i>	
TOTAL	\$98,095.00

II. Compensation and Reimbursement.

PACOG will reimburse Pueblo County for expenses incurred by its Department of Planning and Development on a quarterly basis. Expenses include the following: employee time, office supplies, postage, photocopies, fax, long distance calls, and mileage. Details on each of these expenses shall be submitted through a request for reimbursement and are listed below.

Employee Time: Employee time is charged at a weighted hour rate that includes salary, benefits, and other employee costs for actual hours worked on PACOG’s Regional Land Use Planning work program activities. The following weighted hourly rates apply for 2023:

County Planning Director	\$83.66
Deputy Director	75.56
Planner II	42.54
Planner I	37.44
Office Manager/Recording Secretary	52.45
Administrative Assistant III	32.25

Office Supplies: Office supplies, such as newspaper ads or public notices (e.g., EPAC vacancies, PACOG budget), plaques presented to outgoing PACOG members, Zoom meeting account, letterhead, supplies, and envelopes, etc., are charged accordingly to the specific activity at the direct rate cost.

Postage: Postage is tracked by the County on its postage meter at a direct rate. A billing is sent quarterly for reimbursement to the Department of Planning and Development for payment.

Photocopies: Photocopies are assessed at 5¢ per page for black and white copies and 10¢ for color copies, which includes the cost of machine use, paper, and toner. A “copy log”

is kept in order to maintain an accurate count.

Fax: PACOG will be charged County's actual direct costs associated with fax services (i.e., the cost of long-distance telephone calls and cost per fax copy).

Long Distance Telephone Calls: Long distance telephone calls are assessed per call at the direct rate. Individuals maintain their own telephone logs and are requested to specify on monthly billings their respective PACOG long distance calls.

Mileage: Mileage is kept on a "mileage log". PACOG is assessed at a rate per mile established by Resolution of the Board of County Commissioners pursuant to §30-11-107, C.R.S.