

Intergovernmental Agreement

This Intergovernmental Agreement (hereinafter referred to as “IGA”) is made and entered into on this ___ day of _____, 2022 (“Effective Date”), by and between the City of Pueblo, a Municipal Corporation, with an address of 1 City Hall Place, Pueblo, Colorado 81003 (hereinafter referred to as “City”) and the Pueblo Regional Building Department, a body politic and corporate established pursuant to C.R.S. 29-1-203, with an address of 830 N. Main Street, Pueblo, Colorado 81003 (hereinafter referred to as “PRBD”).

1. Purpose. The purpose of this IGA is to establish the terms and conditions under which the Pueblo Means Business (“PMB”) Portal (“Portal”) will be funded and used, as agreed to by and between the City and PRBD. The Portal will be used to navigate the websites and platforms used by local government agencies in order to better facilitate new and continued business within the community, aiding economic development and expansion. PMB and the Portal will involve and require a financial commitment from PRBD, the City, County of Pueblo, and Pueblo West Metro District. Each of these four local government entities intends to provide twenty-five percent (25%) of the funds required for the Portal. This IGA is between the City and PRBD, and the County of Pueblo and the Pueblo West Metro District are not parties to this IGA. PRBD intends to enter into separate agreements regarding the Portal with the County of Pueblo and the Pueblo West Metro District.

This IGA is intended: (i) to set forth a clear expression of the support of each party for the project; (ii) to express recognition of the parties that the project is a community-wide initiative with public benefits that transcend jurisdictional boundaries; and (iii) to pledge the full cooperation of each party to expedite the project and the Portal. The parties acknowledge the purposes set forth and agree jointly and severally to pursue their fulfillment in good faith, including acting in good faith in all matters that require joint or coordinated action.

2. Term of IGA. This IGA is effective and will commence upon the Effective Date and shall remain in full force and effect for one year (“Initial Term”). This IGA will automatically renew for one-year terms on an annual basis (each year a “Renewal Term”) unless a party provides the other notice of its intent not to renew this IGA at least thirty (30) days prior to the end of the then current term in a signed writing. This IGA may be terminated at any time, without cause, by either party upon ninety (90) days prior written notice, which notice shall be delivered by hand or by certified mail to the address listed above. If at any time the County of Pueblo or Pueblo West Metro District withdraw from PMB or otherwise discontinue funding to the Portal, the City may immediately terminate this IGA and all obligations hereunder upon notice to PRBD.

3. Responsibilities of the City.

- (a) City will provide initial funding of twenty-five percent (25%) of startup costs for the build out of the Portal during the Initial Term, subject to available appropriations. The City's initial funding shall not exceed \$20,000.00 in total for the Initial Term.
- (b) During each Renewal Term, the City will contribute yearly funding of twenty-five percent (25%) of the operational costs for hosting and maintaining the Portal, subject to available appropriations. The City's funding during any one Renewal Term shall not exceed \$20,000.00 in total for said term, unless otherwise agreed to by the City in a signed writing.
- (c) City funding may be derived from state or federal grants made available to the City for use in accordance with the purposes of this IGA, in which case PRBD will be bound by applicable grant terms governing use of the funds. PRBD may terminate this IGA upon notice to City if it determines, in its sole discretion, that it cannot comply with the terms of any grant because of the resulting negative impact on PRBD.
- (d) The City will designate a primary representative(s) able to speak on behalf of the City's interests, except that said representative may not agree to binding policy or decisions which require the approval of City Council or the Mayor, nor may the representative agree to amendments of this IGA.
- (e) Should PRBD receive notice from the City of its failure to appropriate sufficient funds for this IGA, this IGA will immediately terminate.

4. Responsibilities of PRBD.

- (a) PRBD will facilitate the initial build of the Portal, including through contracting with a developer and the initial installation and configuration of the software, an interface for project routing features, an administrator dashboard, and a user portal to enable users to view existing projects from all participating agencies. PRBD's funding will be twenty-five percent (25%) of startup costs for the build out of the Portal during the Initial Term, not to exceed \$20,000.00 and subject to appropriation.
- (b) PRBD is not responsible for creating the primary PMB website, which is to be completed by the County of Pueblo or its assignee. PRBD will furnish cloud hosting and maintain the Portal for PMB. During each Renewal Term, PRBD will contribute yearly funding of twenty-five percent (25%) of the operational costs for hosting and maintaining the Portal, subject to available appropriations. PRBD's funding during any one Renewal Term shall not exceed \$20,000.00 in total for said term, unless agreed to by PRBD in a signed writing.

- (c) PRBD will contract directly with Camino or other developer, as it may decide, for development of the Portal. City will not be a party to nor be expected to participate in said contract and will be an independent third party. City will in no way be liable for or bound by any provision of the developer contract, unless expressly agreed to by City in a signed writing. Notwithstanding the foregoing, PRBD's contract with the developer will require that the developer defend and indemnify the City from any third-party claims that the Portal infringes on intellectual property or similar rights.
- (d) Until this IGA terminates, expires, or another agreement is put in place that changes the maintenance and hosting responsibilities for the Portal, PRBD will provide an annual invoice to the City for the percentage of shared services set forth in Section 3 above. PRBD will also provide City with all supporting documentation for vendor services and invoices.
- (e) Administration of the Portal will be a collaborative effort between PRBD, City, County of Pueblo, and Pueblo West Metro District, although PRBD will maintain final say and administrative authority.
- (f) The financial obligations of PRBD pursuant to this IGA are subject to annual appropriation. Should City receive notice from PRBD of its failure to appropriate sufficient funds for this IGA, this IGA will immediately terminate.

5. Work Product and Other Information. PRBD hereby grants to the City a non-exclusive, royalty free license, with the right to perform, display, and otherwise use all intellectual property created by PRBD or any of its contractors and paid for in part with funds from this IGA, including, but not limited to, as needed to use and access the Portal and information thereon. Upon request during the term of this IGA, PRBD will provide City with any public data involved with or included in the Portal at no charge and in the format requested by City. In the event of termination or expiration of this IGA, access to Portal functions and systems will no longer be provided for locations inside the jurisdiction of the City. Said functions include but are not limited to guide creation and automated routing creation.

6. Accessibility. To the extent applicable, PRBD and the Portal shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. PRBD and the Portal shall comply with all applicable technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.

7. Insurance; Liability; Employees; PERA.

- (a) Each party shall maintain at all times during the term of this IGA such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., including for, but not limited to, bodily injury, death, property damage, automobiles, and statutory workers' compensation insurance.
- (b) Each party shall be liable for its respective individual actions and omissions in accordance with law and shall in no way be held liable or otherwise responsible for the actions of the other party.
- (c) The parties shall employ separate persons and no current employee of a party shall be simultaneously considered an employee of the other party. Each party shall comply with all applicable employment laws and only be responsible for its own employees and payment and benefits therefore and shall have no employment relationship with the current employees of the other party.
- (d) PRBD shall reimburse the City for the full amount of any employer contribution required to be paid by the City to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree retained by PRBD and performing contracted services for the City under this IGA.

8. General Provisions

- (a) Amendments. Either party may request changes to this IGA. Any changes, modifications, revisions, or amendments to this IGA must be mutually agreed upon between the parties and in a signed written instrument, effective when executed and signed by all parties to this IGA.
- (b) Entirety of Agreement. This IGA represents the entire agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- (c) Severability. Should any portion of this IGA be determined to be illegal or unenforceable, the remainder of the IGA shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- (d) Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this IGA shall not be construed so as to create such status. The rights, duties, and obligations contained in this IGA shall operate only between the parties to this IGA and shall inure solely to the benefit of the parties to this IGA. The provisions of this IGA are intended

only to assist the parties in determining and performing their obligations under this IGA. The parties to this IGA intend and expressly agree that only parties signatory to this IGA shall have any legal or equitable right to seek to enforce this IGA, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this IGA, or to bring an action for the breach of this IGA.

- (e) This IGA is expressly made subject to the limitations of the Colorado Constitution. 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 PRBD nor the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this IGA, with respect to any financial obligation of PRBD or the City which may arise under this IGA in any fiscal year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this IGA, including any sub-agreement, attachment, schedule or exhibit thereto, by PRBD or the City. PRBD or City may in its sole and absolute discretion terminate this IGA for reasons of non-appropriation immediately upon written notice without causing default or breach.
- (f) Nothing in this IGA 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 upon a party 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.
- (g) This IGA shall be governed by the laws of the State of Colorado. Venue for any action arising under this IGA or for the enforcement of this IGA shall be in a state court with jurisdiction located in Pueblo County, Colorado.
- (h) A waiver by any party to this IGA of the breach of any term or provision of this IGA shall not operate or be construed as a waiver of any subsequent breach by either party.
- (i) This IGA shall not be assigned by either party without the prior written consent of the non-assigning party, which consent may be granted, denied, or conditioned in said party's discretion.
- (j) Nothing in this IGA is intended to, nor shall be deemed to constitute, a partnership or joint venture between the parties, or to create any agency or partner relationship between the parties. Neither party shall hold itself out as a partner, joint venture, agent, or representative of the other under this IGA.

(k) Any delays in or failure of performance by any party of its obligations under this IGA shall be excused if such delays or failure are a result of acts of God, fires, floods, storms, lightning strikes, labor strikes, labor disputes, pandemic, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

9. Electronic Signatures. This IGA and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be: (i) an original, and all of which taken together shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal law, and (iii) enforceable in accordance with its terms.

10. Legal Authority. The parties assure that each possess the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or other action passed or taken, to enter into this IGA. The person or persons signing and executing this IGA do hereby warrant that he/she/they have been fully authorized to execute this IGA and to validly and legally bind their respective principals to all the terms, conditions, and provisions set forth herein.

IN WITNESS WHEREOF, PRBD and the City have caused this agreement to be executed on their respective behalf by their proper officer. The effective date of this IGA is the Effective Date on the first page.

ATTEST:

City Clerk

CITY OF PUEBLO, A MUNICIPAL CORPORATION

By _____

Nicholas A. Gradisar, Mayor

Date _____

PUEBLO REGIONAL BUILDING DEPARTMENT

By _____

Building Official

Date _____