

**PUEBLO COUNTY  
CONSERVATION TRUST FUND  
FUNDING ASSISTANCE AGREEMENT**

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, *nunc pro tunc* January 1, 2020, by and between the County of Pueblo, Colorado, for the use and benefit of the Office of Budget and Finance, (hereinafter referred to as the "County") and

**PUEBLO WEST METROPOLITAN DISTRICT  
109 E Industrial Blvd  
Pueblo West, CO 81007**

(hereinafter referred to as the "Contractor"):

WITNESSETH THAT:

WHEREAS, authority exists in the Law, and Funds have been budgeted, appropriated and otherwise made available for payment in Fund Number 217-450000-4723-19, Department Conservation Trust Fund Allocation; and,

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate departments of the County; and

WHEREAS, the County has received a request for funding assistance from the Contractor and desires to engage the Contractor to render certain activities aimed at benefiting and enhancing the community; and

WHEREAS, the Contractor's proposed program and services are to be performed within the County's jurisdiction; and,

WHEREAS, the County has determined that it is in the best interest of the citizens of Pueblo County's to aid the Contractor's proposed program and services through funding assistance.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the parties hereto as follows:

1. **PROJECT DESCRIPTION AND SCOPE OF SERVICES:** The Contractor agrees to provide the following activities or services in accordance with the 2020 Budget approved by the County. Scope of Services shall be attached hereto and incorporated herein as Exhibit A.

**Program Services:** Contractor shall use the funds provided hereunder for development and construction costs of the TAP III-SDS North Park Trail

completion in Pueblo West. in accordance with the attached Scope of Services and Budget for 2020 incorporated herein as Exhibit A.

2. **TIME OF PERFORMANCE:** The services of the Contractor are to commence as soon as practicable after the execution of this Agreement and shall be undertaken and completed in such a manner and sequence as to assure their expeditious completion in the light of the purpose of this Agreement, but **in any event all of the services required hereunder shall be completed by December 31, 2020.**
  
3. **COMPENSATION AND METHOD OF PAYMENT:** As compensation for the performance of the Contractor hereunder, the County agrees to pay the Contractor for the services outlined in Section 1.A. the amount of **\$85,000 in 2020**, said amount to be provided in accordance with actual costs associated with the services provided for in Section 1.A. above and the 2020 Work Plan. The funds will be provided through various payments in accordance with actual costs. Contractor is to submit to Pueblo County copies of bills or receipts that demand payment for services identified in Section 1.A. above. Pueblo County will make reimbursement payments of the total costs as identified above, up to a maximum compensation of **\$85,000, for all work accomplished within the Scope of Services by December 31, 2020. Requests for reimbursement must be made two weeks prior to the anticipated payment date.**

All payments hereunder following the initial payment shall be conditioned upon the Contractor's compliance with all of the terms and conditions of this Agreement, including the reporting requirements contained in Section 1 herein. The County may withhold funds under this Agreement if the County determines that the programs or facilities of the Contractor are not in compliance with the terms and conditions of this Agreement. Additionally, where the County is providing funds to the Contractor as part of a matching funds situation whereunder the Contractor is receiving funding from other governmental entities, the Contractor shall provide the County with proof that all other such entities have contributed their respective shares of matching funds prior to receiving payments from the County after the initial payment from the County.

4. **LIMITATION OF PARTICULAR FUNDS:** The parties hereto expressly recognize that the Contractor is to be paid, reimbursed, or otherwise compensated with Conservation Trust Fund (CTF) provided to the County from the State's Lottery Funds, for the purpose of contracting for the CTF services provided herein, and therefore, the Contractor expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Contract are contingent upon receipt of such funds by the County from the State. In the event that such funds or any part thereof are not received by the County, the County may immediately terminate this Contract without further liability to the County beyond the CTF Funds actually received for services performed through that date.

5. **MAXIMUM COMPENSATION:** It is expressly understood and agreed that in no event will the total compensation to be paid hereunder exceed the maximum sum, stated in Section 3 above, for all the services required. Any expenses, costs or expenditures made or incurred by the Contractor beyond the stated maximum sum shall be the sole and exclusive responsibility of the Contractor.
6. **COMPLIANCE WITH LAWS AND REGULATIONS:** The Contractor shall comply with all applicable laws, rules, regulations, ordinances, and codes of the federal, state, and local governments, including but not limited to, internal revenue service laws, rules, and regulations, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, and the Americans With Disabilities Act, as amended, and Contractor also agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended (24-34-402, C.R.S.), and any other applicable law representing discrimination and unfair employment regulations.
7. **INDEPENDENT CONTRACTOR:** The parties understand and agree that the Contractor shall, at all times during the term of this Agreement, be deemed an independent contractor and not an employee of the County, and shall be responsible for, and obligated to pay, all withholding taxes, social security, unemployment, worker's compensation, and/or other taxes and shall indemnify and hold the County harmless from and against any and all claims for the same period. Contractor acknowledges and agrees that all of its personnel are its employees only, and not employees or agents of the County for any purpose whatsoever, including for purposes of Worker's Compensation.
8. **ASSIGNMENT:** This Agreement is not assignable in whole or in part without the prior written consent of all parties hereto.
9. **INDEMNIFY AND HOLD HARMLESS PROVISION:** The Contractor agrees to indemnify and to hold the County and its agents harmless from any and all claims, suits, expenses, damages or other liabilities, including reasonable attorney fees and court costs arising out of damage or injury to persons or property caused or sustained by any person, persons, or entities as a result of any intentional or negligent act or omission by Contractor or failure of Contractor to perform this Agreement according to its terms. By requiring this right to indemnification, the County in no way waives or intends to waive the immunity protections provided to the County and its employees under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*
10. **MONITORING ACTIVITIES:** The County shall review the progress reports as delineated above for monitoring purposes. In addition, the County may require the Contractor to provide copies of other program progress or financial reports or documentation, including those reports or documentation that the Contractor may submit to other funding entities. The County may conduct other monitoring activities as necessary throughout the period of this Agreement to determine

program progress and for purposes of data base computation and/or program evaluation. Such monitoring activities may include, but not be limited to, receipt of Contractor's monthly Board meeting agenda, minutes, etc.; attendance at Contractor's Board meetings; and on-site visits, including access to all records and documentation maintained by the Contractor.

11. **AMENDMENTS:** This Agreement may be amended at any time by the parties hereto, provided such amendment be reduced to writing and executed by both parties to this Agreement. The Contractor shall submit copies of any revised Work Program and Budgets to the County during the period of this Agreement, and any changes to said Work Program or Budgets shall require an amendment pursuant to this Section 11.

12. **TERMINATION AND/OR CANCELLATION OF AGREEMENT:**

A. Pueblo County may, upon thirty (30) days' written notice to the other party, cancel this Agreement for any reason without liability to the County.

B. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, the County shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

C. Notwithstanding the provisions of Sections A. and B. above, the Contractor shall not be relieved of liability to the County for any obligations to repay funds advanced under this Agreement or for any damages sustained by the County by virtue of any breach of the Agreement by the Contractor, and the County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due to the County from the Contractor is determined. In addition, upon receipt of any notice to terminate under this Section, any unexpended funds allocated or advanced to the Contractor by this Agreement shall be reverted to the County.

13. **TERM / TERMINATION:** This Agreement **shall commence on January 1, 2020,** and unless sooner terminated as provided herein, **shall automatically terminate on December 31, 2020.** The parties understand and agree that this Agreement is subject to the annual appropriation of funds for its continuance by the County and upon failure of the County to appropriate funds for this Agreement, said Agreement shall be automatically terminated without liability for termination to the County.

14. **SEVERABILITY:** To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.
15. **PROHIBITION ON EMPLOYMENT OF ILLEGAL ALIENS:** If Contractor has any employees or subcontractors, Contractor shall comply with the provisions of C.R.S. § 8-17.5-101, *et seq.* and this Contract. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract; or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Contract.

By execution of this Contract, Contractor certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Contractor will participate in either the Federal E-Verify Program or the Colorado Department of Labor & Employment's "Department Program" as identified in C.R.S. §§ 8-17.5-101(3.7) and (3.3), in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Contract.

- A. Contractor shall not:
- (i) Knowingly employ or contract with an illegal alien to perform work under this Contract; or
  - (ii) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- B. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or Department Program.
- C. Contractor shall not use either the E-Verify Program or Department Program to undertake pre-employment screening of job applicants while this Contract is in effect.
- D. If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Contractor shall:
- (i) Notify the subcontractor and the County within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

- (ii) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to sub-paragraph (i) above, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
  - E. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
  - F. If Contractor violates this provision of this Contract, the County may terminate this contract for breach of contract and the Contractor shall be liable for actual and consequential damages to the County as required by law.
  - G. The County will notify the Office of the Secretary of State if Contractor violates this provision of the Contract and the County terminates the Contract for such breach.
16. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the County and the Contractor, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the County and the Contractor that any person other than the County or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
17. **SURVIVAL OF CERTAIN CONTRACT TERMS:** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the County as provided herein in the event of such failure to perform or comply by the Contractor or by its subcontractors.
19. **MODIFICATION/WAIVER OF TERMS, APPLICABILITY OF LAWS:** This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No variation or modification of this Agreement, and no waiver of any of the Agreement's provisions or conditions, shall be binding unless made in writing and signed by duly authorized owners, principals, or officers of the Contractor and the County. This Agreement shall be governed by, and construed according to, the laws of the State of Colorado.

In Witness Whereof, the County and the Contractor have executed this Agreement as of the date first above written.

**ATTEST:**

**PUEBLO COUNTY:**

By \_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Chair, Board of County Commissioners

Date: \_\_\_\_\_

**APPROVED AS TO CONTENT:**

By \_\_\_\_\_  
Director, Office of Budget and Finance

**ATTEST:**

**CONTRACTOR:**  
**PUEBLO WEST METROPOLITAN DISTRICT**

By \_\_\_\_\_  
Board Secretary

By: \_\_\_\_\_  
Chair, Board of Directors

Date: \_\_\_\_\_

By: \_\_\_\_\_  
General Manager

Date: \_\_\_\_\_

**ATTACHMENT "A"**  
**2020 SCOPE OF SERVICES**

**AGENCY NAME:** PUEBLO WEST METRO DISTRICT

**TOTAL COUNTY AWARD:** \$ 85,000

**PROGRAM / PROJECT NAME:** TAP III-SDS North Park Trail

**PUEBLO COUNTY FUNDS:** \$ 85,000 (CTF)

***Detailed Description and Cost estimate of Capital Projects to be supported with Pueblo County Funds.***

Contractor shall use the funds provided hereunder for development and construction costs of the TAP III-SDS North Park Trail.





# PUEBLO COUNTY

C O L O R A D O

## BOARD OF COUNTY COMMISSIONERS

Terry A. Hart  
District 1

Garrison M. Ortiz  
District 2

Chris Wiseman  
District 3

January 24, 2020

Pueblo West Metropolitan District  
109 E Industrial Blvd  
Pueblo West, CO 81007

To whom it may concern;

Please find enclosed the signed 2020 Funding Assistance Agreement.

This agreement will highlight the scope of services, reporting requirements, compensation and method of payment as well as several other items.

Once we have received the signed contract, I will forward to the BOCC for final approval and signatures. Payment will then be disbursed as per the terms of your contract.

If you have any questions or concerns, please feel free to call at the number below.

Thank you,

*Dona R Skaggs*

Dona R Skaggs  
Account Analyst  
Finance & Budget  
719-583-4414