

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered this ___ day of _____, 2023 ("Effective Date"), by and between the City of Pueblo, a Colorado Municipal Corporation, (hereinafter referred to as "Client") and The Wellman Way, a Colorado LLC, (hereinafter referred to as "Consultant") for Consultant to render professional services for Client with respect to the Governance Structure Research for Pueblo Food Project's Future and related ancillary services, hereinafter referred to as the "Project". In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES.

(a) Consultant shall satisfactorily perform the professional consulting services for the Project described in more detail in *Schedule 1* attached hereto and incorporated herein by reference, including but not limited to providing the outlined Deliverables. Such services shall include all usual and customary professional consulting services in connection with Consultant's work on the Project. Consultant shall only perform the services associated with Phase 1 of the Project as detailed in Schedule 1. Client shall not pay for nor otherwise be liable for any work performed by Consultant with regards to Phase 2 of the Project.

(b) Consultant shall maintain prudent and accurate records of all transactions. The Consultant shall track all project activities. Client will not reimburse or otherwise pay for any of Consultant's transactions, as such costs are part of Consultant's business.

(c) To the extent Consultant performs any of the Project work through subcontractors or subconsultants, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subcontractors or subconsultants as it is for services performed directly by Consultant or Consultant's employees.

(d) To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

SECTION 2. CONSULTANT'S RESPONSIBILITIES.

(a) Consultant shall be responsible for the professional quality, technical accuracy, and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including reports and other services, notwithstanding Client's initial acceptance of same.

(b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission; and Consultant hereby irrevocably waives and excuses Client and Client's attorneys from compliance with any requirement to obtain a certificate of review as a condition precedent to commencement of an action, including any such requirements set forth in Section 13-20-602, C.R.S. or similar statute, whether now existing or hereafter enacted.

(c) Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees, if any.

(d) Before undertaking any work or incurring any expense which Consultant considers beyond or in addition to the Statement of Work described in *Schedule 1* for Phase 1 or otherwise contemplated by the terms of this Agreement, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of this Agreement, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. The compensation for such authorized work shall be negotiated. Unauthorized work shall not be compensated.

SECTION 3. FEES FOR SERVICES; PAYMENT.

(a) Client will pay to Consultant as full compensation for all services required to be performed by Consultant

under this Agreement, except for services for additional work or work beyond the scope of this Agreement, the maximum sum of U.S. \$10,000.00. Consultant will invoice Client on a monthly basis for actual services performed at a maximum hourly rate of \$67.00 per hour of completed work. Consultant may invoice Client for up to one hundred forty nine and a quarter (149.25) hours of Consultant work per calendar month. Payments shall be made within forty-five (45) days of invoice by Consultant.

(b) Consultant shall submit periodically, but not more frequently than monthly, records of time worked and services rendered. Records shall contain appropriate documentation, if available, evidencing that such services have been performed. Consultant must submit a written request and obtain signed approval prior to completing any work beyond the scope of this agreement.

(c) No separate or additional payment shall be made for profit, overhead, telephone expenses, travel, lodging, routine photocopying, computer time, secretarial or clerical time, or similar expenses.

(d) No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.

(e) Compensation for authorized work beyond the scope of this Agreement shall be governed by the provisions of Section 2(d).

(f) In the event services under this Agreement are phased and to be performed in more than one fiscal year or are subject to annual appropriation, Consultant acknowledges that funds only in the amount of initial appropriation are available and it shall confirm availability of funds before proceeding with work exceeding initial and subsequent annual appropriations.

SECTION 4. CLIENT'S RESPONSIBILITIES)

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, data, and previous reports accessible to Client which Consultant may reasonably require.

(b) Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy.

(c) Client shall examine all documents presented by Consultant, and render decisions pertaining thereto within a reasonable time. The Client's approval of any reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.

(d) Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of fourteen (14) days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of forty-five (45) days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

SECTION 5. TERM AND TERMINATION.

(a) Term. The term of this Agreement begins on the Effective Date and ends on December 31, 2023, unless the project is completed by Consultant and approved by Client prior to that date or the term is sooner terminated in accordance with this Agreement. Client reserves the right to extend the term of this Agreement in one-year increments by written acceptance of both parties.

(b) Fund Appropriation. This agreement 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 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 agreement, with respect to any financial obligation of Client which may arise under this agreement in any fiscal year after the current 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 agreement. The termination of this Agreement due to lack of funding shall be without penalty to the Client.

(c) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress.

(d) Upon termination of this Agreement for events or reasons not the fault of Consultant, Consultant shall be paid the monthly rate on a pro-rated basis for all services rendered and reasonable costs incurred to date of termination, together with any reasonable costs incurred within ten (10) days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(e) In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of: (a) the reasonable value of completed work to Client, or (b) payment at the monthly rate on a pro-rated basis for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.

(f) Consultant's professional responsibility for its completed work and services shall survive any termination.

SECTION 6. SITE ACCESS.

In the event the Project requires access to property not under the control of Client, Consultant and Consultant's employees and consultants shall obtain all additional necessary approval and clearances required for access to such property. Client shall assist Consultant in obtaining access to such property at reasonable times but makes no warranty or representation whatsoever regarding access to such property. Notwithstanding the foregoing, Consultant understands and agrees that entry to some property by Consultant may be subject to compliance by Consultant with the terms and conditions of an access agreement in accordance with section 1(d) of this Agreement.

SECTION 7. EQUIPMENT AND SOFTWARE.

Consultant will not be provided with Client owned equipment ("Equipment"), such as computers or software, for Consultant's work on the Project. All equipment must be provided by Consultant and Consultant shall make no claim to any Equipment or other Client property provided under this Agreement. Consultant shall cooperate in all instances with Client to ensure compliance with Client's policies, including its information technology policies, and the protection of Client's data and systems.

SECTION 8. USE OF DOCUMENTS.

Data, plans, reports, and all other documents prepared or provided by Consultant hereunder shall become the sole property of Client, and Client shall be vested with all rights therein of whatever kind or nature and however created, whether by common law, statute, or equity. Client shall have access at all reasonable times to inspect and make copies of all notes, plans, reports and all other data or other documents pertaining to the work to be performed under this Agreement. In no event shall Consultant publish work product developed pursuant to this Agreement except (i) with advance written consent of Client, which consent may be granted or withheld in Client's sole and absolute discretion, and (ii) in full compliance with the requirements of this Agreement and applicable regulations.

SECTION 9. INSURANCE AND INDEMNITY.

(a) Consultant agrees that it shall procure and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and from claims for damages for professional liability.

(b) Consultant agrees to hold harmless, defend, and indemnify Client from and against any liability to third parties, arising out of negligent acts or omissions of Consultant, its employees, subcontractors, and consultants.

SECTION 10. REQUIRED GRANT PROVISIONS

(a) Consultant understands that Client may be funding the Project in whole or part with funds provided through private, State, and Federal grants, including but not limited to the American Rescue Plan Act (“ARPA”). Consultant agrees it is subject to and shall comply with all applicable provisions of said grants, the Act under which the contract award has been made, and applicable regulations.

(b) Consultant shall comply with all applicable Federal, State, and local laws applicable to its activities.

(c) All records with respect to any matters covered by this Agreement shall be available for inspection by Client and the grant providers at any time during normal business hours and as often as Client and the grant providers deem necessary, to audit, examine, and make excerpts or transcripts of relevant information, and otherwise to perform official functions or duties.

SECTION 11. SUBCONTRACTS.

(a) Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.

(b) Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.

(c) Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

SECTION 12. MISCELLANEOUS.

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client, Attention: Nicholas A. Gradisar, Mayor, 1 City Hall Place, Pueblo, Colorado 81003; or to Consultant, Attention: The Wellman Way LLC, 6550Z Zercher Rd. Beulah, CO 81023. Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between Consultant and Client respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either Client or Consultant in relation thereto not expressly set forth in this instrument and its attachments is null and void. In the case of any conflict between the terms of this Agreement for Professional Services and terms of *Schedule 1* or any other attachment hereto, the terms of this Agreement shall govern.

(c) Successors and Assigns. This Agreement shall be binding on the parties hereto and on their successors and assigns; provided, however, neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to Consultant may be assigned by it without the written consent of Client, which consent may be withheld in Client’s sole and absolute discretion. Any assignment or attempted assignment in violation of this subsection shall be void.

(d) Amendments. No amendment to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of Consultant and by Client in accordance with the requirements of Section 4(b) of this Agreement or upon authorization of Client’s governing board.

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State

of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability, gender orientation or age. Consultant shall endeavor to ensure that its employees are treated during employment without regard to their race, color, religion, sex, national origin, disability, gender orientation or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law, then this entire Agreement shall be void.

(h) Electronic Signatures. This Agreement 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.

SECTION 13. PERA LIABILITY.

Consultant shall reimburse the Client for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees’ Retirement Association (“PERA”) for salary or other compensation paid to a PERA retiree performing contracted services for the Client under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as the Effective Date.

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

THE WELLMAN WAY, LLC
HEATHER WELLMAN

By: _____
Naomi Hedden, Director of Purchasing

By: _____

Attest: _____
City Clerk

Title: _____

[S E A L]

BALANCE OF APPROPRIATION EXISTS FOR THIS CONTRACT AND FUNDS ARE AVAILABLE.

Director of Finance

APPROVED AS TO FORM:

City Attorney

SCHEDULE 1
Professional Consulting Services

**Governance Structure Research for Pueblo Food Project's Future
Request for Proposals**

Summary:

The Pueblo Food Project (PFP) is requesting Proposals from qualified consultants to research and create a report to better understand the options for governance structure change pertaining to fiscal sponsorship, 501c3 status, or other fiscal options.

In partnership with Civic Canopy, Pueblo Food Project has been investigating governance structure options for PFP to adhere to. Over the past year, research has been conducted to evaluate the top priorities that PFP should focus on to create the most sustainable future for PFP. One of these is evaluating and changing our governance structure to fit the needs of the coalition.

We request proposals to include two phases of work. Phase two work is not guaranteed. However, we would like to work with a firm that can offer services for both phase one and phase two, should the coalition make a decision to move forward with an organizational change.

An information session for this RFP will be held Friday, April 21st from 9am-10:30. Join as you are able during the time:

RFP Information Session: Governance Structure Research for Pueblo Food Project's Future

Friday, April 21 · 10:30am – 12:00pm

Google Meet joining info

Video call link: <https://meet.google.com/uft-dnmk-ova>

Or dial: (US) +1 302-364-6166 PIN: 956 848 013#

More phone numbers: <https://tel.meet/uft-dnmk-ova?pin=5895963556101>

Deliverables:

Phase 1 - Applicants will be expected to work 100-150 hours on Phase 1.

1. Adhere to work plan as designated by Pueblo Food Project
2. Develop a single report that includes:
 - a. Evaluate needs/barrier and pros/cons of existing fiscal model between the City of Pueblo and Pueblo Food Project
 - b. Evaluate needs/barriers and pros/cons of becoming a 501c3 non profit organization
 - c. Evaluate needs/barriers and pros/cons of finding a new fiscal sponsor
 - d. Evaluate needs/barriers and pros/cons of finding of possible other options of fiscal structures

- e. Include recommendations for fiscal sponsors and the pros/cons of working with each entity (ex. Trailhead Institute, PDPHE, Fuel & Iron, RMSER, United Way, and others)
 - f. Research and recommend a tool to help the Pueblo Food Project Governance Group make a decision on future structure
3. Present a final report with all above information to the Governance Priority Group no later than June 2023. The governance group will discuss and choose the governance structure that will be implemented for the Pueblo Food Project.

Phase 2 - Should the work of Phase 1 be successful, the applicant may be invited to complete Phase 2.

4. Complete necessary work to implement the chosen new governance structure
 - a. Write bylaws, decision making procedures, and organizational structure with the help of the governance group
 - b. Create timeline for implementation: including expected time to complete, milestones, and communication plan
 - c. Provide checklists to ensure protocols established are easily followed and tracked
 - d. Develop reporting templates and other tools to systemize governance policies and procedures including evaluation tools
 - e. Provide necessary training on all established policies, procedures, and evaluation functions
5. Research scalability potential for Pueblo Food Project
 - a. How can we grow sustainably?
 - b. Possible revenue streams (donation, grant, etc.)
 - c. Budgets for staffing

Qualifications

- Are you an experienced leader?
- Do you have demonstrated understanding of nonprofit & government structures?
- Do you have demonstrated experience in conducting research?
- Do you embrace complexity and conflict with compassion, curiosity, and humility?
- Do you have an eye for cultivating healthy cultures and justice-oriented organizational systems?
- Are you skilled at leading strategic planning processes that are also realistic, engaging, and fun?
- Have you facilitated this type of work using a combination of consensus-based decision making and voting?
- Do you have demonstrated understanding of the Pueblo Food Project?

Budget

Please include a budget table that outlines activities and hours needed to complete each activity for phase 1 and for phase 2. Phase 1 work shall not exceed a total of \$10,000.00. The maximum

hourly rate for this project shall not exceed \$67.00 per hour. A max budget for Phase 2 will be developed based on the proposed amount of work hours and hourly pay from applicants, and will depend on successful completion of phase 1 work, and the availability of funding at the time phase 2 work may begin.

Proposal Requirements

- **Bidders must submit their bid with the following sections**

- Statement of purpose
 - Why do you want to do this work?
- Qualifications and relevant experience
 - What qualifications do you possess that lead you to believe you are qualified to successfully develop this report?
 - Have you completed community work similar to this before?
- Proposed project plan
 - What is your plan of action to complete this work?
 - What resources will you provide? (ex. research tools)
 - What resources will you need? (ex. contact lists, data)
- References
 - Please include the name, email, and phone number of three references that can speak to your ability to do this work
- Proof of Insurance Coverage
 - The minimum insurance coverage which Consultant shall obtain and keep in force is Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client. The consultant shall provide a Certificate of Insurance to the PFP upon award of the project. (if applying as an individual the city will provide a waiver instead of using proof of insurance).

Those interested in responding to this RFP are asked to send an email stating the intent to submit a proposal via email to Megan Moore at megan@pueblofoodproject.org. Questions on this RFP will be accepted through **May 1, 2023 via email to megan@pueblofoodproject.org.**

Thank you for your interest in supporting the Pueblo Food Project.