



**REGULAR CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE**

**TUESDAY, OCTOBER 11, 2022
7:00 PM**

Individuals Requiring Special Accommodations Should Notify the City's ADA Coordinator at (719) 553-2295 by Noon on the Friday Preceding the Meeting.

- A. CALL TO ORDER** President Heather Graham
- B. INVOCATION** Pastor Rob Reyes, Praise Assembly of God
- C. PLEDGE OF ALLEGIANCE**
- D. ROLL CALL**
- E. SPECIAL RECOGNITIONS**
- F. PUBLIC FORUM**
- G. COUNCIL MEMBER AND MAYOR COMMENTARY**
- H. REVIEW OF AGENDA**

Review Agenda page by page.

I. APPROVAL OF AGENDA

Motion to Amend the Agenda or Motion to Approve the Agenda as distributed.

J. READING AND APPROVAL OF MINUTES

Motion to dispense with the reading and approve the Minutes of the Regular Meeting dated September 26, 2022, as distributed.

J1 City Council Minutes for September 26, 2022

K. COMMUNICATIONS

K1 Submission of the Mayor's Recommended Budget for the Fiscal Year 2023

Required Council Action: Motion to Receive the 2023 Proposed Budget, Set the Budget Public Hearing for **Monday, October 24, 2022**, and Order the *Notice of Budget Public Hearing* to be Published.

L. CONSENT AGENDA

All items listed in this portion of the agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilperson so requests; in which event, the item will be removed from the Consent Agenda and considered under the Regular Agenda. Unless otherwise indicated, titles are self-

explanatory.

M. RESOLUTIONS

- M1 A Resolution awarding a construction contract in the amount of \$91,385 to Industrial Constructors Managers, Inc., for Project Number 22-066 (WWAN04) FY2022 James R. Dilorio Water Reclamation Facility Secondary Clarifier #1 Rehabilitation, setting forth \$18,277 for contingencies and authorizing the Purchasing Agent to execute same
- M2 A Resolution awarding a construction contract in the amount of \$43,514.66 to GWP Inc. dba Colorado Boiler, for Project No. 22-072 (WWAN04) FY2022 James R. Dilorio Water Reclamation Facility Refurbishment of Boiler #33, setting forth \$4,351.47 for contingencies and authorizing the Purchasing Agent to execute same
- M3 A Resolution authorizing the City of Pueblo to refund sanitary sewer fees of \$226.40 to Delma Alvarez
- M4 A Resolution awarding a construction contract in the amount of \$421,688.63 to Merriman Land Works dba Flat & Fancy for Project No. 22-026R, Arkansas River Trail Phase 4 - Rebid, setting forth \$200,000 for contingencies, and authorizing the Purchasing Agent to execute same
- M5 A Resolution awarding a construction contract in the amount of \$133,347.21 to Merriman Land Works dba Flat & Fancy for Project No. 22-083, Grove Neighborhood Sidewalks and Curb Ramps (CDBG), setting forth \$41,652.79 for contingencies, and authorizing the Purchasing Agent to execute same
- M6 A Resolution amending Resolution No. 14962 regarding a donation of property and release of claims between the City of Pueblo, a municipal corporation, and the City of Lamar, Colorado relating to a CRAFCO crack fill machine located at the Pueblo Memorial Airport
- M7 A Resolution in support of the City of Pueblo's application for the FY2023 Safe Routes to School Grant Program
- M8 A Resolution confirming the appointment by the Mayor of Mindy Armijo to the El Centro del Quinto Sol Recreation Center Board of Directors
- M9 A Resolution approving and authorizing City of Pueblo employee participation in the United Way of Pueblo County Middle School Mentoring Program

N. ORDINANCES – FIRST PRESENTATION

- N1 An Ordinance approving and authorizing the Mayor to sign a subrecipient agreement between the City of Pueblo, a Colorado Municipal Corporation and the Pueblo Performing Arts Guild, inc. d/b/a the Pueblo Arts Alliance, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of thirty-six thousand dollars (\$36,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof
- N2 An Ordinance approving and authorizing the Mayor to sign a subrecipient agreement between the City of Pueblo, a Colorado Municipal Corporation and the Crazy Faith Street Ministry, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of fifty thousand two hundred dollars (\$50,200) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof

- N3 An Ordinance approving and accepting a grant in the amount of \$461,538 from the Colorado Department of Labor and Employment for the Just Transitions Strategic Planning Project, authorizing the Mayor to execute the award letter, creating Project No. CI2209, and budgeting and appropriating \$461,538 to Project No. CI2209
- N4 An Ordinance approving the 1st amendment and restatement to the Intergovernmental Agreement between the City of Pueblo, a Colorado Municipal Corporation ("City"), and the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"), Project MTF M086-088 (24024)/TAP M086-091 (24079) for Prairie Avenue to Minnequa Lake Trail Project, budgeting and appropriating funds in the amount of \$1,022,542 for said project and authorizing the Mayor to execute same
- N5 An Ordinance approving a 3rd amendment and restatement to an intergovernmental agreement between the City of Pueblo ("City"), a Colorado Municipal Corporation, and the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"), Project: TAP M086-082 (22971) relating to the Northern Ave Trail Phase III Project, budgeting and appropriating funds in the amount of \$693,494 for said project and authorizing the Mayor to execute same
- N6 An Ordinance approving a deposit agreement between the City of Pueblo, a Municipal Corporation, and Sky Creek Homes, LTD, LLC, a Colorado Limited Liability Company, related to the installation and construction of required public improvements within Settlers Village Filing Five Subdivision and authorizing the Mayor to execute said agreement
- N7 An Ordinance approving an agreement between the City of Pueblo, a Municipal Corporation, and Pueblo Development Company, LLC, a Colorado Limited Liability Company, related to the completion of the West 18th Street Extension project and authorizing the Mayor to execute said agreement
- N8 An Ordinance approving a license agreement between the City of Pueblo, a Municipal Corporation, and the Colorado State Fair Authority, a subdivision of the State of Colorado, and authorizing the Mayor to execute same
- N9 An Ordinance approving a memorandum of understanding between the City of Pueblo, the Colorado Department of Public Health and Environment, and the Colorado State University to monitor for SARS-CoV-2 and other pathogens of concern and authorizing the Mayor to execute same
- N10 An Ordinance approving a cooperation agreement between the City of Pueblo, a Municipal Corporation, and the Historic Arkansas Riverwalk of Pueblo Authority, a body politic and corporate established pursuant to C.R.S. 29-1-203 for the payment of professional services related to the subdivision of City-Owned property for the Historic Arkansas Riverwalk extension and authorizing the Mayor to execute same
- N11 An Ordinance amending the Fiscal Year 2022 Staffing Ordinance by adding one (1) full-time position entitled Trash Removal Coordinator to the authorized staffing of the Parks and Recreation Department
- N12 An Ordinance amending Section 6-5-16 of Chapter 5 of Title VI of the Pueblo Municipal Code relating to the FY 2022 Classification and Pay Plan by establishing the pay scale for Trash Removal Coordinator
- N13 An Ordinance approving and accepting a U.S. Department of Justice 2022 Edward Byrne Memorial Justice Assistance (2022 JAG) Grant, Award No. 15PBJA-22-GG-02214-JAGX, and applicable conditions pertaining thereto, establishing project number PS2213, budgeting and appropriating funds not to exceed \$101,117, authorizing the Mayor to execute same and related certifications, assurances and other documents, approving and

ratifying the July 26, 2022 Memorandum of Understanding concerning receipt and disbursement of funds, and authorizing the Mayor to execute same and ratifying his signature thereto

- N14 An Ordinance approving two cost reimbursement agreements, delineating the responsibilities of the Southern Colorado Violent Gang Safe Streets Task Force (SCVGSSTF) and the Southern Colorado TOC-W Task Force (SCTOCWTF), between the Federal Bureau of Investigation (FBI) and the City of Pueblo, and ratifying the Mayor's signature thereof

O. APPROVAL OF CONSENT AGENDA

I move to approve all Resolutions Set Forth in the Consent Agenda; Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for October 24, 2022, and Order the Ordinances to be published BY TITLE.

P. REGULAR AGENDA

Q. RESOLUTIONS

- Q1 A Resolution authorizing payment in the amount of one million dollars (\$1,000,000) from Project CI2113 - American Rescue Plan Act for neighborhood cleanup projects in qualified census tracts of the City of Pueblo and to provide employment to low-income unemployed and underemployed individuals who were disproportionately impacted by the COVID-19 pandemic, as authorized by section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6
- Q2 A Resolution authorizing payment from the council contingencies account in the 2022 general fund budget to the Parkview Medical Center in the amount of \$350 to sponsor a table at the Mammos & Mimosas event at 11:30 am on October 20, 2022 in the Occhiato Ballroom at CSU Pueblo
- Q3 A Resolution authorizing payment from the council contingencies account in the 2022 general fund budget to the Pueblo Choral Society, Inc. in the amount of \$5,000 to support the "Jubilation" holiday concert on December 8, 2022, at 7 pm in Memorial Hall
- Q4 A Resolution authorizing payment from the council contingencies account in the 2022 general fund budget to El Movimiento Sigue in the amount of \$1,500 to support the Multicultural Festival on October 8, 2022 at 11 am in Mineral Palace Park
- Q5 A Resolution authorizing the President of City Council to negotiate a proposed agreement for professional services between the City of Pueblo, a Colorado Municipal Corporation and a reputable accounting firm, to perform a forensic audit, subject to subsequent approval of said agreement by ordinance

R. ORDINANCES – FINAL PRESENTATION

- R1 An Ordinance approving and authorizing the Mayor to sign a Grant Agreement between the City Of Pueblo, a Colorado Municipal Corporation and the Southeastern Colorado Heritage Center, Inc., d/b/a the Pueblo Heritage Museum, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of ten thousand dollars (\$10,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof - *Introduced September 26, 2022 by Dennis Flores*
- R2 An Ordinance approving and authorizing the Mayor to sign a Grant Agreement between the City of Pueblo, a Colorado Municipal Corporation and the State Historic Society of Colorado d/b/a the El Pueblo History Museum, a Colorado Nonprofit Corporation, as

authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of five thousand dollars (\$5,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof - *Introduced September 26, 2022 by Dennis Flores*

- R3 An Ordinance approving and authorizing the Mayor to sign a Grant Agreement between the City of Pueblo, a Colorado Municipal Corporation and the Colorado Archaeological Society, Inc. d/b/a the Pueblo Archeological and Historical Society, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of five thousand dollars (\$5,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof - *Introduced September 26, 2022 by Dennis Flores*
- R4 An Ordinance approving and accepting a subgrant in the amount of \$44,000 from One Colorado Education Fund for the Pueblo Food Project, authorizing the Mayor to sign the grant agreement, creating Project No. CI2213, and budgeting and appropriating \$44,000 to Project No. CI2213 - *Introduced September 26, 2022 by Dennis Flores*
- R5 An Ordinance approving and accepting a grant in the amount of \$20,000 from the Colorado Housing and Finance Authority for the Pueblo Food Project, authorizing the Mayor to sign the award letter, creating Project No. CI2214, and budgeting and appropriating \$20,000 to Project No. CI2214 - *Introduced September 26, 2022 by Dennis Flores*
- R6 An Ordinance approving and accepting a grant in the amount of \$400,000 from the Colorado Health Foundation for the Pueblo Food Project, authorizing the Mayor to sign the grant agreement, establishing Project No. CI2216, and budgeting and appropriating \$400,000 to Project No. CI2216 - *Introduced September 26, 2022 by Dennis Flores*
- R7 An Ordinance approving and accepting a grant agreement and applicable conditions pertaining thereto with the Colorado Department of Transportation (CDOT) for the "A Step Towards Reducing Traffic Fatalities" grant, in the amount of \$75,000, from October 1st, 2022 through September 30th, 2023, establishing project number PS2209, budgeting and appropriating funds into project PS2209, and authorizing the Mayor to execute same - *Introduced September 26, 2022 by Dennis Flores*
- R8 An Ordinance approving Amendment No. 1 to the Lease and Management Agreement between the City of Pueblo, a Municipal Corporation, and Bregar Golf, LLC, relating to the Elmwood Golf Course Restaurant, and authorizing the Mayor to execute same - *Introduced September 26, 2022 by Dennis Flores*
- R9 An Ordinance approving an agreement between Pueblo Corporate College, a division of Pueblo Community College, ("PCC") and the City of Pueblo, a Municipal Corporation, for use of a parking lot at the Pueblo Memorial Airport, and authorizing the Mayor to execute same - *Introduced September 26, 2022 by Dennis Flores*
- R10 An Ordinance electing to certify Abatement Assessment Roll No. 2022-1 to the County Treasurer and to have the County Treasurer collect in the same manner as other taxes - *Introduced September 26, 2022 by Dennis Flores*
- R11 An Ordinance budgeting and appropriating funds from the unappropriated fund balance of the general fund in the amount of \$15,000 to council contingencies to reimburse payment to Goodnight Barn Foundation - *Introduced June 27, 2022 by Sarah Martinez*

S. ADJOURN



**Regular City Council MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE
Monday, September 26, 2022 - 7:00 PM
MINUTES**

A. CALL TO ORDER

B. INVOCATION

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

Council Members Present: Heather Graham, Larry Atencio, Vicente Martinez Ortega, Regina Maestri, Dennis Flores.

Council Members Present via Zoom: None.

Council Members Absent: Sarah Martinez (excused), Lori Winner (excused).

Administrative Staff Members Present: Mayor Nicholas Gradisar, Chief of Staff Laura Solano, City Attorney Daniel Kogovsek, City Clerk Marisa Stoller.

E. SPECIAL RECOGNITIONS

E1 Proclamation: “Scott A. Richards Day” - September 26, 2022; Meg Richards, wife of Scott Richards

E2 Proclamation: “Health Solutions 60 Year Anniversary” – September 1, 2022; Jason Chippeaux, President & CEO, Health Solutions

E3 Proclamation: “National Hispanic Heritage Observance – Pueblo Latino Veterans Profiles in Courage Day” - October 1, 2022; Pueblo Latino Veterans Profiles in Courage Committee members

E4 Proclamation: “Italian Heritage Month” - October 2022; Frankie Cirullo, last surviving member of the Christopher Columbus Lodge in Pueblo

F. PUBLIC FORUM

- Elvis Martinez - Homeless camp and more
- Deborah Martinez Martinez - Take it down - Columbus
- Deborah Esperanza - Take it Down - Columbus
- Rebeca Robles - Take it Down
- Rachel Donchue-Dupler - Take it Down
- Dave DeCenzo - Film (Movies)
- Ted Freeman - Pool/City/Pueblo
- Michael Wenzl - Aquatic Center Options

G. COUNCIL MEMBER AND MAYOR COMMENTARY

Council members expressed comments regarding community-related issues and events/functions they attended.

Mayor Gradisar mentioned additional signs will be going up to remind people it is unlawful to occupy the intersection. EVRAZ will be here for work session next week to update on construction. On Sept. 21st, Planning & Zoning approved the updated Regional Comprehensive Plan. Update on CS Winds America's invitation to travel to Seoul, Korea and takeaways from the trip as well as details about the expansion plan for CS Winds in Pueblo.

H. REVIEW OF AGENDA

The agenda was reviewed page by page.

I. APPROVAL OF AGENDA

President Graham requested that item M7 be moved to the regular agenda. Councilor Atencio, seconded by Councilor Flores, moved to move M7 to the regular agenda and approve the agenda as amended.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion passed 5-0.

J. READING AND APPROVAL OF MINUTES

J1 City Council Minutes for September 12, 2022

Councilor Atencio, seconded by Councilor Maestri, moved to dispense with the reading and approve the Minutes of the Regular Meeting dated **September 12, 2022** as distributed.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

K. CONSENT AGENDA

L. COMMUNICATIONS

M. RESOLUTIONS

M1 A Resolution awarding a construction contract in the amount of \$16,850 to Russ Grading & Excavating, LLC. for emergency storm sewer point repair

near the intersection of Encino and Modesto and authorizing the purchasing agent to execute same

This Resolution was assigned as 15006.

- M2 A Resolution ratifying an emergency construction contract in the amount of \$139,166.16 with Parker Excavating, Inc. for emergency sanitary sewer point repair at W 8th St & N Main St crossing, Project No. 20-059 (WWAN03) and approving the purchasing agent's execution of same**

This Resolution was assigned as 15007.

- M3 A Resolution authorizing the transfer of budgeted and appropriated funds in the amount of \$124,319.90 from Project No. SR2101 - Street Rehabilitation - Northern Avenue, Broadway Avenue, High Street, Grand Avenue, W. 24th Street, and Hudson Avenue to Project No. SR2003 - Street Rehabilitation Project - Fortino, Outlook, Greenwood, and Eagleridge and closing out Project No. SR2003**

This Resolution was assigned as 15008.

- M4 A Resolution authorizing an additional payment in the amount of \$3,110.42 from Project CI2113 - American Rescue Plan Act for the purchase of two Toro Groundsmaster mowers for the Department of Parks and Recreation, as authorized by Section 603(c)(1)(c) of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6**

This Resolution was assigned as 15009.

- M5 A Resolution approving a Purchasing Agreement between the City of Pueblo, a Municipal Corporation, and Pattlen Enterprises, Inc. dba L.L. Johnson Distributing Company, Inc., for two Toro Groundsmaster mowers for the Pueblo Parks and Recreation Department and authorizing the Purchasing Agent to execute same**

This Resolution was assigned as 15010.

- M6 A Resolution authorizing the issuance of a Revocable Permit to the Pueblo Bulls Hockey Club for the use of the 100 Block of Grand Avenue Right-of-Way between City Center Drive and W. 2nd Street**

This Resolution was assigned as 15011.

- M8 A Resolution confirming the appointment by the Mayor of Laura Leyba to the ADA Advisory Committee**

This Resolution was assigned as 15012.

N. ORDINANCES – FIRST PRESENTATION

- N1 An Ordinance approving and authorizing the Mayor to sign a Grant Agreement between the City Of Pueblo, a Colorado Municipal Corporation and the Southeastern Colorado Heritage Center, Inc., d/b/a the Pueblo Heritage Museum, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31**

CFR 35.6 and authorizing the payment of ten thousand dollars (\$10,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof

- N2 An Ordinance approving and authorizing the Mayor to sign a Grant Agreement between the City of Pueblo, a Colorado Municipal Corporation and the State Historic Society of Colorado d/b/a the El Pueblo History Museum, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of five thousand dollars (\$5,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof**
- N3 An Ordinance approving and authorizing the Mayor to sign a Grant Agreement between the City of Pueblo, a Colorado Municipal Corporation and the Colorado Archaeological Society, Inc. d/b/a the Pueblo Archeological and Historical Society, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of five thousand dollars (\$5,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof**
- N4 An Ordinance approving and accepting a subgrant in the amount of \$44,000 from One Colorado Education Fund for the Pueblo Food Project, authorizing the Mayor to sign the grant agreement, creating Project No. CI2213, and budgeting and appropriating \$44,000 to Project No. CI2213**
- N5 An Ordinance approving and accepting a grant in the amount of \$20,000 from the Colorado Housing and Finance Authority for the Pueblo Food Project, authorizing the Mayor to sign the award letter, creating Project No. CI2214, and budgeting and appropriating \$20,000 to Project No. CI2214**
- N6 An Ordinance approving and accepting a grant in the amount of \$400,000 from the Colorado Health Foundation for the Pueblo Food Project, authorizing the Mayor to sign the grant agreement, establishing Project No. CI2216, and budgeting and appropriating \$400,000 to Project No. CI2216**
- N7 An Ordinance approving and accepting a grant agreement and applicable conditions pertaining thereto with the Colorado Department of Transportation (CDOT) for the “A Step Towards Reducing Traffic Fatalities” grant, in the amount of \$75,000, from October 1st, 2022 through September 30th, 2023, establishing project number PS2209, budgeting and appropriating funds into project PS2209, and authorizing the Mayor to execute same**
- N8 An Ordinance approving Amendment No. 1 to the Lease and Management**

Agreement between the City of Pueblo, a Municipal Corporation, and Bregar Golf, LLC, relating to the Elmwood Golf Course Restaurant, and authorizing the Mayor to execute same

N9 An Ordinance approving an agreement between Pueblo Corporate College, a division of Pueblo Community College, ("PCC") and the City of Pueblo, a Municipal Corporation, for use of a parking lot at the Pueblo Memorial Airport, and authorizing the Mayor to execute same

N10 An Ordinance electing to certify Abatement Assessment Roll No. 2022-1 to the County Treasurer and to have the County Treasurer collect in the same manner as other taxes

O. APPROVAL OF CONSENT AGENDA

Councilor Flores, seconded by Councilor Maestri, moved to approve all Resolutions Set Forth in the Consent Agenda, Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for October 11, 2022, and Order the Ordinances to be published BY TITLE.

Roll Call – **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

P. REGULAR AGENDA

Q. RESOLUTIONS

M7 A Resolution authorizing the issuance of a Revocable Permit to The Gravel Locos, LLC for the use of Main Street from C Street to D Street, and the portions of the City-owned lot on the north corners of Main and D Street and Oneida and D Street and their rights of way to host their Gravel Locos Pueblo Bicycle Race

A staff report and detailed review of the Resolution was given by Andrew Hayes, Director of Public Works.

Councilor Flores, seconded by Councilor Ortega, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Resolution was assigned as 15013.

Q1 A Resolution naming the City Council Chambers Broadcast Room as the "Scott A. Richards Broadcast Room"

A staff report and detailed review of the Resolution was given by Councilor Dennis Flores.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Resolution was assigned as 15014.

Q2 A Resolution authorizing payment from the Council Contingencies account in the 2022 General Fund budget to Pueblo Community College Foundation in the amount of \$2,000 to support the Scott Richards Scholarship

A staff report and detailed review of the Resolution was given by Councilor Dennis Flores.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Resolution was assigned as 15015.

Q3 A Resolution authorizing payment from the Council Contingencies account in the 2022 General Fund budget to Historic Pueblo, Inc. in the amount of \$1,000 to support the Damon Days Fundraiser on Friday, October 28, 2022, at 5:30 pm

A staff report and detailed review of the Resolution was given by President Heather Graham.

Councilor Flores, seconded by Councilor Martinez Ortega, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion 5-0.

This Resolution was assigned as 15016.

Q4 A Resolution authorizing payment from the Council Contingencies account in the 2022 General Fund budget to NAACP Pueblo branch in the amount of \$700 to support the Freedom Fund Banquet Celebration on Saturday, October 15, 2022, at 6 pm

A staff report and detailed review of the Resolution was given by Councilor Vicente Martinez Ortega.

Councilor Flores, seconded by Councilor Martinez Ortega, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Resolution was assigned as 15017.

Q5 A Resolution authorizing payment from the Council Contingencies account in the 2022 General Fund budget to Pueblo Downtown Association in the amount of \$1,000 to support the Parade of Lights on November 26, 2022, at 5:30 pm

A staff report and detailed review of the Resolution was given by Councilor Larry Atencio.

Councilor Martinez Ortega, seconded by Councilor Atencio, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Resolution was assigned as 15018.

Q6 A Resolution authorizing payment from the Council Contingencies account in the 2022 General Fund budget to Pueblo Downtown Association in the amount of \$2,832.88 to support the decorating of light poles from Union Avenue Bridge to Main Street at Headwaters Park

A staff report and detailed review of the Resolution was given by Councilor Larry Atencio.

Councilor Martinez Ortega, seconded by Councilor Atencio, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Resolution was assigned as 15019.

Q7 A Resolution confirming the appointment of Alexandria A. Romero to the position of Finance Director

A staff report and detailed review of the Resolution was given by Mayor Nicholas Gradisar.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Resolution.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Resolution was assigned as 15020.

R. ORDINANCES – FINAL PRESENTATION

R1 An Ordinance approving and authorizing the Mayor to sign a grant agreement between the City of Pueblo, a Colorado Municipal Corporation and Rosemount Museum, a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of ten thousand dollars (\$10,000) from Project no. C12113 - American Rescue Plan Act, for purposes thereof

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10271.

R2 An Ordinance approving and authorizing the Mayor to sign a grant agreement between the City of Pueblo, a Colorado Municipal Corporation and the Bessemer Historical Society dba the Steelworks Center of the West, a Colorado Nonprofit Corporation, as authorized by section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of ten thousand dollars (\$10,000) from Project no. CI2113 - American Rescue Plan Act, for purposes thereof

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10272.

R3 An Ordinance approving and authorizing the Mayor to sign a subrecipient agreement between the City of Pueblo, a Colorado Municipal Corporation and So Col Racing dba Southern Colorado Youth Development a Colorado Nonprofit Corporation, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6 and authorizing the payment of forty thousand two hundred dollars (\$40,200) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

- Ted Freeman appeared in person to speak against this Ordinance

Seeing no one else wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0

This Ordinance was assigned as 10273.

R4 An Ordinance approving and authorizing the Mayor to sign a grant

agreement between the City of Pueblo, a Colorado Municipal Corporation and Fuel and Iron Commercial, LLC, a Colorado Limited Liability Company, as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CRF 35.6 and authorizing the payment of two hundred ninety-four thousand one hundred twenty-one and 51/100 dollars (\$294,121.51) from Project no. CI-2113 - American Rescue Plan Act, for purposes thereof

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

- Ted Freeman appeared in person to speak against this ordinance.

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Flores. **Nays:** Councilor Maestri. Motion Passed 4-1.

This Ordinance was assigned as 10274.

R5 An Ordinance approving an agreement in an amount not to exceed \$150,000 between the City of Pueblo and Brown and Caldwell, Inc., for regulatory assistance and general engineering services and authorizing the Mayor to execute same

A staff report and detailed review of the Ordinance was given by Andra Ahrens, Director of Wastewater.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10275.

R6 An Ordinance approving and accepting a grant in the amount of \$20,000 from the Trailhead Institute for the Pueblo Food Project, authorizing the Mayor to sign the grant agreement, creating Project No. CI2215, and budgeting and appropriating \$20,000 to Project No. CI2215

A staff report and detailed review of the Ordinance was given by Laura Solano, Chief of Staff.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10276.

R7 An Ordinance rezoning 14.1-acres generally located south of Oakshire Lane, north of 13th street, and west of Beaumont Avenue from R-2, Single Family Residential Zone District and S-1, Governmental Use Zone District to R-4, Mixed Residential Zone District

A staff report and detailed review of the Ordinance was given by Scott Hobson, Acting Director of Planning & Community Development. Mr. Hobson requested that the Planning & Zoning documents for this item, Case #Z22-12 dated August 10, 2022, be made part of the record for this hearing. So ordered by President Graham.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10277.

R8 An Ordinance rezoning 215 East Orman Avenue from S-1, Governmental Use Zone District to CCN, Commercial Charter Neighborhood and RCN, Residential Charter Neighborhood Zone Districts

A staff report and detailed review of the Ordinance was given by Scott Hobson, Acting Director of Planning & Community Development. Mr. Hobson requested that the Planning & Zoning documents for this item, Case #Z22-04 dated August 10, 2022, be made part of the record for this hearing. So ordered by President Graham.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by President Graham, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10278.

R9 An Ordinance rezoning 1.52-acres of land along State Highway 96 and west of Victory Lane from B-3, Highway Arterial Business Zone District to S-1, Government Use Zone District

A staff report and detailed review of the Ordinance was given by Scott Hobson, Acting Director of Planning & Community Development. Mr. Hobson requested that the Planning & Zoning documents for this item, Case #Z22-09 dated August 10, 2022, be made part of the record for this hearing. So ordered by President Graham.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10279.

R10 An Ordinance vacating a 20-foot public utility easement between Parcel B, rearrangement of boundary lines and Lot 4, Block 3, Trinity Subdivision

A staff report and detailed review of the Ordinance was given by Scott Hobson, Acting Director of Planning & Community Development. Mr. Hobson requested that the Planning & Zoning documents for this item, Case #V22-04 dated August 10, 2022, be made part of the record for this hearing. So ordered by President Graham.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Flores, seconded by Councilor Martinez Ortega, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10280.

R11 An Ordinance approving the North Vista Highlands, Filing No. 5 Subdivision

A staff report and detailed review of the Ordinance was given by Scott Hobson, Acting Director of Planning & Community Development. Mr. Hobson requested that the Planning & Zoning documents for this item, Case #S22-06 dated August 10, 2022, be made part of the record for this hearing. So ordered by President Graham.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Maestri, moved to approve the Ordinance on final presentation

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10281.

R12 An Ordinance amending the fiscal year 2022 staffing ordinance by adding

one (1) full-time Stormwater Engineering Manager position to the authorized staffing of the Stormwater Department as part of a reorganization

A staff report and detailed review of the Ordinance was given by Andrew Hayes, Director of Public Works.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10282.

R13 An Ordinance amending Section 6-5-16 of Chapter 5 of Title VI of the Pueblo Municipal Code relating to the FY 2022 classification and pay plan by establishing the pay scale for Stormwater Engineering Manager

A staff report and detailed review of the Ordinance was given by Marisa Pacheco, Director of Human Resources.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Maestri, moved to approve the Ordinance on final presentation

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10283.

R14 An Ordinance declining employer participation in the Paid Family and Medical Leave Insurance (FAMLI) Program and Act created and codified at Part 5, Article 13.3, Title 8 of the Colorado Revised Statutes

A staff report and detailed review of the Ordinance was given by Marisa Pacheco, Director of Human Resources.

PUBLIC HEARING:

- Mr. Freeman appeared in person to speak against this ordinance.

Seeing no one else wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10284.

R15 An Ordinance approving a license agreement Between the City of Pueblo, a Municipal Corporation and Clarity Telecom, LLC dba Bluepeak Fiber, a Delaware Limited Liability Company

A staff report and detailed review of the Ordinance was given by Andrew Hayes, Director of Public Works.

PUBLIC HEARING:

- Casey Quinn appeared in person to speak in favor of this ordinance.

Seeing no one else wished to speak, President Graham declared the Hearing closed.

Councilor Flores, seconded by Councilor Martinez Ortega, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10285.

R16 An Ordinance approving and accepting a Department of Homeland Security Grant Award No. EMW-2021-FG-07073 and applicable conditions pertaining thereto, establishing project No. PS2210 for the purchase of one air compressor and budgeting and appropriating grant funds in the amount of \$45,599 which includes a ten percent cost match of \$4,145.37 for the Purposes Authorized by the Grant Agreement

A staff report and detailed review of the Ordinance was given by Deputy Chief Keith Novak, Fire Department.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Atencio, seconded by Councilor Maestri, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10286.

R17 An Ordinance approving a non-disclosure agreement between Pueblo, a Municipal Corporation, and Colorado Springs Utilities, an enterprise of the City of Colorado Springs, and authorizing the Mayor to execute same

A staff report and detailed review of the Ordinance was given by Deputy Chief Keith Novak, Fire Department.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10287.

R18 An Ordinance approving and authorizing the Mayor to execute a memorandum of understanding between the City of Pueblo, a Colorado Municipal Corporation and InhabX, LLC, a Colorado Limited Liability Company, relating to trailhead access to the City of Pueblo's trail to the Arkansas River

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Maestri, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10288.

R19 An Ordinance approving and authorizing the Mayor to sign an Amendment No. 3 to an employment agreement between the City of Pueblo, a Colorado Municipal Corporation and New CF&I Inc., a Delaware Corporation

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

- Ted Freeman appeared in person to speak against this ordinance.

Seeing no one else wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10289.

R20 An Ordinance approving and authorizing the Mayor to execute Amendment No. 2 to a hangar lease between the City of Pueblo, a Colorado Municipal Corporation and Lockheed Martin Corporation, a Maryland corporation, relating to land and a hangar building at the Pueblo Memorial Airport

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

Seeing no one wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10290.

R21 An Ordinance approving and authorizing the Mayor to sign a construction management agreement between the City of Pueblo, a Colorado Municipal Corporation and the Pueblo Development Foundation, a Colorado nonprofit corporation, relating to a construction project at 32501 Walt Basset Avenue, Pueblo, CO 81001

A staff report and detailed review of the Ordinance was given by Dan Kogovsek, City Attorney.

PUBLIC HEARING:

- Ted Freeman appeared in person to speak against this ordinance.

Seeing no one else wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10291.

S. EMERGENCY ORDINANCES

S1 An Emergency Ordinance approving and accepting the Colorado Firefighter Safety and Disease Prevention Grant, and budgeting and appropriating funds in the amount of \$17,111.52 into Project No. PS2211 for the purposes authorized by the grant agreement

A staff report and detailed review of the Ordinance was given by Deputy Chief Keith Novak, Fire Department

PUBLIC HEARING:

- Ted Freeman appeared in person to speak against this ordinance.

Seeing no one else wished to speak, President Graham declared the Hearing closed.

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve the Ordinance on final presentation.

Roll Call - **Ayes:** President Graham, Councilor Atencio, Councilor Martinez Ortega, Councilor Maestri, Councilor Flores. **Nays:** None. Motion Passed 5-0.

This Ordinance was assigned as 10292.

T. ADJOURN

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Stoller', written in a cursive style.

Marisa Stoller
City Clerk



**Background Paper for Proposed
Presentation**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: SUBMISSION OF THE MAYOR'S RECOMMENDED BUDGET FOR THE
FISCAL YEAR 2023

Required Council Action: Motion to Receive the 2022 Proposed Budget, Set the Budget Public Hearing for **Monday, October 24, 2022**, and Order the *Notice of Budget Public Hearing* to be Published.

ATTACHMENTS:

None



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$91,385 TO INDUSTRIAL CONSTRUCTORS MANAGERS, INC., FOR PROJECT NUMBER 22-066 (WWAN04) FY2022 JAMES R. DIORIO WATER RECLAMATION FACILITY SECONDARY CLARIFIER #1 REHABILITATION, SETTING FORTH \$18,277 FOR CONTINGENCIES AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a Resolution awarding a construction contract to Industrial Constructors Managers, Inc. for Project No. 22-066 (WWAN04), FY2022. Remove and install Suction Manifold and repair scum trough in clarifier #1 at James R. Dilorio Water Reclamation Facility.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

James R. Dilorio Water Reclamation treats wastewater for the City of Pueblo. The three secondary clarifiers are the last step in the treatment. The suction manifold and seal are no longer working properly on secondary clarifier #1 due loss of the seal and wear on the manifold used in the removal of solids. The clarifier arms are wearing a hole in the bottom scum trough which if not fixed will cause the clarifier to be out of service. These components need to be repaired and replaced to ensure the clarifier functions properly.

FINANCIAL IMPLICATIONS:

The cost of the construction project was bid at \$91,385.00 with contingencies of \$18,277.00 Funds are available from the Rehabilitation Funds and appropriated to Project No. 22-066 (WWAN04).

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

If no upgrades are performed on the Secondary Clarifier suction manifold and scum trough, the condition of the equipment would continue to deteriorate until an emergency repair is required at a higher cost than a planned project. The James R. Dilorio Water Reclamation Facility would also risk violating its discharge permit if the equipment upgrades are not upgraded, and an outage were to happen.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Bid Summary

RESOLUTION NO. 15021

A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$91,385 TO INDUSTRIAL CONSTRUCTORS MANAGERS, INC., FOR PROJECT NUMBER 22-066 (WWAN04) FY2022 JAMES R. DIORIO WATER RECLAMATION FACILITY SECONDARY CLARIFIER #1 REHABILITATION, SETTING FORTH \$18,277 FOR CONTINGENCIES AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 22-066 (WWAN04) FY2022 Secondary Clarifier #1 Rehabilitation Project have been received and examined; and

WHEREAS, the proposal of Industrial Constructors Managers, Inc., was the lowest of those bids determined to be responsive; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council authorizes Project No. 22-066 (WWAN04) FY2022 Secondary Clarifier #1 Rehabilitation Project to be performed, and the contract for said project is hereby awarded to Industrial Constructors Managers, Inc., in the amount of \$91,385.00.

SECTION 2.

Funds for Project 22-066 (WWAN04) shall be from the Rehabilitation Funds.

SECTION 3.

The Purchasing Agent is hereby authorized to execute said contract on behalf of Pueblo, A Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest the same.

SECTION 4.

In addition to the amount of the bid set forth, as aforementioned, an additional amount as stipulated in this section is hereby established for contingencies and additional work.

Contingencies and Additional Work.....\$18,277.00

SECTION 5.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this resolution and the contract to implement the transactions described therein.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

Bid: 22-066 Replacement of Secondary Clarifier No. 1 for Wastewater Reclamation Facility		Industrial Constructors Managers, Inc.	GSE Construction Company. Inc.
Opening Date: August 30, 2022 Time: 11:00:00 AM			
Item	Description		
1	Lump sum for removal of existing suction system, purchase of replacement suction manifold and related parts (as approved by City), and complete installation of all components for Secondary Clarifier No. 1. as outlined in this bid document.	87,695.00	121,200.00
2	Lump sum for mobilization	3,690.00	5,000.00
Grand Total Bid		\$91,385.00	\$126,200.00



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$43,514.66 TO GWP INC. DBA COLORADO BOILER, FOR PROJECT NO. 22-072 (WWAN04) FY2022 JAMES R. DIORIO WATER RECLAMATION FACILITY REFURBISHMENT OF BOILER #33, SETTING FORTH \$4,351.47 FOR CONTINGENCIES AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a Resolution awarding a construction contract to GWP Inc. dba Colorado Boiler for Project No. 22-072 (WWAN04), FY2022. Remove and install the tube sheet and tubes on boiler #33, building heating boiler at James R. Dilorio Water Reclamation Facility.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

James R. Dilorio Water Reclamation Facility treats wastewater for the City of Pueblo. Boiler #33 is a methane burning boiler used to heat the building and water throughout the plant. Burning methane causes buildup of dry acid in the tubes and needs to be removed every year, otherwise the tubes and tube sheet will corrode. Boiler #33 tubes and tube sheet are getting thin and need to be replaced, so emergency repairs are not needed to keep the boiler running.

FINANCIAL IMPLICATIONS:

The cost of the construction project was bid at \$43,514.66 with contingencies of \$4,351.47. Funds are available from the Rehabilitation Funds and appropriated to Project No. 22-072 (WWAN04).

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Alternative No. 1 - No Action

If no upgrades are performed on Boiler #33, the facility would not be able to heat the facility's buildings this winter and have to rely on an outdated natural gas boiler to provide the facility's heating needs until a fix could be found which would cost the City of Pueblo more money.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Bid Summary

RESOLUTION NO. 15022

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$43,514.66 TO GWP INC. DBA COLORADO BOILER, FOR PROJECT NO. 22-072 (WWAN04) FY2022 JAMES R. DIORIO WATER RECLAMATION FACILITY REFURBISHMENT OF BOILER #33, SETTING FORTH \$4,351.47 FOR CONTINGENCIES AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 22-072 (WWAN04) FY2022 Refurbishment of Boiler #33 Project have been received and examined; and

WHEREAS, the proposal of GWP Inc. dba Colorado Boiler, was the lowest of those bids determined to be responsive; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council authorizes Project No. 22-072 (WWAN04) FY2022 Refurbishment of Boiler #33 Project to be performed, and the contract for said project is hereby awarded to GWP Inc. dba Colorado Boiler, in the amount of \$43,514.66.

SECTION 2.

Funds for Project 22-072 (WWAN04) shall be from the Rehabilitation Funds.

SECTION 3.

The Purchasing Agent is hereby authorized to execute said contract on behalf of Pueblo, A Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest the same.

SECTION 4.

In addition to the amount of the bid set forth, as aforementioned, an additional amount as stipulated in this section is hereby established for contingencies and additional work.

Contingencies and Additional Work.....\$4,351.47

SECTION 5.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Resolution and the contract to implement the transactions described therein.

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

Bid: 22-072 Refurbishment of Boiler #33 for Wastewater Reclamation Facility (WRF)			GWP Inc. dba Colorado Boiler
Opening Date: September 13, 2022 Time: 10:00:00 AM			
Item	Description	Amount	
1	Lump sum for removal, fabrication, installation, and testing of Boiler #33 as outlined in the bid document.	Amount	Included below
2	Lump sum for mobilization	Amount	Included below
Grand Total Bid			\$43,514.66

All prices as submitted - Evaluation Committee will determine if bidder has met bid requirements.



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: A RESOLUTION AUTHORIZING THE CITY OF PUEBLO TO REFUND
SANITARY SEWER FEES OF \$226.40 TO DELMA ALVAREZ

SUMMARY:

This Resolution authorizes the refund of erroneously collected sanitary sewer fees in the amount of \$226.40 to the owner of the property located at 113 S. Union Ave, Pueblo, Colorado 81003.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The Wastewater Department recently received a written request from Delma Alvarez, the owner of the property located at 113 S Union Avenue, seeking refund of sewer fees assessed under the water account held in the name of Delma Alvarez for the property. The property at 113 S Union Avenue is a parking lot that is not connected to the City's wastewater system and should never have been charged sanitary sewer fees.

Pursuant to City Ordinance 16-6-25, refunds based upon sewer user charges appearing on billings issued more than ninety (90) days prior to receipt of a written request can only be authorized by City Council and are limited to a maximum period of two years. Ms. Alvarez is requesting the refund of sanitary sewer fees in the amount of \$226.40 for charges from November 2021 through August 2022.

FINANCIAL IMPLICATIONS:

The amount of \$226.40 will be credited to customer account number 350939-066628.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Delma Alvarez will not receive compensation for sanitary sewer fees.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 10-11-22 REFUND 113 S UNION AVE SEWER CHARGES - Delma Alvarez

RESOLUTION NO. 15023

A RESOLUTION AUTHORIZING THE CITY OF PUEBLO
TO REFUND SANITARY SEWER FEES OF \$226.40 TO
DELMA ALVAREZ

WHEREAS, the City's Wastewater Department has been notified that Delma Alvarez was overcharged for sanitary sewer fees; and

WHEREAS, , pursuant to Section 16-6-23 of the Pueblo Municipal Code, the Director of Wastewater has determined that grounds exist for a refund pursuant to Section 16-6-24 of the code; and

WHEREAS, a refund for the paid amount can only be authorized by Pueblo City Council; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that
SECTION 1.

The City shall credit the sum of \$226.40 for the collection of fees charged for 113 S. Union Ave during the period of November 2021 – August 2022.

SECTION 2.

Such claim shall be credited through Account Number 350939-066628 in the amount of \$226.40.

SECTION 3.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

Transaction Date	Transaction	Transaction Amount	Bill #
11/4/2021	Cycle Bill Due: 11/24/2021	\$8.50	9302403
12/6/2021	Cycle Bill Due: 12/26/2021	\$23.18	9343920
1/5/2022	Cycle Bill Due: 1/25/2022	\$24.34	9388124
2/3/2022	Cycle Bill Due: 2/23/2022	\$24.34	9430628
3/4/2022	Cycle Bill Due: 3/24/2022	\$24.34	9477193
4/5/2022	Cycle Bill Due: 4/25/2022	\$24.34	9520018
5/4/2022	Cycle Bill Due: 5/24/2022	\$24.34	9563674
6/3/2022	Cycle Bill Due: 6/23/2022	\$24.34	9607519
7/6/2022	Cycle Bill Due: 7/26/2022	\$24.34	9653573
8/4/2022	Cycle Bill Due: 8/24/2022	\$24.34	9698736
		\$226.40	
DELMA ALVAREZ			
113 S UNION AVENUE			
350939-066628			
<i>Source: Board of Water Works</i>			



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$421,688.63 TO MERRIMAN LAND WORKS DBA FLAT & FANCY FOR PROJECT NO. 22-026R, ARKANSAS RIVER TRAIL PHASE 4 - REBID, SETTING FORTH \$200,000 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a construction contract to Merriman Land Works dba Flat & Fancy for 22-026R, Arkansas River Trail Phase 4.

PREVIOUS COUNCIL ACTION:

Ordinance 9010, passed and approved on July 25, 2016, established the Arkansas River Trail Upgrade and Safety Improvements Phase 4 Project, budgeted and appropriated funds in the amount of \$770,618, transferred funds in the amount of \$65,887 from the Conservation Trust Fund, Authorized funds in the amount of \$88,237 from the Black Hills Underground Utility Fund to be expended and approved an IGA between the City of Pueblo and CDOT to receive grant funds in the amount of \$616,494.

Ordinance 9487, final adoption by City Council on June 24, 2019, authorized an additional \$69,292 from the Black Hills Energy Underground Utility Fund.

Ordinance 9480, final adoption by City Council on June 10, 2019, approved a contract between the City of Pueblo and CDOT for the maintenance and operation of the trailhead and trail improvements at SH 96 (4th Street) and Arkansas River.

Ordinance 9751, final adoption by City Council on July 27, 2020, authorized an additional \$28,187.20 from the Black Hills Energy Underground Utility Fund, approved an IGA between the City and CDOT and budgeted and appropriated the additional grant funds in the amount of \$200,000.

BACKGROUND:

The Project is the fourth phase of the upgrade and reconstruction of the 25-year old section of the Arkansas River Trail northwest of Santa Fe Avenue along the southside of the Arkansas River. The Project will connect the bike/pedestrian trail to the southside of the 4th Street Bridge, provide parking for trail users, and connect a trail access from the nearest bike/pedestrian crossing west of the 4th Street Bridge to the Arkansas River Trail. The Resolution awards the construction contract to Merriman Land Works dba Flat & Fancy.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$621,688.63 will be paid from account PL1606 Arkansas River Trail Upgrade.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel the project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 22-026R Bid Summary Arkansas River Trail Project Phase 4-Rebid

RESOLUTION NO. 15024

A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$421,688.63 TO MERRIMAN LAND WORKS DBA FLAT & FANCY FOR PROJECT NO. 22-026R, ARKANSAS RIVER TRAIL PHASE 4 - REBID, SETTING FORTH \$200,000 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 22-026R, Arkansas River Trail Phase 4 have been received and examined; and

WHEREAS, the proposal of Merriman Land Works dba Flat & Fancy, was the lowest of those bids determined to be responsive, and the Committee of Awards recommends to the City Council that it authorize Project No. 22-026R, Arkansas River Trail Phase 4 to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council authorizes Project No. 22-026R, Arkansas River Trail Phase 4 to be performed, and the contract for said project is hereby awarded to Merriman Land Works dba Flat & Fancy in the amount of \$421,688.63.

SECTION 2.

The Purchasing Agent is hereby authorized to execute said contract on behalf of the City of Pueblo, A Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest the same.

SECTION 3.

In addition to the amount of the bid set forth, as aforementioned, an additional amount as stipulated in this section is hereby established for contingencies and additional work.

Contingencies and Additional Work.....\$200,000.00

SECTION 4.

Funds for Project 20-026R (including contingencies and additional work) shall be from Project No. PL1606, Arkansas River Trail Upgrade.

SECTION 5.

The officers of the City of Pueblo are authorized to perform any and all acts consistent with this Resolution to implement the policies and procedures described therein.

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

Bid: 22-026R Arkansas River Trail Project Phase - 4-Rebid						Merriman Land Works dba Flat & Fancy	JARCCO Construction, LLC	K.R. Swerdfeger Construction, LLC
Opening Date: September 22, 2022 Time: 11:00:00 AM								
Item	CDOT Item	Description	Estimated Quantity					
1	201-00001	Clearing & Grubbing	1	LS	Unit Price	3,500.00	49,000.00	59,000.00
					Amount	3,500.00	49,000.00	59,000.00
2	202-00203	Remove Curb & Gutter	43	LF	Unit Price	12.61	19.00	63.00
					Amount	542.23	817.00	2,709.00
3	202-00175	Remove Concrete	2943	SF	Unit Price	3.50	4.00	5.00
					Amount	10,300.50	11,772.00	14,715.00
4	202-00000	Remove Existing Fence & Gate	1	LS	Unit Price	1,600.00	2,500.00	2,900.00
					Amount	1,600.00	2,500.00	2,900.00
5	202-00220	Remove Asphalt	5240	SF	Unit Price	2.28	4.00	5.00
					Amount	11,947.20	20,960.00	26,200.00
6	0	Remove Existing Railing & Gate - Salvage to City of Pueblo	1	LS	Unit Price	1,600.00	2,500.00	6,464.00
					Amount	1,600.00	2,500.00	6,464.00
7	0	Remove Existing Swing Gate - Salvage to City of Pueblo	1	LS	Unit Price	2,000.00	2,500.00	1,616.00
					Amount	2,000.00	2,500.00	1,616.00
8	0	Remove Existing Inlet	1	LS	Unit Price	1,500.00	3,500.00	4,900.00
					Amount	1,500.00	3,500.00	4,900.00
STORMWATER								
9	604-30005	Construct Water Quality Feature	1	LS	Unit Price	6,500.00	19,000.00	85,000.00
					Amount	6,500.00	19,000.00	85,000.00
RAPIDS PLACE, PARKING LOT, & CUL-DE-SAC								
10	609-21020	Construct Curb & Gutter	1910	LF	Unit Price	45.00	43.00	63.00
					Amount	85,950.00	82,130.00	120,330.00
11	609-00000	Construct Type II C&G	164	LF	Unit Price	55.39	45.00	150.00
					Amount	9,083.96	7,380.00	24,600.00
12	0	Construct 4' Double Gutter	157	LF	Unit Price	110.00	41.00	140.00
					Amount	17,270.00	6,437.00	21,980.00
13	608-00000	Construct 4" Concrete	4054	SF	Unit Price	12.61	10.00	39.00
					Amount	51,120.94	40,540.00	158,106.00
14	608-00000	Construct 6" Concrete	832	SF	Unit Price	13.86	11.50	42.00
					Amount	11,531.52	9,568.00	34,944.00
15	608-00000	Construct 6" Stamped Concrete	267	SF	Unit Price	17.48	19.00	65.00
					Amount	4,667.16	5,073.00	17,355.00
16	608-00000	Construct 7" Reinforced Concrete	677	SF	Unit Price	17.56	15.00	50.00
					Amount	11,888.12	10,155.00	33,850.00
17	0	Construct 6" Curb Head	78	LF	Unit Price	21.00	41.00	78.00
					Amount	1,638.00	3,198.00	6,084.00
18	304-06000	Install 6" Class 6 ABC	658	TON	Unit Price	90.00	85.00	150.00
					Amount	59,220.00	55,930.00	98,700.00
19	403-33741	Install 3" HMA PG64-22 SX	410	TON	Unit Price	243.90	220.00	144.00
					Amount	99,999.00	90,200.00	59,040.00
20	0	Install ADA Parking Signs	3	Each	Unit Price	350.00	950.00	95.00
					Amount	1,050.00	2,850.00	285.00
21	0	Install 24"x24" Tactile Band	9	Each	Unit Price	320.00	350.00	301.00
					Amount	2,880.00	3,150.00	2,709.00
22	0	Relocate Post and Cable Fence	1	LS	Unit Price	1,600.00	2,500.00	3,200.00
					Amount	1,600.00	2,500.00	3,200.00
23	0	Construct Pavement Markings	1	LS	Unit Price	5,000.00	5,000.00	9,500.00
					Amount	5,000.00	5,000.00	9,500.00
24	0	Relocate Existing Boulders	1	LS	Unit Price	2,800.00	3,500.00	6,500.00
					Amount	2,800.00	3,500.00	6,500.00
MISCELLANEOUS								
25	700-70380	Stormwater Management & Erosion Control	1	LS	Unit Price	1,500.00	15,000.00	22,500.00
					Amount	1500.00	15000.00	22500.00
26	630-00000	Traffic Control	1	LS	Unit Price	7,500.00	25,000.00	13,000.00
					Amount	7500.00	25000.00	13000.00
27	626-00000	Mobilization	1	LS	Unit Price	7,500.00	50,000.00	32,000.00
					Amount	7500.00	50000.00	32000.00
Grand Total Bid						\$421,688.63	\$530,160.00	\$868,187.00



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$133,347.21 TO MERRIMAN LAND WORKS DBA FLAT & FANCY FOR PROJECT NO. 22-083, GROVE NEIGHBORHOOD SIDEWALKS AND CURB RAMPS (CDBG), SETTING FORTH \$41,652.79 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a construction contract to Merriman Land Works dba Flat & Fancy for 22-083, Grove Neighborhood Sidewalks and Curb Ramps (CDBG).

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In general, this project will consist of the removal and replacement of existing damaged concrete sidewalk, installation of new concrete sidewalks, curb ramps, and alley approaches, and other incidental items related to the construction.

FINANCIAL IMPLICATIONS:

Funding (including contingencies) in the amount of \$175,000 will be paid from account CD2113, Grove Neighborhood Infra Improvement.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel the project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 22-083 Bid Summary Grove Neighborhood Sidewalks and Curb Ramps CDBG

RESOLUTION NO. 15025

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$133,347.21 TO MERRIMAN LAND WORKS DBA FLAT & FANCY FOR PROJECT NO. 22-083, GROVE NEIGHBORHOOD SIDEWALKS AND CURB RAMPS (CDBG), SETTING FORTH \$41,652.79 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 22-083, Grove Neighborhood Sidewalks and Curb Ramps (CDBG) have been received and examined; and

WHEREAS, the proposal of Merriman Land Works dba Flat & Fancy, was the lowest of those bids determined to be responsive, and the Committee of Awards recommends to the City Council that it authorize Project No. 22-083, Grove Neighborhood Sidewalks and Curb Ramps (CDBG) to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 22-083, Grove Neighborhood Sidewalks and Curb Ramps (CDBG) to be performed, and the contract for said project is hereby awarded to Merriman Land Works dba Flat & Fancy in the amount of \$133,347.21.

SECTION 2.

The Purchasing Agent is hereby authorized to execute said contract on behalf of the City of Pueblo, A Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest the same.

SECTION 3.

In addition to the amount of the bid set forth, as aforementioned, an additional amount as stipulated in this section is hereby established for contingencies and additional work.

Contingencies and Additional Work.....\$41,652.79

SECTION 4.

Funds for Project 22-083 (including contingencies and additional work) shall be from Project No. CD2113, Grove Neighborhood Infra Improvement.

SECTION 5.

The officers of the City of Pueblo are authorized to perform any and all acts consistent with this Resolution to implement the policies and procedures described herein.

SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

Bid: 22-083 Grove Neighborhood Sidewalks and Curb Ramps (CDBG)					Merriman Land Works dba Flat and Fancy	Doug Vaughn, LLC
Opening Date: September 22, 2022 Time: 10:00:00 AM						
Item	Description	Estimated Quantity				
1	Remove Curb and Gutter	245	L.F.	Unit Price	4.90	4.50
				Amount	1,200.50	1,102.50
2	Remove Concrete	6764	S.F.	Unit Price	3.50	3.00
				Amount	23,674.00	20,292.00
3	Remove Asphalt	1842	S.F.	Unit Price	1.45	2.00
				Amount	2,670.90	3,684.00
4	Construct Curb Head	399	L.F.	Unit Price	18.86	20.00
				Amount	7,525.14	7,980.00
5	Construct Curb and Gutter	245	L.F.	Unit Price	25.00	27.00
				Amount	6,125.00	6,615.00
6	Construct 4" Concrete	6266	S.F.	Unit Price	5.30	5.70
				Amount	33,209.80	35,716.20
7	Construct 6" Concrete	1055	S.F.	Unit Price	5.75	6.25
				Amount	6,066.25	6,593.75
8	Construct 6" Asphalt Patch	602	S.F.	Unit Price	12.75	8.00
				Amount	7,675.50	4,816.00
9	Install 24" x 24" Tactile Band	42	EA.	Unit Price	120.00	138.00
				Amount	5,040.00	5,796.00
10	Install Class 6 Road Base	7	TON	Unit Price	55.00	45.00
				Amount	385.00	315.00
11	Stormwater BMP's	1	L.S.	Unit Price	300.00	300.00
				Amount	300.00	300.00
12	Traffic Control	1	L.S.	Unit Price	1,500.00	1,200.00
				Amount	1,500.00	1,200.00
13	Mobilization	1	L.S.	Unit Price	1,500.00	8,000.00
				Amount	1,500.00	8,000.00
Total Base Bid					\$96,872.09	\$102,410.45
Bid Alternate No. 1						
14	Remove Concrete	2362	S.F.	Unit Price	3.50	3.00
				Amount	8,267.00	7,086.00
15	Construct 4" Concrete	2362	S.F.	Unit Price	5.30	5.70
				Amount	12,518.60	13,463.40
16	Construct 7" Reinforced Concrete	126	S.F.	Unit Price	17.56	10.00
				Amount	2,212.56	1,260.00
17	Stormwater BMP's	1	L.S.	Unit Price	100.00	300.00
				Amount	100.00	300.00
18	Traffic Control	1	L.S.	Unit Price	300.00	1,400.00
				Amount	300.00	1,400.00
Total Bid Alternate No. 1					\$23,398.16	\$23,509.40
Bid Alternate No. 2						
19	Remove Concrete	324	S.F.	Unit Price	3.50	3.00
				Amount	1,134.00	972.00
20	Construct 4" Concrete	228	S.F.	Unit Price	5.30	5.70
				Amount	1,208.40	1,299.60
21	Construct 7" Reinforced Concrete	96	S.F.	Unit Price	17.56	10.00
				Amount	1,685.76	960.00
22	Stormwater BMP's	1	L.S.	Unit Price	50.00	300.00
				Amount	50.00	300.00
23	Traffic Control	1	L.S.	Unit Price	150.00	1,400.00
				Amount	150.00	1,400.00
Total Bid Alternate No. 2					\$4,228.16	\$4,931.60
Bid Alternate No. 3						
24	Remove Concrete	732	S.F.	Unit Price	3.50	3.00
				Amount	2,562.00	2,196.00
25	Construct 4" Concrete	732	S.F.	Unit Price	5.30	5.70
				Amount	3,879.60	4,172.40
26	Construct 7" Reinforced Concrete	120	S.F.	Unit Price	17.56	10.00
				Amount	2,107.20	1,200.00
27	Stormwater BMP's	1	L.S.	Unit Price	100.00	300.00
				Amount	100.00	300.00
28	Traffic Control	1	L.S.	Unit Price	200.00	1,400.00
				Amount	200.00	1,400.00
Total Bid Alternate No. 3					\$8,848.80	\$9,268.40



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Greg Pedroza, Director Aviation

SUBJECT: A RESOLUTION AMENDING RESOLUTION NO. 14962 REGARDING A DONATION OF PROPERTY AND RELEASE OF CLAIMS BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE CITY OF LAMAR, COLORADO RELATING TO A CRAFCO CRACK FILL MACHINE LOCATED AT THE PUEBLO MEMORIAL AIRPORT

SUMMARY:

The Pueblo Memorial Airport would like to donate a CRAFCO crack fill machine to the Southeast Colorado Regional Airport (LAA) and the City of Lamar, Colorado, in conjunction with the Grant Assurances for the Colorado Department of Transportation (CDOT) Division of Aeronautics Grant No. 21-PUB-01. Resolution No. 14962 used the incorrect vehicle identification number (VIN) to describe the machine, which requires amendment.

PREVIOUS COUNCIL ACTION:

Ordinance No. 9921 was passed and approved on May 17, 2021, with accepted CDOT Grant No. 21-PUB-01 and established Project No. AP2104.

BACKGROUND:

As part of the Colorado Division of Aeronautics' pavement program, a grant was issued to the Pueblo Memorial Airport for the purchase of a new crack sealing machine that will be available to all airports within the region. As a CDOT required assurance to the grant, the Pueblo Memorial Airport will donate its old CRAFCO crack fill machine and deliver it to the Southeast Colorado Regional Airport (LAA) and the City of Lamar, Colorado.

Resolution No. 14962 used the incorrect vehicle identification number (VIN) to describe the machine, which requires this amendment to correct.

FINANCIAL IMPLICATIONS:

Not applicable to this Resolution.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

If this Resolution is not approved, the Pueblo Memorial Airport will not be able to comply with the conditions of CDOT Division of Aeronautics Grant No. 21-PUB-1.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Release Of Claims - Crackfill Machine (Amended)
2. CFM Assurance Final (PUB Edit)

RESOLUTION NO. 15026

A RESOLUTION AMENDING RESOLUTION NO. 14962 REGARDING A DONATION OF PROPERTY AND RELEASE OF CLAIMS BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE CITY OF LAMAR, COLORADO RELATING TO A CRAFT CO CRACK FILL MACHINE LOCATED AT THE PUEBLO MEMORIAL AIRPORT

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Resolution No. 14962 is hereby amended by deleting references therein to VIN 1CWZV122561418148 in their entirety and replacing them with references to VIN 1C9ZV122581418146, including in the incorporated Agreement for Release and Waiver of Claims ("Release") and the Colorado Regional Crack Fill Machine Assurance ("Assurance"), updated copies of which are attached hereto, having been approved as to form by the City Attorney.

SECTION 2.

The Mayor's signatures of the updated Release and the updated Assurance in the name of the City are hereby ratified.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with this Resolution to implement the policies and procedures described herein.

SECTION 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

AGREEMENT FOR
RELEASE AND WAIVER OF CLAIMS

THIS AGREEMENT for Release and Waiver of Claims (“Agreement”) is made and entered into this _____ day of _____, 2022, by the City of Lamar, for its Southeast Colorado Regional Airport, (“Donee”) for the benefit of and to be enforceable by the City of Pueblo, a Municipal Corporation (“Donor”).

WITNESSETH:

WHEREAS, Donor owns one CRAFCO Crack Fill Machine, VIN: 1C9ZV122581418146, along with all associated ancillary equipment, for use at its Pueblo Memorial Airport (herein the “Property”), which is surplus to its needs and is willing to transfer the Property to Donee; and

WHEREAS, the Donee has agreed to accept the Property in its current condition without warranty and to release Donor from any and all claims and demands with respect to the condition or future use of the Property; and

WHEREAS, the Donee desires to enter into this Agreement for the benefit of Donor, setting forth the terms and conditions of its acceptance of the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Transfer. Donor donates and transfers all its right, title, and interest in and to the Property to the Donee and Donee accepts such transfer.
2. Disclaimer of Warranty. DONEE ACCEPTS THE PROPERTY “AS IS, WITH ALL ITS FAULTS.” DONOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION, OR CONDITION OF THE PROPERTY, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND DONOR HEREBY DISCLAIMS THE SAME.
3. Release and Discharge. Donee agrees to completely release and forever discharge Donor and its agents, employees, and officers of and from any and all claims, liabilities, or causes of action, whether known or unknown, disclosed or undisclosed, material, or immaterial, liquidated or unliquidated, which Donee or its officers, agents, and employees may have or may hereafter have against the Donor for or by reason of any matter, cause, or thing relating to the transfer, use, or condition of the Property.
4. Donee shall indemnify, defend and hold harmless the Donor and its officers, agents, and employees from any and all claims, actions, assessments, demands, liabilities, causes of action, whatsoever which may arise after the date of this Agreement out of the transfer,

use, operation, or condition of the Property.

5. Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law, including but not limited to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.
6. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.
7. The parties hereto agree to execute such other documents and to take such other actions, which may reasonably be necessary to further the purpose of this Agreement.
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, and assigns.
9. This Agreement constitutes the entire understanding between the parties pertaining to the subject matter hereof and supersedes any prior understandings, representations, warranties, and agreements between the parties hereto pertaining to the subject matter hereof and may be modified only by a written agreement signed by all of the parties hereto.
10. The person signing this Agreement on behalf of Donee represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this Agreement on behalf of Donee and that this Agreement is a valid and legally binding obligation of Donee enforceable against it in accordance with its terms.

IN WITNESS WHEREOF, the parties have entered into this Agreement the day and year first written above.

DONEE
CITY OF LAMAR, COLORADO

By_____

Name:_____

Title:_____

DONOR ACKNOWLEDGEMENT
CITY OF PUEBLO, COLORADO

By_____

Nicholas A. Gradisar, Mayor



Colorado Regional Crack Fill Machine Assurance

The purpose of the Colorado Airport Pavement Crack Fill Program is to support and improve the State Aviation System. Eligibility requirements to secure crack fill machines through this program are as follows:

1. Must be an owner or sponsor of an eligible Colorado airport (section 2.3, CDOT Aero P & P Manual).
2. Crack fill machines purchased through this program must be used exclusively on airport.
3. Equipment must be freely shared between other eligible airports within the local area.
4. **Specific to Pueblo Memorial Airport (PUB), authorization for 100% state grant funding for new crack fill equipment is contingent upon safe transfer of currently owned CRAFCO crack fill machine, VIN 1C9ZV122581418146, along with all associated ancillary equipment to the Southeast Colorado Regional Airport (LAA) and the City of Lamar CO. PUB will ensure the machine is safe for use, clean and free of structural and operational defects that would impede full utilization of all capabilities inherent with this equipment prior to transfer to LAA. PUB is responsible for coordinating shipment and delivery of the machine to LAA.**

Airport owners and sponsors are responsible for registering, titling, insuring and plating crack fill machines purchased through the Airport Pavement Crack Fill Program. This equipment will have a 7 to 10-year useful life unless otherwise determined by the Division of Aeronautics.

Crack fill machines purchased through the Airport Pavement Crack Fill Program shall be used on eligible COLORADO PUBLIC-USE AIRPORTS ONLY and will be maintained by the airport entity for the useful life of the equipment. Furthermore, airports that possess state-funded crack fill machines shall make this equipment available for use by all eligible airports within the local area free of charge and without encumbrance, condition or caveat. The Division of Aeronautics, as manager of the program may inspect the equipment during periodic airport visits to evaluate their condition and serviceability and to verify proper use.

Crack fill machines purchased through the Airport Pavement Crack Fill Program may be disposed of, traded, or sold by the airport at any time after the pre-determined useful life of the unit. However, Division of Aeronautics approval is required prior to disposing of, selling or trading a state-funded crack fill machine before the end of said useful life. Sponsors shall submit a written request for authorization to the Division of Aeronautics clearly stating the justification for early removal and the intended use of proceeds from any sale.

As an authorized representative I commit the airport sponsor to the above assurances regarding procurement and use of crack fill machines through the Colorado Airport Pavement Crack Fill Program. I will coordinate with the Division of Aeronautics upon disposal of the equipment. Noncompliance with the above assurances may affect my ability to receive Division of Aeronautics grant funding in the future.

Airport _____

Airport Sponsor _____

Signature _____ Date _____

Printed Name & Title _____

Signature _____ Date _____

Kip McClain -Division of Aeronautics



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: A RESOLUTION IN SUPPORT OF THE CITY OF PUEBLO'S APPLICATION FOR THE FY2023 SAFE ROUTES TO SCHOOL GRANT PROGRAM

SUMMARY:

Attached is a Resolution supporting the City of Pueblo's application for the FY2023 Safe Routes to School Grant Program administered by the Colorado Department of Transportation.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Colorado Safe Routes to School (SRTS) provides opportunities for communities to foster a safe environment for students by funding education and safe infrastructure and encourages safe and healthy transportation options for children that include biking and walking. The Monument Avenue corridor between East 12th Street and East 2nd Street is a thoroughfare with multiple schools and community facilities used by young students, including Risley International Academy of Innovation and Park View Elementary School. Other community facilities, including the Patrick A. Lucero Branch of the Pueblo City-County Library District, Mitchell Park, and Bradford Park are also located along the proposed project route. A project to provide upgraded multimodal transportation pathways for pedestrians and bicyclists transiting to and from these community facilities is proposed for design and construction if the City of Pueblo's grant application is successful.

FINANCIAL IMPLICATIONS:

Approval of this Resolution will not result in any direct financial implications to the City of Pueblo.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

The Public Works Department is working with representatives from District 60 and other community members to secure resolutions and letters of support for the grant application.

ALTERNATIVES:

If Council does not pass this Resolution, the competitiveness and strength of the City's application may be negatively impacted.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15027

A RESOLUTION IN SUPPORT OF THE CITY OF PUEBLO'S
APPLICATION FOR THE FY2023 SAFE ROUTES TO SCHOOL
GRANT PROGRAM

WHEREAS, the City of Pueblo recognizes that dedicated pedestrian and bicycle infrastructure within the public right-of-way directly enhances the safety of students who walk or ride bicycles as a means of transportation to and from school, fosters healthy lifestyles for students who use those transportation facilities, and improves the quality of life for all local residents; and

WHEREAS, the proposed project serving the area along Monument Avenue between East 12th Street and East 2nd Street and pathways to adjacent public transit facilities aligns with ongoing redevelopment and public infrastructure renewal efforts in the surrounding community; and and is determined to be in the best interest of local residents, schools, and the City of Pueblo; and

WHEREAS, the proposed project serves the interests of local residents, schools, and the City of Pueblo; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council hereby expresses its support for the City of Pueblo's application for the FY2023 Safe Routes to School grant program for proposed bicycle and pedestrian transportation infrastructure upgrades along the Monument Avenue corridor and nearby public transit facilities.

SECTION 2.

The Officers of the City are authorized to perform any and all acts consistent with this Resolution to implement the policies and procedures described herein.

SECTION 3.

This Resolution shall become effective immediately upon final passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Alyssa Parga, Secretary to the Mayor

SUBJECT: A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF MINDY ARMIJO TO THE EL CENTRO DEL QUINTO SOL RECREATION CENTER BOARD OF DIRECTORS

SUMMARY:

This resolution confirms the appointment by the Mayor of a member to complete a four-year term expiring August 30, 2024.

PREVIOUS COUNCIL ACTION:

Appointments to the El Centro Del Quinto Sol Recreation Center Board of Directors are made as vacancies arise and terms expire.

BACKGROUND:

Due to the resignation of Lindsay Reeves, there is one vacancy on this board. Following an announcement on the City's Facebook and website seeking volunteers to serve on this board, three applications were received. The applications were reviewed by Mayor Gradisar, and he has recommended that Ms. Armijo be appointed to serve.

FINANCIAL IMPLICATIONS:

This a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Remove from the agenda and re-advertise for additional applications.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Application for El Centro - Armijo

RESOLUTION NO. 15028

A RESOLUTION CONFIRMING THE APPOINTMENT BY
THE MAYOR OF MINDY ARMIJO TO THE EL CENTRO
DEL QUINTO SOL RECREATION CENTER BOARD OF
DIRECTORS

WHEREAS, Mayor Nicholas A. Gradisar has requested confirmation by the City Council of his appointment of Mindy Armijo to the El Centro del Quinto Sol Recreation Center Board of Directors to complete a four-year term expiring August 30, 2024; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Mindy Armijo is hereby appointed to the El Centro del Quinto Sol Recreation Center Board of Directors to complete a four-year term expiring August 30, 2024.

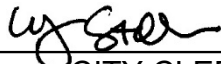
SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with this Resolution to implement the appointment described herein.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: EL CENTRO DEL QUINTO SOL RECREATION CENTER BOARD OF DIRECTORS
Date: Friday, July 29, 2022 4:58:40 PM

External email. Please use caution.

EL CENTRO DEL QUINTO SOL RECREATION CENTER BOARD OF DIRECTORS

EL CENTRO DEL QUINTO SOL RECREATION CENTER BOARD OF DIRECTORS Application for Appointment

Contact Information

DATE *Field not completed.*

FIRST NAME Mindy

Middle Initial *Field not completed.*

LAST NAME Armijo

HOME ADDRESS 21 Duke St.

CITY Pueblo

STATE CO

ZIP 81005

HOME PHONE 7193694608

WORK PHONE *Field not completed.*

CELL PHONE 7193694608

E-MAIL ADDRESS mindy.armijo@gmail.com

ARE YOU
CURRENTLY
EMPLOYED WITH
THE CITY OF
PUEBLO? No

OCCUPATION (or if Behavioral Health Provider/Licensed Professional Counselor

RETIRED, your
previous occupation)

Pueblo Community Health Center- East Side Clinic

Board Membership Structure

Please select the
position that you are
applying for:

At Large Resident of the City of Pueblo

Questionnaire

Please complete the following general information.

Please elaborate on
your qualifications or
interest based on the
category you selected
above?

I have almost 20 years of professional community mental health experience in Pueblo. I have been fortunate to work with many diverse populations in our community. I currently work at Pueblo Community Health Center's East Side clinic as a Behavioral Health Provider. Many of my patients are residents of the East Side. I have a strong interest in the East Side community's growth and well being and believe El Centro plays an important role in the East Side. Having a safe, healthy, inclusive space for recreation and socialization is important for building up community and preserving its history.

Why are you interested
in being appointed to
serve on the El Centro
del Quinto sol
Recreation Center
Board of Directors?

Working on the East Side and having family and patients who are reside here makes me inspired to make positive contributions to this community. I would like to learn more about the community and its needs.

Please list your areas
of experience and/or
accomplishments that
you feel could assist
the mission of this
Board.

I believe my experience in the mental health field could be an asset to El Centro's board. I am a parent of children who were and are students of local schools and have participated in various recreation and sports programs in the community. I believe this has given me experience and insights on navigating these programs from a parent's perspective.

What goals would you
like to see this Board
accomplish?

I think it would be great to see more collaboration among the businesses, agencies and services on the East Side to support recreation at El Centro for youth and adults. I would like to work toward bringing more events and expanding programs that would promote health and a sense of community.

List any other items
that might be useful in
consideration for your
appointment to this
Board.

In my youth, my cousins and I spent a lot of time at El Centro in the summers, and I have fond memories of my time there.

List any other civil or

I have never served on any civil or community commissions or boards.

Community
Commissions or
Boards that you
currently serve on.

(Section Break)

Upload resume,
references and/or other
pertinent information

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Email not displaying correctly? [View it in your browser.](#)



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor
Laura Solano, Chief of Staff

SUBJECT: A RESOLUTION APPROVING AND AUTHORIZING CITY OF PUEBLO
EMPLOYEE PARTICIPATION IN THE UNITED WAY OF PUEBLO
COUNTY MIDDLE SCHOOL MENTORING PROGRAM

SUMMARY:

Attached is a Resolution approving and authorizing up to twenty (20) City of Pueblo employees to participate in the United Way of Pueblo County Middle School Mentoring Program as a City sanctioned, work-related activity.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The City of Pueblo was selected as one of 13 international cities to participate in the Bloomberg Center for Public Innovation at Johns Hopkins University's 2022 Innovation Training program, which will provide consulting, training, and networking to address a key issue facing its residents. The identified target issue for the City of Pueblo is to reduce youth-related gang violence in the community. Research strongly suggests that middle school students are the age cohort where recruitment into gangs most heavily occurs. Furthermore, research from the project revealed that mentoring and developing relationships with caring adults can be an impactful way to help deter negative lifestyle choices.

United Way of Pueblo County has designed and implemented the Middle School Mentoring Program which provides a nationally standardized framework for success. The program's mission is to enrich lives of Pueblo middle school students by providing opportunities to build relationships with nurturing adults who empower and encourage them through one-to-one mentoring. The program has been in place since 2012 and has been connecting positive caring adults with middle schoolers since program

inception via weekly communication to cultivate character and strength by fostering relationships centered on trust, hope and growth. The program uses adult volunteers to commit to supporting, guiding and being a friend to a young person for a period of at least one school year and a maximum of three until the student completes middle school. The time commitment to participate is approximately one hour per week during the school year (lunch hour) and sessions occur on site at Risley, Roncalli, Heaton or PAA middle schools.

Mentees are middle school students at one of the schools listed above who can thrive and be successful with a little extra support from an adult role model outside of the classroom setting. Referrals to the program are made by school staff who collaborate with the program manager to make compatible mentor-mentee matches. Progress measurement occurs in several different areas both qualitative and quantitative. The positive impacts of having a mentor in these children's lives are numerous and include increased confidence levels and self-esteem, improved attitudes toward attending school, higher level of engagement at school and more effective decision making. Additionally, there are quantitative measurements of success such as reduction in absenteeism and better academic achievement/grades. The United Way of Pueblo County Middle School Mentoring Program reports that over 75% of program participants have shown significant improvements in progress indicator areas. Other employers in the community support the program through allowing staff to participate, including Parkview Medical Center, the 10th Judicial District Court and Probation, Blazer Electric, CSU-Pueblo, and CSU Pueblo Foundation.

There is a great need for mentors in the community to work with youth and the City has many employees who would be excellent mentors. The City of Pueblo desires to support United Way of Pueblo County Middle School Mentoring Program through meaningful staff participation. Mayor Gradisar has authorized participation of up to 20 City employees in this program. Time spent will be considered City worktime. Interested participants must obtain approval from their supervisor and Department Director to participate to minimize operational impacts. Those wishing to participate as a mentor will then be required to apply for participation with the United Way of Pueblo County.

All mentors must successfully complete a screening process which includes criminal background check, fingerprinting and several interviews. If selected, United Way of Pueblo County trains mentors to ensure they have the skills they need to be effective mentors.

FINANCIAL IMPLICATIONS:

There is no new financial cost to the City to support and participate in the program.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable to this Resolution.

STAKEHOLDER PROCESS:

Not Applicable to this Resolution.

ALTERNATIVES:

Denial of this resolution will result in lack of formal approval to support the program by allowing employees to participate in connection with the City of Pueblo.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15029

A RESOLUTION APPROVING AND AUTHORIZING CITY
OF PUEBLO EMPLOYEE PARTICIPATION IN THE
UNITED WAY OF PUEBLO COUNTY MIDDLE SCHOOL
MENTORING PROGRAM

WHEREAS, middle school students in Pueblo need support through positive mentoring relationships with adults; and,

WHEREAS, the City desires to support the United Way of Pueblo County Middle School Mentoring Program in their mission of enriching the lives of Pueblo middle school students by providing opportunities to build relationships with nurturing adults who empower, encourage them through one-to-one mentoring; and,

WHEREAS, Mayor Nicholas A Gradisar has agreed to allow, if operationally feasible, up to twenty (20) City of Pueblo employees to apply for and if accepted, participate in the program each year beginning in 2022; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council approved and authorized City of Pueblo employee participation in the United Way of Pueblo County Middle School Mentoring Program.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Resolution.

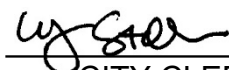
SECTION 3.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Dan Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO PERFORMING ARTS GUILD, INC. D/B/A THE PUEBLO ARTS ALLIANCE, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF THIRTY-SIX THOUSAND DOLLARS (\$36,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign a Subrecipient Agreement with the Pueblo Performing Arts Guild, Inc. d/b/a the Pueblo Arts Alliance, a Colorado nonprofit corporation ("Arts Alliance") to support its participatory art classes and programs for Pueblo's disproportionately impacted and low-income students (hereinafter "Project") as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6. Funds for the project, in the amount of \$36,000 will be paid out of Project No. CI2113, the American Rescue Plan Act.

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026).

BACKGROUND:

The past few years have been challenging for young people and families in the Pueblo community and the impact of Covid-19 created additional life-changing implications that have continued to affect Pueblo's low-income households which qualify for government

assistance. Low-income students generally have fewer learning resources at home, particularly training in the arts which is essential for “right brain” development.

Subrecipient was organized in 2013 and for many years has been providing participatory art classes to Pueblo’s low-income students. In particular, the Arts Alliance has provided the following programs and services:

1. During the Chili & Frijole Festival – Creative Corridor approximately 600 children at Kid’s Corner Stencil Walls, Wings picture op, Eric Sarracino created free caricatures; gave out water color kits, parking lot chalk art
2. Kids’ Corner – Art History Class – in Liminal Space Gallery 22 children – ages 2 to 5 group 1/ ages 11-13 group 2; art history class attached to a themed art project – 6 week course
3. Cross Roads Turning Point Stay Sober Event Gallery show and lot festival; approximately 150 high school age youth themed “Do Art Not Drugs”
4. Southern Colorado Equality Association Pride Celebration Gallery Show and Pride Prom (no alcohol) – 5 years to 80 years attended; approximately 120 17–28-year-olds participated
5. Creative Reuse of Pueblo Project Days 17 children – “shop” in thrift store to make a project StreetBeat, in Liminal Space Gallery
6. Collaborates with Southern Colorado Youth Development (another 501c3 organization) in participatory art projects
7. Many of the Subrecipient’s members also teach youth classes – such as Vocal lessons, Piano, and Classical Percussion – Approx.35 students at the Subrecipient’s building located at 107 S. Grand Ave. in downtown Pueblo

FINANCIAL IMPLICATIONS:

The Arts Alliance will receive \$36,000 in ARPA funds from Project No.CI2113.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to support the Arts Alliance.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Arts Alliance - Subrecipient Agreement - ARPA funds

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE PUEBLO PERFORMING ARTS GUILD, INC. D/B/A THE PUEBLO ARTS ALLIANCE, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF THIRTY-SIX THOUSAND DOLLARS (\$36,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

RECITALS

The following recitals are incorporated in and made a part of this Ordinance.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter "ARPA"); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds ("CLFRF") to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Final Rule 31 CFR 35.6(b)(7) recipients may use CLFR Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Subrecipient Agreement ("Agreement") dated October 24, 2022, between and the City of Pueblo, a Colorado municipal corporation and the Pueblo Performing Arts Guild, Inc. d/b/the Pueblo Arts Alliance, a Colorado nonprofit corporation ("Arts Alliance") a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

Funds in the amount of \$36,000 are hereby authorized to be paid from Project No.

CI2113 – American Rescue Plan Act, for purposes of providing financial support to the Arts Alliance’s participatory art classes and programs for Pueblo’s disproportionately impacted and low-income students, as described in the attached Agreement.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the policies and procedures described herein.

SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor’s veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor’s veto.

President of City Council

ATTEST

City Clerk

SUBRECIPIENT AGREEMENT

THIS SUBRECIPIENT AGREEMENT ("Agreement") is made and entered into this 24th day of October, 2022, by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the "City" and the Pueblo Performing Arts Guild, Inc. d/b/a the Pueblo Arts Alliance, a Colorado nonprofit corporation, hereinafter referred to as the "Subrecipient" or "Arts Alliance." City and Subrecipient/Arts Alliance are sometimes each referred to as a "Party" and collectively "Parties."

RECITALS

The following recitals are incorporated in and made a part of this Agreement.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter "ARPA"); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, by Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds ("CLFRF") to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Final Rule 31 CFR 35.6(b)(7) recipients may use CLFR Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, Subrecipient has requested that the City use CLRF Funds for the purpose of providing participatory art classes and programs to Pueblo's disproportionately impacted and low-income students (hereinafter "Project"); and

WHEREAS, the City desires to disburse funds from Project No. CI2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

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

1. FACTUAL BASIS FOR THE GRANT AWARD

(a) The past few years have been challenging for young people and families in the Pueblo community and the impact of Covid-19 created additional life-changing implications that have continued to affect Pueblo's low-income households which qualify for government assistance. Low-income students generally have fewer learning resources at home, particularly training in the arts which is essential for "right brain" development.

(b) Subrecipient was organized in 2013 and for many years has been providing participatory art classes to Pueblo's low-income students. In particular, the Arts Alliance has provided the following programs and services:

1. During the Chili & Frijole Festival – Creative Corridor approximately 600 children at Kid's Corner Stencil Walls, Wings picture op, Eric Sarracino created free caricatures; gave out water color kits, parking lot chalk art.
2. Kids' Corner – Art History Class – in Liminal Space Gallery 22 children – ages 2 to 5 group 1/ ages 11-13 group 2; art history class attached to a themed art project – 6 week course
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4. Southern Colorado Equality Association Pride Celebration Gallery Show and Pride Prom (no alcohol) – 5 years to 80 years attended; approximately 120 17–28-year-olds participated
5. Creative Reuse of Pueblo Project Days 17 children – "shop" in thrift store to make a project StreetBeat, in Liminal Space Gallery,
6. Collaborates with Southern Colorado Youth Development (another 501c3 organization) in participatory art projects.
7. Many of the Subrecipient's members also teach youth classes – such as Vocal lessons, Piano, and Classical Percussion – Approx.35 students at the Subrecipient's building located at 107 S. Grand Ave. in downtown Pueblo

2. NOTICE AND DISCLOSURES BY THE CITY

(a) For purposes of receiving and using Coronavirus Local Fiscal Recovery Funds, the Subrecipient is hereby advised that the City of Pueblo's CFDA Number is 21.027.

(b) Notice pursuant to 2 CFR 25.300 – Requirement for recipients to ensure subrecipients have a unique entity identifier:

- A recipient of ARPA funds, such as the City of Pueblo, may not make a subaward to a subrecipient unless the subrecipient has obtained and provided to the recipient a unique entity identifier. Subrecipients are not required to complete full SAM registration to obtain a unique entity identifier.
- A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient has obtained a unique entity identifier.

3. SERVICES; RESPONSIBILITIES OF SUBRECIPIENT

(a) Prior to receiving ARPA funds under this Agreement, Subrecipient is required to provide the City with the following information and documentation:

1. Federal SAM Unique Entity ID;
2. City Sales Tax License;
3. State Sales Tax License;
4. IRS designation as a 501(c)(3) nonprofit entity; and
5. Certificate of Good Standing from the Office of the Secretary of State.

(b) Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions 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.

(c) Subrecipient warrants and represents that it: (i) has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder; (ii) that it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto; and (iii) that it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions.

(d) This Agreement is a covered transaction for purposes of 2 CFR, Part 180 and 2 CFR, Part 3000. As such the Subrecipient is required to verify that none of the Subrecipient, its principals (defined at 2 CFR Section 180.995) or its affiliates (defined at 2 CFR Section 180.905) are excluded (defined at 2 CFR Section 180.940) or disqualified (defined at 2 CFR Section 180.935).

(e) The Subrecipient must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(f) This certification is a material representation of fact relied upon by City. If it is later determined that the Subrecipient did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

(g) The Subrecipient agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C during the term of this Agreement. The Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4. RESPONSIBILITIES OF THE CITY

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

5. SUBRECIPIENT'S COMPENSATION AND METHOD OF PAYMENT

(a) The City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment: (i) that Subrecipient has expended funds for eligible approved expenditures, (ii) that Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation, (iii) that Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City, (iv) that Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit "C" and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Thirty-Six Thousand Dollars (U.S. \$36,000.00). City shall make payments to Subrecipient according to the following schedule:

Date	Description	Amount
11-01-22	Initial payment	\$ 9,000.00
01-15-23	Second payment (contingent on receipt of quarterly report covering 11/01/22 to 12/31/22)	9,000.00
04-15-23	Third payment (contingent on receipt of quarterly report for the preceding quarter)	9,000.00
07-15-23	Final payment (contingent on receipt of quarterly report for the preceding quarter)	9 ,000.00
Total		\$ 36,000.00

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

6. TERM OF PROJECT AND AGREEMENT

(a) The term of the Project shall be from Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

(b) The term of this Agreement shall be from the Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

7. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include any material failure by Subrecipient to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(c) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

8. ASSIGNABILITY

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

9. CONFLICT OF INTEREST

The Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

10. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, 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 City's auditor. The Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

11. MONITORING AND EVALUATION

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

12. SUBRECIPIENT FILES AND INFORMATION REPORTS

The Subrecipient 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 and activity reports. These records shall be retained by the Subrecipient for a period of three years after the completion of the Project. Financial and activity reports shall be submitted quarterly no later than the ninth day of the month following the end of the quarter for which the report is submitted.

13. INDEPENDENCE OF SUBRECIPIENT

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

14. LIABILITY AND INSURANCE

(a) As to the City, Subrecipient 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 Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation.

(b) During the term of the Project, Subrecipient shall maintain Workers' Compensation Insurance complying with statutory requirements in Colorado.

15. CERTIFICATIONS

The Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

16. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph 16 or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

17. PERA LIABILITY

The Subrecipient shall reimburse the City 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 Agreement ed services for the City under this Agreement. The Subrecipient shall fill out the questionnaire attached as Exhibit D and submit the completed form to City's Finance Office as part of the signed Agreement.

18. 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 provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

19. GOVERNMENT IMMUNITY. The City does not waive or intend to waive, by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act § 24-10-101 to 120, C.R.S., or otherwise available under applicable law.

20. NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under the Agreement shall be deemed an incidental beneficiary only.

21. LITIGATION, VENUE AND WAIVER OF TRIAL BY JURY. In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

22. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

23. RULES OF CONSTRUCTION. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

24. WAIVER. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

25. NO MONETARY DAMAGES AGAINST CITY. In consideration of City entering into the Agreement, Subrecipient waives and discharges City, its officers, agents and employees from any and all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

26. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

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

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

CITY OF PUEBLO
A COLORADO MUNICIPAL
CORPORATION

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

Subrecipient:

PUEBLO PERFORMING ARTS GUILD,
INC. D/B/A PUEBLO ARTS ALLIANCE
A COLORADO NONPROFIT
CORPORATION

ATTEST:

By _____
Signature

By _____
Signature

Name _____

Name _____

Title _____

Title _____

EXHIBIT A SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for administering the Project. The Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The components of Subrecipient's workplan shall consist of providing participatory art classes, at no cost to participants, to Pueblo's low-income students, including but not limited to the following programs and services:

1. During the Chili & Frijole Festival – Creative Corridor approximately 600 children at Kid's Corner Stencil Walls, Wings picture op, Eric Sarracino created free caricatures; gave out water color kits, parking lot chalk art.
2. Kids' Corner – Art History Class – in Liminal Space Gallery 22 children – ages 2 to 5 group 1/ ages 11-13 group 2; art history class attached to a themed art project – 6 week course
3. Cross Roads Turning Point Stay Sober Event Gallery show and lot festival; approximately 150 high school age youth themed "Do Art Not Drugs"
4. Southern Colorado Equality Association Pride Celebration Gallery Show and Pride Prom (no alcohol) – 5 years to 80 years attended; approximately 120 17–28-year-olds participated
5. Creative Reuse of Pueblo Project Days 17 children – "shop" in thrift store to make a project StreetBeat, in Liminal Space Gallery,
6. Collaborates with Southern Colorado Youth Development (another 501c3 organization) in participatory art projects.
7. Many of the Subrecipient's members also teach youth classes – such as Vocal lessons, Piano, and Classical Percussion – Approx.35 students at the Subrecipient's building located at 107 S. Grand Ave. in downtown Pueblo

The aggregate of all payments made hereunder shall not exceed Thirty-Six Thousand Dollars (U.S. \$36,000). City shall make payments to Subrecipient according to the following schedule:

Date	Description	Amount
11-01-22	Initial payment	\$ 9,000.00
01-15-23	Second payment (contingent on receipt of quarterly report covering 11/01/22 to 12/31/22)	9,000.00
04-15-23	Third payment (contingent on receipt of quarterly report for the preceding quarter)	9,000.00
07-15-23	Final payment (contingent on receipt of quarterly report for the preceding quarter)	9 ,000.00
Total		\$ 36,000.00

Changes in the scope of services, budget, or method of compensation contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and the City.

B. Performance Monitoring:

The City will monitor the performance of the Subrecipient according to the Principal Tasks and Budget set forth herein. Substandard performance shall mean non-compliance with this Agreement. If actions to correct such substandard performance are not taken by the Subrecipient within a reasonable period of time after being so notified by the City, contract suspension or termination procedures may be initiated, in the sole discretion of the City.

EXHIBIT B
COMPLIANCE PROVISIONS INCORPORATED
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed per the expense account they were charged.

2. There is no flexibility on budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
 - a) recipient
 - b) brief description of purchase
 - c) amount with method of computation detailed

Cost Summary must be submitted quarterly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with all applicable municipal, state and federal statutes and regulations, including but not limited to the following:

Municipal and State

(1) The Charter, Municipal Code and the Rules and Regulations of the City of Pueblo, including but not limited to, the legal obligation to obtain all required licenses and permits from the City of Pueblo.

(2) The Constitution, Colorado Revised Statutes and the Rules and Regulations of the State of Colorado, including, but not limited to, the legal obligation to obtain all required licenses and permits from the State of Colorado.

Federal

(1) Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;

(3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;

(4) Section 3 of the Housing and Urban Development Act of 1968, as amended;

(5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;

(6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;

(7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;

(8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;

(9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;

(10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;

(11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);

(12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended (particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)]) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA);

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 916 U.S.C. 469 et seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis-Bacon Wage Decision issued for the project will be incorporated into this Agreement document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

- (a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Agreement , the making of any federal grant, the making of any federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Agreement, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

(25) The Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

(26) The Subrecipient and all of its subcontractors acknowledge and will comply with the requirements of 2 C.F.R. § 200.216, including the prohibition on spending federal loan or grant funds to procure or obtain the prohibited equipment, services, or systems covered by the provision.

(27) To the extent consistent with law and in accordance with 2 C.F.R. § 200.322, Subrecipient and all of its subcontractors will to the greatest extent practicable under the Agreement, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement must be included in all contracts and purchase orders which Subrecipient may enter into.

EXHIBIT D

COLORADO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION SUPPLEMENTAL QUESTIONNAIRE TO BE ANSWERED BY ANY BUSINESS PERFORMING SERVICES FOR THE CITY OF PUEBLO

Pursuant to section 24-51-1101(2), C.R.S., salary or other compensation from the employment, engagement, retention or other use of a person receiving retirement benefits (Retiree) through the Colorado Public Employees Retirement Association (PERA) in an individual capacity or of any entity owned or operated by a PERA Retiree or an affiliated party by the City of Pueblo to perform any service as an employee, Agreement employee, consultant, independent Agreement or, or through other arrangements, is subject to employer contributions to PERA by the City of Pueblo. Therefore, as a condition of Agreement ing for services with the City of Pueblo, this document must be completed, signed and returned to the City of Pueblo:

- a) Are you, or do you employ or engage in any capacity, including an independent Agreement or, a PERA Retiree who will perform any services for the City of Pueblo? Yes __, No __.
- b) If you answered "yes" to (a) above, please answer the following question: Are you an individual, sole proprietor or partnership, or a business or company owned or operated by a PERA Retiree or an affiliated party? Yes __, No __.
- If you answered "yes" please state which of the above entities best describes your business:
- c) If you answered "yes" to both (a) and (b), please provide the name, address and social security number of each such PERA Retiree.

Name

Address

Social Security Number

Name

Address

Social Security Number

(If more than two, please attach a supplemental list)

Failure to accurately complete, sign and return this document to the City of Pueblo may result in your being denied the privilege or doing business with the City of Pueblo.

If you answered "yes" to both (a) and (b), you agree to reimburse the City of Pueblo for any employer contribution required to be paid by the City of Pueblo to PERA for salary or other compensation paid to you as a PERA Retiree or paid to any employee or independent Agreement or of yours who is a PERA Retiree performing services for the City of Pueblo. You further authorize the City of Pueblo to deduct and withhold all such contributions from any moneys due or payable to you by the City of Pueblo under any current or future Agreement or other arrangement for services between you and the City of Pueblo.

Signed _____, 20____.

By: _____
Name: _____
Title: _____

For purposes of responding to question (b) above, an "affiliated party" includes (1) any person who is the named beneficiary or co-beneficiary on the PERA account of the PERA Retiree; (2) any person who is a relative of the PERA Retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren; (3) any person who is a relative of the PERA Retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings; and (4) any person or entity with whom the PERA Retiree has an agreement to share or otherwise profit from the performance of services for the City of Pueblo by the PERA Retiree other than the PERA Retiree's regular salary or compensation.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Dan Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE CRAZY FAITH STREET MINISTRY, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF FIFTY THOUSAND TWO HUNDRED DOLLARS (\$50,200) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign a Subrecipient Agreement with the Crazy Faith Street Ministry, a Colorado nonprofit corporation ("CFSM") for the purpose of CFSM's operation of a temporary homeless shelter when temporary housing and shelter emergencies are declared by the Mayor (hereinafter "Project") as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6. Funds for the project, in the amount of \$50,200 will be paid out of Project No. CI2113, the American Rescue Plan Act.

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026).

BACKGROUND:

Extreme cold temperatures pose significant dangers to the health of the City's homeless persons and appropriate warming shelters are necessary to protect the health of the homeless against freezing temperatures when they are outdoors at night.

On November 22, 2021, City Council adopted Ordinance No. 10058, which authorizes the Mayor, when temperatures reach dangerous levels between December 1st and March 31st of each year, to declare temporary housing and shelter emergencies for the City's homeless residents. Said Ordinance also allows buildings utilized by the City's churches, synagogues, mosques, temples and other religious institutions to be used as temporary warming shelters for the City's homeless population during such temporary emergencies. The City's Zoning and Building Code ordinances and regulations in conflict with such use will be temporarily suspended during such temporary emergencies.

CFSM has requested that the City use CLRF Funds for the purpose of CFSM's operation of a temporary homeless shelter when temporary housing and shelter emergencies are declared by the Mayor.

FINANCIAL IMPLICATIONS:

The aggregate of all payments made to CFSM shall not exceed Fifty Thousand Two Hundred Dollars (U.S. \$50,200). \$2,200 of grant funds shall be available to be distributed in a lump sum on November 1, 2022 for the purchase of mats, blankets, sleeping bags and COVID-19 PPE. CFSM must provide the City with receipts itemizing how the \$2,200 in grant funds were spent. Thereafter, CFSM shall provide the City with pay applications and draw packages generally corresponding to the following amounts:

Item	Amount
Reimbursement of shelter expenses up to 20 nights @ \$2,400.00 per night	Up to \$48,000.00

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to support the CFSM Project.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Crazy Faith - Subrecipient Agreement - ARPA funds

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE CRAZY FAITH STREET MINISTRY, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF FIFTY THOUSAND TWO HUNDRED DOLLARS (\$50,200) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

RECITALS

The following recitals are incorporated in and made a part of this Ordinance.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter "ARPA"); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds ("CLFRF") to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Final Rule 31 CFR 35.6(b)(7) recipients may use CLFR Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Subrecipient Agreement ("Agreement") dated October 24, 2022, between and the City of Pueblo, a Colorado Municipal Corporation and the Crazy Faith Street Ministry, a Colorado Nonprofit Corporation ("CFSM") a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

Funds in the amount of \$50,200 are hereby authorized to be paid from Project No. CI2113 – American Rescue Plan Act, for the purpose of CFSM's operation of a temporary

homeless shelter when temporary housing and shelter emergencies are declared by the Mayor, as described in the attached Agreement.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the policies and procedures described herein.

SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

SUBRECIPIENT AGREEMENT

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this 24th day of October, 2022, by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the “City” and Crazy Faith Street Ministry, a Colorado nonprofit corporation, hereinafter referred to as the “Subrecipient” or “CFSM.” City and Subrecipient/CFSM are sometimes each referred to as a “Party” and collectively “Parties.”

RECITALS

The following recitals are incorporated in and made a part of this Agreement.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, by Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds (“CLFRF”) to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Final Rule 31 CFR 35.6(b)(7) recipients may use CLFR Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, extreme cold temperatures pose significant dangers to the health of the City’s homeless persons; and

WHEREAS, appropriate warming shelters are necessary to protect the health of the homeless against freezing temperatures when they are outdoors at night.

WHEREAS, on November 22, 2021, City Council adopted Ordinance No. 10058, which authorizes the Mayor, when temperatures reach dangerous levels between December 1st and March 31st of each year, to declare temporary housing and shelter emergencies for the City's homeless residents and also allows buildings utilized by the City's churches, synagogues, mosques, temples and other religious institutions to be used as temporary warming shelters for the City's homeless population during such temporary emergencies. The City's Zoning and Building Code ordinances and regulations in conflict with such use will be temporarily suspended during such temporary emergencies; and

WHEREAS, Subrecipient has requested that the City use CLRF Funds for the purpose of Subrecipient's operation of a temporary homeless shelter when temporary housing and shelter emergencies are declared by the Mayor (hereinafter "Project"); and

WHEREAS, the City desires to disburse funds from Project No. CI2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

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

1. NOTICE AND DISCLOSURES BY THE CITY

(a) For purposes of receiving and using Coronavirus Local Fiscal Recovery Funds, the Subrecipient is hereby advised that the City of Pueblo's CFDA Number is 21.027.

(b) Notice pursuant to 2 CFR 25.300 – Requirement for recipients to ensure subrecipients have a unique entity identifier:

- A recipient of ARPA funds, such as the City of Pueblo, may not make a subaward to a subrecipient unless the subrecipient has obtained and provided to the recipient a unique entity identifier. Subrecipients are not required to complete full SAM registration to obtain a unique entity identifier.
- A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient has obtained a unique entity identifier.

2. SERVICES; RESPONSIBILITIES OF SUBRECIPIENT

(a) Prior to receiving ARPA funds under this Agreement, Subrecipient is required to provide the City with the following information and documentation:

1. Federal SAM Unique Entity ID;
2. City Sales Tax License;
3. State Sales Tax License;
4. IRS designation as a 501(c)(3) nonprofit entity; and
5. Certificate of Good Standing from the Office of the Secretary of State.

(b) Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions 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.

(c) Subrecipient warrants and represents that it: (i) has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder; (ii) that it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto; and (iii) that it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions.

(d) This Agreement is a covered transaction for purposes of 2 CFR, Part 180 and 2 CFR, Part 3000. As such the Subrecipient is required to verify that none of the Subrecipient, its principals (defined at 2 CFR Section 180.995) or its affiliates (defined at 2 CFR Section 180.905) are excluded (defined at 2 CFR Section 180.940) or disqualified (defined at 2 CFR Section 180.935).

(e) The Subrecipient must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(f) This certification is a material representation of fact relied upon by City. If it is later determined that the Subrecipient did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

(g) The Subrecipient agrees to comply with the requirements of 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C during the term of this Agreement. The Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3. RESPONSIBILITIES OF THE CITY

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

4. SUBRECIPIENT'S COMPENSATION AND METHOD OF PAYMENT

(a) The City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment: (i) that Subrecipient has expended funds for eligible approved expenditures, (ii) that Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation, (iii) that Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City, (iv) that Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit "C" and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Twenty-Five Thousand Dollars (U.S. \$25,000). \$2,500 of grant funds shall be available to be distributed in a lump sum on November 1, 2022 for the purchase of mats, blankets, sleeping bags and COVID-19 PPE. Subrecipient shall provide the City with receipts itemizing how the \$2,500 in grant funds were spent. Thereafter, Subrecipient shall provide the City with pay applications and draw packages generally corresponding to the following amounts:

Item	Amount
Reimbursement of shelter expenses up to 15 nights @ \$1,500.00 per night	Up to \$22,500.00

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

5. TERM OF PROJECT AND AGREEMENT

(a) The term of the Project shall be from Effective Date set forth above to September 30, 2023 unless sooner terminated as herein provided.

(b) The term of this Agreement shall be from the Effective Date set forth above to September 30, 2023 unless sooner terminated as herein provided.

6. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include any material failure by Subrecipient to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(c) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

7. ASSIGNABILITY

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

8. CONFLICT OF INTEREST

The Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but

not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

9. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, 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 City's auditor. The Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

10. MONITORING AND EVALUATION

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

11. SUBRECIPIENT FILES AND INFORMATION REPORTS

The Subrecipient 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 and activity reports. These records shall be retained by the Subrecipient for a period of three years after the completion of the Project. Financial and activity reports shall be submitted quarterly no later than the ninth day of the month following the end of the quarter for which the report is submitted.

12. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent Agreement or, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents

or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

13. LIABILITY AND INSURANCE

(a) As to the City, Subrecipient 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 Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation.

(b) During the term of the Project, Subrecipient shall maintain Workers' Compensation Insurance complying with statutory requirements in Colorado.

14. CERTIFICATIONS

The Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

15. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph 15 or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

16. PERA LIABILITY

The Subrecipient shall reimburse the City 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 Agreement ed services for the City under this Agreement. The Subrecipient shall fill out the questionnaire attached as Exhibit D and submit the completed form to City's Finance Office as part of the signed Agreement.

17. 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 provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

18. GOVERNMENT IMMUNITY. The City does not waive or intend to waive, by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act § 24-10-101 to 120, C.R.S., or otherwise available under applicable law.

19. NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under the Agreement shall be deemed an incidental beneficiary only.

20. LITIGATION, VENUE AND WAIVER OF TRIAL BY JURY. In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

21. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

22. RULES OF CONSTRUCTION. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

23. WAIVER. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

24. NO MONETARY DAMAGES AGAINST CITY. In consideration of City entering into the Agreement, Subrecipient waives and discharges City, its officers, agents and

employees from any and all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

25. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

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

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

CITY OF PUEBLO
A COLORADO MUNICIPAL
CORPORATION

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

Subrecipient:

CRAZY FAITH STREET MINISTRY
A COLORADO NONPROFIT
CORPORATION

ATTEST:

By _____
Signature

By _____
Signature

Name _____

Name _____

Title _____

Title _____

EXHIBIT A SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for administering the Project. The Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The components of Subrecipient's workplan shall consist of opening and operating an overnight shelter for the City's homeless residents when the when temporary housing and shelter emergencies are declared by the Mayor under the following guidelines:

- The shelter shall be open from 6:00 p.m. to 6:00 a.m. the following morning
- Homeless individuals (male or female) must be 18 years of age or older and no more than 25 homeless individuals may be housed at the overnight shelter at any one time
- Subrecipient shall use a professionally trained security officer to provide security when the overnight shelter is in operation

The aggregate of all payments made hereunder shall not exceed Twenty-Five Thousand Dollars (U.S. \$25,000). \$2,500 of grant funds shall be available to be distributed in a lump sum on November 1, 2022 for the purchase of mats, blankets, sleeping bags and COVID-19 PPE. Subrecipient shall provide the City with receipts itemizing how the \$2,500 in grant funds were spent. Thereafter, Subrecipient shall provide the City with pay applications and draw packages generally corresponding to the following amounts:

Item	Amount
Reimbursement of shelter expenses up to 15 nights @ \$1,500.00 per night	Up to \$22,500.00

Changes in the scope of services, budget, or method of compensation contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and the City.

B. Performance Monitoring:

The City will monitor the performance of the Subrecipient according to the Principal Tasks and Budget set forth herein. Substandard performance shall mean non-compliance with this Agreement. If actions to correct such substandard performance are not taken by the Subrecipient within a reasonable period of time after being so notified by the City, contract suspension or termination procedures may be initiated, in the sole discretion of the City.

EXHIBIT B
COMPLIANCE PROVISIONS INCORPORATED
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed per the expense account they were charged.

2. There is no flexibility on budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
 - a) recipient
 - b) brief description of purchase
 - c) amount with method of computation detailed

Cost Summary must be submitted quarterly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with all applicable municipal, state and federal statutes and regulations, including but not limited to the following:

Municipal and State

(1) The Charter, Municipal Code and the Rules and Regulations of the City of Pueblo, including but not limited to, the legal obligation to obtain all required licenses and permits from the City of Pueblo.

(2) The Constitution, Colorado Revised Statutes and the Rules and Regulations of the State of Colorado, including, but not limited to, the legal obligation to obtain all required licenses and permits from the State of Colorado.

Federal

(1) Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;

(3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;

(4) Section 3 of the Housing and Urban Development Act of 1968, as amended;

(5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;

(6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;

(7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;

(8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;

(9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;

(10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;

(11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);

(12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended (particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)]) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA);

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 916 U.S.C. 469 et seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis-Bacon Wage Decision issued for the project will be incorporated into this Agreement document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

- (a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Agreement , the making of any federal grant, the making of any federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Agreement, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

(25) The Subrecipient also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

(26) The Subrecipient and all of its subcontractors acknowledge and will comply with the requirements of 2 C.F.R. § 200.216, including the prohibition on spending federal loan or grant funds to procure or obtain the prohibited equipment, services, or systems covered by the provision.

(27) To the extent consistent with law and in accordance with 2 C.F.R. § 200.322, Subrecipient and all of its subcontractors will to the greatest extent practicable under the Agreement, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement must be included in all contracts and purchase orders which Subrecipient may enter into.

EXHIBIT D

COLORADO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION SUPPLEMENTAL QUESTIONNAIRE TO BE ANSWERED BY ANY BUSINESS PERFORMING SERVICES FOR THE CITY OF PUEBLO

Pursuant to section 24-51-1101(2), C.R.S., salary or other compensation from the employment, engagement, retention or other use of a person receiving retirement benefits (Retiree) through the Colorado Public Employees Retirement Association (PERA) in an individual capacity or of any entity owned or operated by a PERA Retiree or an affiliated party by the City of Pueblo to perform any service as an employee, Agreement employee, consultant, independent Agreement or, or through other arrangements, is subject to employer contributions to PERA by the City of Pueblo. Therefore, as a condition of Agreement ing for services with the City of Pueblo, this document must be completed, signed and returned to the City of Pueblo:

- a) Are you, or do you employ or engage in any capacity, including an independent Agreement or, a PERA Retiree who will perform any services for the City of Pueblo? Yes __, No __.
- b) If you answered "yes" to (a) above, please answer the following question: Are you an individual, sole proprietor or partnership, or a business or company owned or operated by a PERA Retiree or an affiliated party? Yes __, No __.
If you answered "yes" please state which of the above entities best describes your business:

- c) If you answered "yes" to both (a) and (b), please provide the name, address and social security number of each such PERA Retiree.

Name

Address

Social Security Number

Name

Address

Social Security Number

(If more than two, please attach a supplemental list)

Failure to accurately complete, sign and return this document to the City of Pueblo may result in your being denied the privilege or doing business with the City of Pueblo.

If you answered "yes" to both (a) and (b), you agree to reimburse the City of Pueblo for any employer contribution required to be paid by the City of Pueblo to PERA for salary or other compensation paid to you as a PERA Retiree or paid to any employee or independent Agreement or of yours who is a PERA Retiree performing services for the City of Pueblo. You further authorize the City of Pueblo to deduct and withhold all such contributions from any moneys due or payable to you by the City of Pueblo under any current or future Agreement or other arrangement for services between you and the City of Pueblo.

Signed _____, 20____.

By: _____

Name: _____

Title: _____

For purposes of responding to question (b) above, an "affiliated party" includes (1) any person who is the named beneficiary or co-beneficiary on the PERA account of the PERA Retiree; (2) any person who is a relative of the PERA Retiree by blood or adoption to and including parents, siblings, half-siblings, children, and grandchildren; (3) any person who is a relative of the PERA Retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings; and (4) any person or entity with whom the PERA Retiree has an agreement to share or otherwise profit from the performance of services for the City of Pueblo by the PERA Retiree other than the PERA Retiree's regular salary or compensation.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A GRANT IN THE AMOUNT OF \$461,538 FROM THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT FOR THE JUST TRANSITIONS STRATEGIC PLANNING PROJECT, AUTHORIZING THE MAYOR TO EXECUTE THE AWARD LETTER, CREATING PROJECT NO. CI2209, AND BUDGETING AND APPROPRIATING \$461,538 TO PROJECT NO. CI2209

SUMMARY:

Attached is an Ordinance approving and accepting a grant in the amount of \$461,538.00 from the Colorado Department of Labor and Employment to provide funds for the Just Transitions strategic planning project. This Ordinance also creates Project No. CI2209 – Just Transitions Grant, budgets and appropriates the grant funds to said Project, and authorizes the Mayor to execute the Award Letter.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The Colorado Department of Labor and Employment's ("CDLE") Office of Just Transition ("OJT"), in the 2021 legislative session, received \$8 million in state stimulus funds to assist coal transition communities' transition away from coal-based economies (§§ 8-83-501 to 506, C.R.S.). Broadly, the OJT funds support strategies and projects that intend to, over the long-term, broaden the tax base, diversify the local economy, and develop family-sustaining jobs.

Only communities and entities defined in HB 21-1290 are eligible for funding. Tier One transition communities, including the City of Pueblo, were not required to participate in a competitive process to receive this grant, but rather received the grant through filling out a funding request form with OJT. The purpose of this Grant to the City of Pueblo is to provide funding for the City's Transition Strategic Planning Project.

The City of Pueblo's Transition Strategic Planning Project provides funding to hire a full-time employee, the Transition Project Manager, to develop a transition plan, attract new investment, and serve as a transition coordinator leading up to and during the coal-burning Comanche Plant closure.

FINANCIAL IMPLICATIONS:

There are no matching funds required for this grant. Upon passage of the Ordinance, the City of Pueblo will receive the entire \$461,538.00. The total grant budget for Project No. CI2209 will become \$461,538.00.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the proposed Ordinance is not approved, the Transition Strategic Planning Project will not occur.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. DOLA Award Letter and Grant Terms

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A GRANT IN THE AMOUNT OF \$461,538 FROM THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT FOR THE JUST TRANSITIONS STRATEGIC PLANNING PROJECT, AUTHORIZING THE MAYOR TO EXECUTE THE AWARD LETTER, CREATING PROJECT NO. CI2209, AND BUDGETING AND APPROPRIATING \$461,538 TO PROJECT NO. CI2209

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Grant Award Letter dated October 5, 2022 ("Agreement") between the City of Pueblo, a Municipal Corporation, and the Colorado Department of Labor and Employment's ("CDLE") Office of Just Transition ("OJT"), a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement on behalf of the City of Pueblo, a Colorado Municipal Corporation, and the City Clerk is authorized to affix the seal of the City thereto and attest the same.

SECTION 3.

Project No. CI2209 – Just Transitions Grant is hereby created.

SECTION 4.

Funds in the amount of \$461,538.00 shall be accepted pursuant to the Agreement and budgeted and appropriated to Project No. CI2209.

SECTION 5.

The officers and staff of the City are hereby authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the transactions described therein.

SECTION 6.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk



COLORADO

Department of Labor and Employment

September 19, 2022

CTGG1 KADA 2023*2416(7577)

City of Pueblo
City Administration
1 City Hall Pl.
Pueblo, CO 81003

To Whom it May Concern:

We are pleased to inform you that Colorado Department of Labor and Employment's Office of Just Transitions has approved your application for funding pursuant to the appropriated funding from HB21-1290 ("Program") in the amount of \$461,538.00. This letter authorizes you to proceed with the Transition Strategic Planning Project ("Project") in accordance with the terms of this Grant Award Letter.

Attached to this letter are the terms and conditions of your Grant. Please review these terms and conditions as they are requirements of this Grant to which you Grantee agree by accepting the Grant Funds.

If you have questions regarding this Grant, please contact: Kirstie McPherson, kirstie.mcpherson@state.co.us

GRANT AWARD LETTER

SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Colorado Department of Labor and Employment on behalf of Office of Just Transitions	Grant Amount State Fiscal Year 2023: \$461,538.00 State Fiscal Year 2024: \$0.00 State Fiscal Year 2025: \$0.00 State Fiscal Year 2026: \$0.00 Total for all State Fiscal Years: \$461,538.00
Grantee City of Pueblo	
Grantee UEI	
Grant Issuance Date The later of September 19, 2022 or the date the State Controller or an authorized delegate signs this Grant Letter	
Grant Expiration Date December 31, 2025	
Grant Authority Authority to enter into this Agreement exists in C.R.S. § 8- 83-504 et seq. Funds have been made available pursuant to House Bill 21-1290.	
Grant Purpose The Office of Just Transition (“OJT”), in the 2021 legislative session, received \$8 million in state stimulus funds to assist coal transition communities’ transition away from coal-based economies (§§ 8-83-501 to 506, C.R.S.). Only communities and entities defined in HB 21-1290 are eligible for funding. Tier One transition communities, including the City of Pueblo, were not required to participate in a competitive process to receive this grant, but rather received the grant through filling out a funding request form with OJT. The purpose of this Grant to the City of Pueblo is to provide funding for their Transition Strategic Planning Project.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Grant: 1. Exhibit A, Statement of Work. 2. Exhibit B, PII Certification In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: 1. The provisions of the other sections of the main body of this Grant. 2. Exhibit A, Statement of Work. 3. Exhibit B, PII Certification	

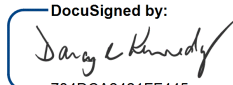
SIGNATURE PAGE

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

STATE OF COLORADO

Jared S. Polis, Governor
Colorado Department of Labor and Employment
Joe M. Barela, Executive Director

DocuSigned by:



784DCA2421FF445...

By: Darcy R. Kennedy, Deputy Executive Director

Date: 10/5/2022

In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:



C9F8259C9E8E402...

By: Leila Boulton, State Controller Delegate

Date: 10/5/2022

1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- B. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302 C.R.S.
- C. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et seq.*, C.R.S.

- D. **“Grant Award Letter”** means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- E. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- F. **“Grant Expiration Date”** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- G. **“Grant Issuance Date”** means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- H. **“Exhibits”** exhibits and attachments included with this Grant as shown on the first page of this Grant
- I. **“Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter
- J. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- K. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- L. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- M. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- N. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- O. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- P. **“Services”** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- Q. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without

confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

- R. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- S. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- T. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- U. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- V. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- W. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. **STATEMENT OF WORK**

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. **PAYMENTS TO GRANTEE**

A. **Maximum Amount**

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. **Reimbursement of Grantee Costs**

Upon prior written approval, the State shall reimburse Grantee’s allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this

Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall only reimburse allowable costs if those costs are: **(i)** reasonable and necessary to accomplish the Work and for the Goods and Services provided; and **(ii)** equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

C. Close-Out.

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

6. REPORTING - NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State as indicated in Exhibit A: Statement of Work, and final reports no later than the end of the close out described in §5.C, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State all violations of State criminal law involving fraud, bribery, or gratuity violations potentially affecting the State Award.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit ___ on an annual basis Contractor's duty and obligation to certify as set forth in Exhibit ___ shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant 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. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

Except as herein specifically provided otherwise disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

16. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

G. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

H. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado 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.
- ii. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor's failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.
- iii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.



COLORADO
Department of
Labor and Employment

Colorado Office of Just Transition
633 17th Street, Suite 1200
Denver, CO 80202-3660 | (303) 318-8000
colorado.gov/cdle/the-office-of-just-transition

EXHIBIT A: STATEMENT OF WORK
Just Transition Community Funding | City of Pueblo |
Transition Project Manager

Introduction

The Office of Just Transition (“OJT”), in the 2021 legislative session, received \$8 million in state stimulus funds to assist coal transition communities’ transition away from coal-based economies (§§ 8-83-501 to 506, C.R.S.). Broadly, the OJT funds support strategies and projects that intend to, over the long-term, broaden the tax base, diversify the local economy, and develop family-sustaining jobs. These community assistance funds are designed, in part, to support “communities in several ways including regional capacity for coordination of economic development programs” [§ 8-83-504(4)(a)(II), C.R.S.].

Background

In establishing the Office of Just Transition during the 2019 legislative session, The Colorado Legislature made a moral commitment to assist communities transitioning away from a coal-based economy. The legislature defined Tier One and Tier Two impacted communities and directed OJT, and an advisory committee, to develop an action plan for assisting these communities. The Just Transition Action Plan (the “Action Plan”) was finalized in December 2020 and outlined six strategies to assist in creating more family sustaining jobs, broadening the property tax base, and diversifying economies. Included in the six strategies are commitments to: target early successes in business start-ups, expansion, retention, and attraction; empower communities with resources to drive their own economic transitions; and coordinate infrastructure investments to support local and regional transition strategies. In 2021, the legislature provided \$15 million in funding to OJT to implement the Action Plan and to provide financial assistance to coal transition communities as well as the transitioning workforce. Of the \$15 million, \$8 million was specifically allocated for Action Plan implementation and community assistance.

The OJT, with guidance from the advisory committee, divided those funds into three primary buckets: 1) community assistance, 2) central projects and investment, and 3) administration. The community assistance bucket was then apportioned to the legislatively-defined transition communities with specific earmarks based on transition impact. Those communities were invited to apply for funding under the guidelines established in the Guidance for Colorado Just Transition Community Funding Opportunities (the “Guidelines”). The Guidelines provided information about the earmarks, enhanced regional collaboration, and defined the non-competitive application process.

Purpose

The City of Pueblo’s Transition Strategic Planning Project (“Project”) provides funding to hire a full-time employee, the Transition Project Manager, to develop a transition plan, attract new investment, and serve as a transition coordinator leading up to and during the coal-burning Comanche Plant closure.

Scope of Work

Services and Expected Result

This three year, capacity-building project revolves around hiring a Transition Project Manager who will develop and write a long-term transition plan to address the loss of 77 direct, high-paying jobs (and 4 indirect jobs for each direct job) and in excess of \$26 million annually in property tax due to the early closure of the coal burning Comanche 3 power plant (Comanche 1 and 2 are also retiring this decade). The Transition Project Manager will work closely with the established Transition Steering Committee to create the plan, including targeting early successes in business start-ups, expansions, retention, and attraction of new industries.

The conclusion of the three year project will result in a long-term transition strategy and investment plan for Pueblo to address the significant impact of the early closure of the Comanche 3 Power Plant. The plan intends to chart a path to achieving more good-paying jobs than will be lost, and through the growth of existing businesses and the introduction of new businesses, a diversified economy and a broader property tax base.

Project Schedule and Location

The Project will be conducted in Pueblo Colorado from Effective Date to December 31, 2025.

Project Deliverables

Within the project's timeframe, the City of Pueblo shall complete the following deliverables:

- 1) Create and hire for the position of Just Transition Project Manager,
- 2) Provide Annual Transition Plan status reports to OJT, and
- 3) Produce a Final Transition Plan to OJT upon completion of the project.

Deliverable	Description of Deliverable	Due Date
Create and hire for the Just Transition Project Manager Position, including operating costs	This position drives the transition strategy development through research, outreach, fund development, and financial forecasting, in collaboration with the previously established transition team. Operating costs include technology, advertising, and administrative costs. The City of Pueblo will invoice OJT for incurred expenses by the 15th of each month.	Hire by: 10/1/22 Period of work: 10/1/22 - 12/31/25
Annual Transition Plan Status Reports	The Transition Project Manager will provide OJT with a written annual update on the strategic plan by June 30 of each project year.	6/30/23 - 6/30/25
Final Transition Plan	The Transition Project Manager will provide OJT with a written copy of the final transition strategy plan by December 31, 2025.	12/31/25

Organization and Personnel Qualifications

Nick Gradisar, Mayor of Pueblo, is the OJT liaison for this Project. If Mayor Gradisar is no longer with the City of Pueblo at any time during this Agreement, the new or interim Mayor shall become the liaison for this Project.

Project Reporting Requirements

- 1) Two annual Project Update Reports from Project start to completion. These reports will include:
 - Project Update Report Due Dates:
 - Yearly on June 30, until the Project is completed.
 - Yearly on December 31, until the Project is completed.
 - Project timeline.
 - Current progress toward final goal.
 - Compare progress with Project timeline.
 - Explain any departures from anticipated schedule, identify how these departures will be remedied, and Project the case of work for the next reporting period.
 - Document accomplishments, benefits, and impacts the activities and the Project are having on the community.
 - Specifically noting where activities have led to job creation/retention, private investment, increased regional collaboration, engagement with historically excluded groups or regions, enhanced regional capacity, and other positive economic benefits.
 - Outstanding or new needs.
 - Specifically noting what, if anything, OJT can reasonably assist with.
 - Any requested changes to the original agreement (OJT office must be notified of any requests prior to the submission of reporting requirements).
- 2) Final Report. The final report will include:
 - Final Report Due date: No later than 45 days after Project completion.
 - Project impact:
 - Jobs created.
 - New property tax amounts.
 - Total amount of private investment, if any, leveraged as a result of the Project.
 - Total amount of other funding and stages involved in the Project.
 - Increased regional collaboration and/or capacity.
 - Engagement with historically excluded groups or regions.
 - Other positive economic benefits.
 - Financial reporting including budget line item, related deliverable, amount spent (broken out by stages), and date of purchase, and any outstanding proof of expenditures.
 - If using funds as match, include funds leveraged from OJT award.
 - Remaining needs, if any, noting what, if anything, OJT can reasonably assist with.

Monthly Financial Reporting Requirements and Invoice Process

By the 15th of each month:

- Invoice OJT for project expenditures accrued during the previous month.
- The invoice **must be** accompanied by an expenditure report, typically generated from financial tracking software, detailing the amount spent, related deliverable, and date of the expenditure.
 - Receipts for any purchased items should also be included with the invoice.

- If there have been no expenditures for the previous month, no invoice needs to be submitted.
- Invoices, expenditure reports, and receipts can be sent to Terri Livermore at terri.livermore@state.co.us
 - Questions? Call Terri at 720-670-1626.

Funding Amount

\$461,538

Period of Work

Effective Date - December 31, 2025

Deliverable	Total Line Item Cost	State Funds (OJT only)	Other Funds	Other Fund Source
Transition Project Manager	\$450,182	\$450,182	\$0	N/A
Project Operating Costs	\$15,250	\$11,356	\$3,894	City of Pueblo
Transition Plan Status Updates	\$0	\$0	\$0	N/A
Final Transition Plan	\$0	\$0	\$0	N/A
Totals	\$465,432	\$461,538	\$3,894	

EXHIBIT B-PII CERTIFICATION

STATE OF COLORADO

**THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO PII
THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, Nicholas Gradisar, on behalf of City of Pueblo
(legal name of entity / organization) (the "Organization"), hereby certify under the penalty of perjury that
the Organization has not and will not use or disclose any Personal Identifying Information, as defined by
§ 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting
Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal
Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless
required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant
or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the
Organization.

Signature:

DocuSigned by:
Nicholas Gradisar
35CB85FFDEB2412...

Printed Name:

Nicholas Gradisar

Title:

Mayor

Date:

10/5/2022



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE APPROVING THE 1ST AMENDMENT AND RESTATEMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION ("CITY"), AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT"), PROJECT MTF M086-088 (24024)/TAP M086-091 (24079) FOR PRAIRIE AVENUE TO MINNEQUA LAKE TRAIL PROJECT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$1,022,542 FOR SAID PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves a 1st Amendment and Restatement of an Intergovernmental Agreement ("IGA") between the City of Pueblo, a Colorado Municipal Corporation ("City") and the State of Colorado, Colorado Department of Transportation ("CDOT") relating to the Prairie Avenue to Minnequa Lake Trail, and budgets and appropriates funds totaling \$1,022,542 for the Project.

PREVIOUS COUNCIL ACTION:

Ordinance 9969, final adoption by City Council on July 26, 2021, established project CI2115, approved the Intergovernmental Agreement (IGA) between the City of Pueblo and the Colorado Department of Transportation (CDOT), budgeted and appropriated funds totaling \$388,000 for the Prairie Avenue to Minnequa Lake Trail Project.

Resolution 14816, final approval by City Council on February 28, 2022, awarded an Agreement for Professional Design Services to Dibble & Associates Consulting Engineers, Inc., for engineering design services for Prairie Avenue to Minnequa Lake Trail Project.

BACKGROUND:

This Ordinance approves the 1st Amendment and Restatement to the Intergovernmental Agreement, originally effective on May 10, 2021, between the City

and CDOT. This amendment is due to an additional Multimodal Transportation & Mitigation Options Funding (MMOF) grant that was awarded to the City.

The project includes the design and construction of an on-street and off-street trail connection from Prairie Avenue and SH45, Pueblo Boulevard, to Lake Minnequa in the City, Project M086-088 (24024) and M086-091 (24079). The project will include the design of the entire project and will include construction of a ten-foot-wide concrete multi-use trail, trailhead improvements and trail grade improvements. The project will also include lighting, crosswalk improvements, on-street bike lanes, bollards and some grading.

FINANCIAL IMPLICATIONS:

Grant funds in the amount of \$388,000 were previously awarded, budgeted and appropriated. Additional grant funds, in the amount of \$1,022,542 are being budgeted and appropriated into CI2115, Prairie Avenue to Minnequa Lake Trail.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from CDOT, the Multimodal Transportation & Mitigation Options Funding (MMOF) grant funds.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. IGA 1st Amendment and Restatement

ORDINANCE NO.

AN ORDINANCE APPROVING THE 1ST AMENDMENT AND RESTATEMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION ("CITY"), AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT"), PROJECT MTF M086-088 (24024)/TAP M086-091 (24079) FOR PRAIRIE AVENUE TO MINNEQUA LAKE TRAIL PROJECT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$1,022,542 FOR SAID PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE SAME

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The 1st Amendment and Restatement to the Intergovernmental Agreement ("IGA") between the City of Pueblo, a Colorado Municipal Corporation, and State of Colorado, acting by and through the Colorado Department of Transportation (CDOT), Project: MTF M086-088 (24024)/TAP M086-091 (24079), Prairie Avenue to Minnequa Lake Trail, a copy of which is attached, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

Subject to encumbrances by the Colorado State Department of Transportation, funds from Prairie Avenue to Minnequa Lake Trail (MTF M086-088 (24024)/TAP M086-091) in the amount of \$1,022,542.00 are hereby budgeted and appropriated for the Prairie Avenue to Minnequa Lake Trail, No. CI2115.

SECTION 3.

The Mayor is authorized to execute and deliver the IGA 1st Amendment and Restatement in the name of the City of Pueblo and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 4.

The officers of the City are authorized to perform any and all acts consistent with this Ordinance to implement the policies and procedures described herein.

SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

STATE OF COLORADO AMENDMENT

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

1st Amendment and Restatement

Project #: MTF M086-088 (24024) / TAP M086-091 (24079)

SIGNATURE AND COVER PAGE

State Agency Department of Transportation		Amendment Routing Number 21-HA2-XC-00024-M0001
Local Agency CITY OF PUEBLO		Original Agreement Routing Number 21-HA2-XC-00024
Agreement Maximum Amount \$1,410,542.00	Agreement Performance Beginning Date May 10, 2021	
	Initial Agreement expiration date February 24, 2031	

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this 1st Amendment and Restatement represents and warrants that he or she is duly authorized to execute this 1st Amendment and Restatement and to bind the Party authorizing his or her signature.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Stephen Harelson, P.E., Chief Engineer Date: _____	
LOCAL AGENCY CITY OF PUEBLO _____ Signature _____ By: Nicholas A. Gradisar, Mayor Date: _____	LOCAL AGENCY (2 nd Signature if Necessary) Attest: _____ Signature _____ By: Marisa Stoller, City Clerk Date: _____

In accordance with §24-30-202 C.R.S., this 1st Amendment and Restatement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Ron Fiet, Office of State Controller, Controller Delegate 1 st Amendment and Restatement Execution Date: _____

1) PARTIES

This 1st Amendment and Restatement to the Original Agreement shown on the Signature and Cover Page for this 1st Amendment and Restatement is entered into by and between the Local Agency and the State.

2) TERMINOLOGY

Except as specifically modified by this 1st Amendment and Restatement, all terms used in this 1st Amendment and Restatement that are defined in the 1st Amendment and Restatement shall be construed and interpreted in accordance with the 1st Amendment and Restatement.

3) EFFECTIVE DATE AND ENFORCEABILITY

A. History

1. The Parties entered into the Original Agreement with an Effective Date of May 10, 2021.
2. On March 29, 2022 CDOT executed Option Letter #1 to encumber \$99,000.00 in Design phase.
3. The Parties are amending and restating these agreements into this 1st Amendment and Restatement of the Intergovernmental Agreement, retaining the Original Agreement Effective Date of May 10, 2021 and Option Letter #1 to the Intergovernmental Agreement, Expiration Date of February 24, 2031.
4. The Parties hereby revoke all provisions of the Intergovernmental Agreement dated May 10, 2021, excepting only the date of execution thereof, and amend the Intergovernmental Agreement as of the execution date of the 1st Amendment and Restatement in its entirety, including the Option Letter #1 referenced in **§ 3.A.3.** above. This 1st Amendment and Restatement, without reference to those provisions revoked, shall hereafter constitute the Original Agreement between the Parties as amended and restated.

B. 1st Amendment and Restatement Execution Date

This 1st Amendment and Restatement shall not be valid or enforceable until completely executed as evidenced by signatures on this Cover Sheet. The Effective Date of the Original Agreement remains unchanged, May 10, 2021. The State shall not be bound by any provision of this 1st Amendment and Restatement before this 1st Amendment and Restatement is signed and shall have no obligation to pay the Local Agency for any Work performed or expense incurred under this 1st Amendment and Restatement either before or after the 1st Amendment and Restatement term shown in **§3.C** of this 1st Amendment and Restatement.

C. 1st Amendment and Restatement Term

The Parties' respective performances under this 1st Amendment and Restatement and the changes to the Original Agreement contained herein shall continue from the Original Agreement effective date of May 10, 2021, and shall terminate on the expiration date of the Original Agreement, February 24, 2031.

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EXHIBIT A, SCOPE OF WORK (Currently version A-1)
EXHIBIT B, SAMPLE OPTION LETTER
EXHIBIT C, FUNDING PROVISIONS (Budget) (Currently version C-2)
EXHIBIT D, LOCAL AGENCY RESOLUTION
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EXHIBIT N, FEDERAL TREASURY PROVISIONS
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EXHIBIT S, PII CERTIFICATION
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase (“Phase Performance Period(s)”). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e.**, or the expiration of “Special Funding” if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder. This subsection shall not apply to a termination of this ARPA Award by the State for breach by Local Agency.

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency

shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice

Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.

- I. **“Consultant”** means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. **“Contractor”** means the general construction contractor hired by Local Agency to construct the Work.
- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in **§6, Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
 - i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.

- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.
- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in §2.B.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.

- JJ. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. “**State Purchasing Director**” means the position described in the Colorado Procurement Code and its implementing regulations.
- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. STATEMENT OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to

Local Agency in a form substantially equivalent to **Exhibit B**. The State's unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
- b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e. Stamp the Plans as produced by a Colorado registered professional engineer.
- f. Provide final assembly of Plans and all other necessary documents.
- g. Ensure the Plans are accurate and complete.
- h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.

ii. Local Agency Work

- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

- 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
- 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
- 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
 - (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
 - (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
 - (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim,

into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).

- (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
- (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
- (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.
- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.

- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in **§7.F.vi**.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C.**
- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C.**

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C.** Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7.** However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C.** Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C.** Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B.** Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

- i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not

include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency's risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency's non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient's previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency's completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency's performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency's submission to the State of all deliverables defined in this Agreement, and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential

Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information "PII"

If Local Agency or any of its Subcontracts will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a "Third Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Contractor's duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
 - b. \$2,000,000 general aggregate.
- v. Professional Liability Insurance
Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$1,000,000 general aggregate.
- vi. Crime Insurance
Crime insurance including employee dishonesty coverage with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$1,000,000 general aggregate.
- vii. Cyber/Network Security and Privacy Liability
Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with **§16** within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7)

Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§14** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§13.B**, shall have all of the remedies listed in this **§14.A**, in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination

shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.C.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer’s decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party’s principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Donald Scanga, Local Agency Coordinator
CDOT Region 2
5615 Wills Boulevard
Pueblo, CO 81008
719-621-8340
donald.scanga@state.co.us

For the Local Agency

CITY OF PUEBLO
Kelly Grisham, Senior Planner
211 East D Street
PUEBLO, CO 81003

719-553-2254

kgrisham@pueblo.us

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written

consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in §20.A, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.

- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

N. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

- i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado 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.
- ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.
- iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State.

Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N and Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

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EXHIBIT A-1 – SCOPE OF WORK

City of Pueblo

Prairie Avenue to Minnequa Lake Trail

MTF M086-088 (24024) / TAP M086-091 (24079)

1. General Description

The Local Agency shall be responsible for the design and construction of an on-street and off-street trail connection from Prairie Avenue and SH45, Pueblo Blvd, to Lake Minnequa in the City of Pueblo, Project M086-088 (24024) and M086-091 (24079). The project will include the design of the entire project and will include construction of a 10' wide concrete multi-use trail, trailhead improvements and trail grade improvements. The project will also include lighting, crosswalk improvements, on-street bike lanes , bollards and some grading.

2. Definitions – N/A

3. Personnel

3.1. Responsible Administrator.

The Local Agency's performance hereunder shall be under the direct supervision of the project manager identified in §16 of the Agreement.

3.2. The Local Agency shall immediately notify the State if any key personnel cease to serve and seek its approval. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime any key personnel ceases to serve, the State, in its sole discretion, may direct the Local Agency to suspend performance on the Work until such time as their replacements are approved. All notices under this subsection shall be sent in accordance with §16 of the Agreement.

4. Administrative Requirements

At all times from the effective date of this Agreement until completion of the Work, the Local Agency shall maintain properly segregated books of State Agreement funds, matching funds, and other funds associated with the Work. All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work Budget set forth herein.

5. Monitoring

The State shall monitor this Work on an as-needed basis. The State may choose to audit the business activities performed under this Agreement. The Local Agency shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed

Agreement. Such books and records shall contain documentation of the participant's pertinent activity under this Agreement in a form consistent with good accounting practice.

If this project is funded with Multimodal Transportation & Mitigation Options Funding (MMOF) these funding expenditures must be invoiced by June 1st of the year they expire.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A-1 constructed under this Agreement at its own cost and expense during its useful life.**

EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name: _____

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the performance of this Agreement and/or update a Work Phase Performance Period.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency), the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the performance of this Agreement and/or update a Work Phase Performance Period.

The total encumbrance as a result of this option and all previous options and/or amendments is now \$0.00, as referenced in **Exhibit C-1**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: as referenced in **Exhibit C-1**.

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Stephen Harelson, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C-2 - FUNDING PROVISIONS**City of Pueblo # TAP M086-091 (24079)****MTF M086-088 (24024) MMOF****A. Cost of Work Estimate**

The Local Agency has estimated the total cost of the Work to be \$1,410,542.00, which is to be funded as follows:

1. FUNDING**TAP M086-091 (24079)**

a. Federal Funds (100% of TAP of Award)	\$ 194,000.00
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b. Federal Funds ARPA US Treasury Expenditure Category EC6 (100% of ARPA Award)	\$ 1,022,542.00
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MTF M086-088 (24024)

c. State Funds (100% of MMOF Award)	\$ 194,000.00
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TOTAL FUNDS ALL SOURCES	\$1,410,542.00
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2. OMB UNIFORM GUIDANCE

a. Federal Award Identification Number (FAIN):	TBD
b. Name of Federal Awarding Agency:	FHWA, USDT
c. Local Agency Unique Entity Identifier	NJK3BNUDRHJ7
d. Assistance Listing # Highway Planning and Construction	ALN 20.205
e. Assistance Listing # Coronavirus State and Local Fiscal Recovery Funds	ALN 21.027
f. Is the Award for R&D?	No
g. Indirect Cost Rate (if applicable)	N/A
h. Amount of Federal Funds Obligated by this Action:	\$0.00
i. Amount of Federal Funds Obligated to Date (including this Action):	\$0.00

3. ESTIMATED PAYMENT TO LOCAL AGENCY

a. Federal Funds Budgeted	\$ 194,000.00
b. ARPA Funds Budgeted	\$ 1,022,542.00
c. State Funds Budgeted	\$ 194,000.00
d. Less Estimated Federal Share of CDOT-Incurred Costs	\$ 0.00

TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	100%	\$ 1,410,542.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	0%	\$ 0.00

TOTAL PROJECT ESTIMATED FUNDING	100.00%	\$ 1,410,542.00
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4. FOR CDOT ENCUMBRANCE PURPOSES**TAP M086-091 (24079)****Fed Funds**

a. Total Encumbrance Amount (Federal funds + Local Agency funds)	\$ 194,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109 ARPA	\$ 0.00

Funds

a. Total Encumbrance Amount (Only ARPA funds are encumbered)	\$1,022,542.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$ 0.00

MTF M086-091 (24024)**MMOF State Funds**

a.	Total Encumbrance Amount (Only State funds are encumbered)	\$	194,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$	0.00

NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS**\$1,410,542.00**

Note: Only \$99,000.00 in design funds are currently available. Additional funds will become available after execution of an Option Letter (Exhibit B) or formal Amendment.

TAP M086-091 (24079)**TAP Funds**

WBS Element 24079.10.30	Performance Period Start*/End Date TBD - TBD	Design 3020	\$0.00
WBS Element 24079.20.10	Performance Period Start*/End Date TBD - TBD	Const. 3301	\$0.00

ARPA Funds

WBS Element 24079.10.30	Performance Period Start**/End Date TBD - TBD	Design 3020	\$0.00
WBS Element 24079.20.10	Performance Period Start**/End Date TBD - TBD	Const. 3301	\$0.00

MTF M086-088 (24024)**State MMOF Funds**

WBS Element 24024.10.30	Performance Period Start***End Date N/A - N/A	Design 3020	\$99,000.00
WBS Element 24024.20.10	Performance Period Start***End Date N/A- N/A	Const. 3301	\$0.00

* TAP M086-091 (24079) the Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

** ARPA Funds TAP M086-091 (24079) the Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

***MTF M086-088 (24024) *The Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase; and 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable.

B. Funding Ratios**TAP M086-091 (24079)****Federal TAP Funds**

The funding ratio for the federal funds for this Work is 100% federal funds to 0% Local Agency funds, and this ratio applies only to the \$194,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$194,000.00, and additional federal funds are available for the Work, the Local Agency shall pay 0% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$194,000.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described herein. **This applies to the entire scope of Work.**

ARPA Funds

The funding ratio for the federal funds for this Work is 100% federal funds to 0% Local Agency funds, and this ratio applies only to the \$1,022,542.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,022,542.00, and additional federal funds are available for the Work, the Local Agency shall pay 0% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,022,542.00, then the

amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described herein. **This applies to the entire scope of Work.**

MTF M086-088 (24024)

State MMOF Funds

The funding ratio for the State funds for this Work is 100% State funds to 0% Local Agency funds, and this ratio applies only to the \$194,000.00 that is eligible for State funds. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$194,000.00, and additional State funds are available for the Work, the Local Agency shall pay 0% of all such costs eligible for State funds and 100% of all other costs. If additional State funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$194,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

This applies to the entire scope of Work.

C. Maximum Amount Payable

TAP M086-091 (24079)

Federal TAP Funds

The maximum amount payable to the Local Agency under this Agreement shall be \$194,000.00. For CDOT accounting purposes, the federal funds of \$194,000.00 and the Local Agency funds of \$0.00 will be encumbered for a total encumbrance of \$194,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract.

This applies to the entire scope of Work.

Federal ARPA Funds

The maximum amount payable to the Local Agency under this Agreement shall be \$1,022,542.00. For CDOT accounting purposes, the federal funds of \$1,022,542.00, will be encumbered, but the Local Agency funds of \$0.00 will NOT be encumbered. The total budget of this project is \$1,022,542.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work. ARPA Funds can only originate from and after May 18, 2021.**

MTF M086-088 (24024)

State MMOF

The maximum amount payable to the Local Agency under this Agreement shall be \$194,000.00. For CDOT accounting purposes, the State funds of \$194,000.00 will be encumbered, but the Local Agency funds of \$0.00 will NOT be encumbered. The total budget of this project is \$194,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

COLORADO DEPARTMENT OF TRANSPORTATION			
LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. M086-091/M086-088	STIP No.	Project Code 24024/24079	Region 2
Project Location Prairie Avenue			Date 3/25/2020
Project Description Prairie Ave. To Minnequa Lake Trail			
Local Agency The City of Pueblo	Local Agency Project Manager Kelly Grisham		
CDOT Resident Engineer Lachelle Davis	CDOT Project Manager Don Scanga		
INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>. The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist. Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Local Agency	X	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	

EXHIBIT E - LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		XX
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Lachelle Davis CDOT Resident Engineer (Signature on File) 3/25/2020 Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		

EXHIBIT E - LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Charles Roy _____ 719-553-2271 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task. Charles Roy _____ 719-553-2271 Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare and Authorize Change Orders	X	
8.13	Submit Change Order Package to CDOT	X	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task. Don Scanga _____ 719-546-5434 CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products	X	
	Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9.6	Approve Sources of Materials		
9.7	Independent Assurance Testing (IAT), Local Agency Procedures ☐ CDOT Procedures X • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X X	
9.8	Approve mix designs • Concrete • Hot mix asphalt	X X	
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

EXHIBIT E - LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	X	
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	

cc: CDOT Resident Engineer/Project Manager
 CDOT Region Program Engineer
 CDOT Region EEO/Civil Rights Specialist
 CDOT Region Materials Engineer
 CDOT Contracts and Market Analysis Branch
 Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request: Business Programs Office

Colorado Department of Transportation 2829 West Howard Place

Denver, Colorado 80204

Phone: (303) 757-9007

REVISED 1/22/98

REQUIRED BY 49 CFR PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety; Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design- build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

a. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

b. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

c. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher-paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)
- (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S.DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and

7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below.

The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(a)(2) of this certification; and

- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, "for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

	CDOT SUBRECIPIENT RISK ASSESSMENT	Date:	
Name of Entity (Subrecipient):			
Name of Project / Program:			
Estimated Award Period:			
Entity Executive Director or VP:			
Entity Chief Financial Officer:			
Entity Representative for this Self Assessment:			
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No
		N/A	
EXPERIENCE ASSESSMENT		Yes	No
		N/A	
1	Is your entity new to operating or managing federal funds (has not done so within the past three years)?	☐	☐
2	Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>	☐	☐
3	Does your staff assigned to the program have at least three full years of experience with this federal program?	☐	☐
MONITORING/AUDIT ASSESSMENT		Yes	No
		N/A	
4	Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?	☐	☐
5	a) Were there non-compliance issues in this prior review?	☐	☐
	b) What were the number and extent of issues in prior review?	☐ 1 to 2	☐ >3
OPERATION ASSESSMENT		Yes	No
		N/A	
6	Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>	☐	☐
FINANCIAL ASSESSMENT		Yes	No
		N/A	
7	a) Does your entity have an indirect cost rate that is approved and current?	☐	☐
	b) If Yes, who approved the rate, and what date was it approved?		
8	Is this grant/award 10% or more of your entity's overall funding?	☐ >10%	☐ <10%
9	Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.	☐	☐
10	Has your entity had difficulty meeting local match requirements in the last three years?	☐	☐
11	What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?		

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥ 6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	☐	☐	☐

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	☐	☐	☐
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	☐	☐	☐
Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.			
☐ By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.  Tool Version: v2.0 (081816)			

**EXHIBIT M - OMB Uniform Guidance for Federal
Awards Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

- 9. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
- 9.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
 - 9.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
 - 9.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2CFR §200.37
 - 9.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
 - 9.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
 - 9.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
 - 9.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
 - 9.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
 - 9.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
 - 9.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A- 133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
 - 9.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 10. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions

automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

11. Procurement Standards.

- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
 - 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
 - 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
 - 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.
- 6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

- 6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

- 4.2 Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-

3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 4.3 **Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
 - 4.4 **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
 - 4.5 **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 - 4.6 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
7. **Certifications.** Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.
 - 1.8. **Event of Default.** Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30

days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

9. **Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

10. **Performance Measurement**

The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
 - 2.1.3. "Entity" means:
 - 2.1.3.1. a Non-Federal Entity;
 - 2.1.3.2. a foreign public entity;
 - 2.1.3.3. a foreign organization;
 - 2.1.3.4. a non-profit organization;
 - 2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only);

- 2.1.3.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
- 2.1.3.8. a foreign for-profit organization (for 2 CFR part 170 only).
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.7. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.8. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.9. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.10. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.10.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.10.2. Is not organized primarily for profit; and
 - 2.1.10.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.13. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.14. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

- 2.1.15. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.16.1. Salary and bonus;
 - 2.1.16.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.16.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.16.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.16.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.16.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.17. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee's information.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
- 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification

- v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served
- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) (*Federal guidance may change this requirement in July 2022*)
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) (*Federal guidance may change this requirement in July 2022*)

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning (*Federal guidance may change this requirement in July 2022*)
- b) Number of families served by home visiting (*Federal guidance may change this requirement in July 2022*)

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs (*Federal guidance may change this requirement in July 2022*)

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services (*Federal guidance may change this requirement in July 2022*)
- b) Number of affordable housing units preserved or developed (*Federal guidance may change this requirement in July 2022*)

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage
- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report

- ii. Project labor agreement certification or project workforce continuity plan
- iii. Prioritization of local hires
- iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum

- speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.
- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient DUNS Number;
- 8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization DUNS Number;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and

location (for broadband, geospatial location data). For projects over \$10 million:

- 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.
- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
- 8.1.3.8.2. Whether the project prioritizes local hires.
- 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit O and submit to State Agency with signed grant agreement.

13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

Local Agency

Date

CDOT Program Manager

Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE APPROVING A 3RD AMENDMENT AND RESTATEMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO ("CITY"), A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT"), PROJECT: TAP M086-082 (22971) RELATING TO THE NORTHERN AVE TRAIL PHASE III PROJECT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$693,494 FOR SAID PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves a 3rd Amendment and Restatement of an Intergovernmental Agreement ("IGA") between Pueblo, a Colorado Municipal Corporation ("City") and the State of Colorado, Colorado Department of Transportation ("CDOT") relating to the Northern Ave Trail Phase III Project, and budgets and appropriates funds totaling \$693,494 for the Project.

PREVIOUS COUNCIL ACTION:

Ordinance 9600 dated November 25, 2019, transferred funds in the amount of \$125,000 from the 2019 Highway User Tax Fund ("HUTF") balance to Project HU1601 and budgeted and appropriated \$125,000 for the Traffic Signal Northern Avenue and Prairie Avenue Project.

Ordinance 9666 dated February 24, 2020, established project PL2003, which approved an IGA between the City and CDOT, transferred \$125,000 from project HU1601 to project PL2003, and budgeted and appropriated funds in the amount of \$625,000 for the Northern Avenue Streetscape/Trail Phase III Project.

Resolution 14465 dated August 24, 2020, approved an agreement for professional engineering services between the City and Short Elliott Hendrickson, Inc., in the amount of \$63,037.19, related to the Northern Avenue Streetscape/Trail Phase III Project.

Ordinance 9977 dated August 9, 2021, approved an amendment to the Intergovernmental Agreement (“IGA”), TAP M086-082 between the City of Pueblo, a Colorado Municipal Corporation (“City”) and the State of Colorado, Colorado Department of Transportation (“CDOT”) relating to the Northern Avenue Streetscape/Trail Phase III Project.

Ordinance 10121 dated February 28, 2022, approved Amendment #2 to the Intergovernmental Agreement (“IGA”), TAP M086-082 between the City of Pueblo, a Colorado Municipal Corporation (“City”) and the State of Colorado, Colorado Department of Transportation (“CDOT”) relating to the Northern Avenue Streetscape/Trail Phase III Project.

BACKGROUND:

This Ordinance approves the 3rd Amendment and Restatement to the Intergovernmental Agreement, originally effective on March 13, 2020, between the City and CDOT. This amendment is due to an additional Multimodal Transportation & Mitigation Options Funding (MMOF) grant that was awarded to the City of Pueblo.

The proposed project will continue the trail along the north side of Northern Avenue between Cambridge Avenue and Prairie Avenue and will then head north on Prairie Avenue to the main entrance of the Colorado State Fair grounds. Over the last several years the City has redeveloped the trail system from Pueblo Boulevard (State Highway 45) east to Cambridge Avenue along Northern Avenue. This project will complete the trail system to the Colorado State fairgrounds, providing the area residents and visitors to the State Fair with a direct bike/pedestrian connection.

FINANCIAL IMPLICATIONS:

Grant funds in the amount of \$625,000 were previously awarded, budgeted and appropriated. Additional grant funds, in the amount of \$693,494 are being budgeted and appropriated into PL2003, Northern Avenue Streetscape Trail III Project.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the CDOT Multimodal Transportation & Mitigation Options Funding (MMOF) grant funds.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. IGA 3rd Amendment and Restatement

ORDINANCE NO.

AN ORDINANCE APPROVING A 3RD AMENDMENT AND RESTATEMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO ("CITY"), A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT"), PROJECT: TAP M086-082 (22971) RELATING TO THE NORTHERN AVE TRAIL PHASE III PROJECT, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$693,494 FOR SAID PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE SAME

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The 3rd Amendment and Restatement to the Intergovernmental Agreement ("IGA") between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT"), Project: TAP M086-082 (22971), Northern Avenue Streetscape Phase III Project, a copy of which is attached, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

Subject to encumbrances by the Colorado State Department of Transportation, funds from the Northern Avenue Streetscape Phase III project (TAP M086-082) in the amount of \$693,494.00 are hereby budgeted and appropriated for the Northern Avenue Streetscape Phase III Trail Project, No. PL2003.

SECTION 3.

The Mayor is authorized to execute and deliver the IGA 3rd Amendment and Restatement in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 4.

The officers of the City are authorized to perform any and all acts consistent with this Ordinance to implement the policies and procedures described herein.

SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

STATE OF COLORADO AMENDMENT
AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
3rd Amendment and Restatement Project #: TAP M086-082 (22971)

SIGNATURE AND COVER PAGE

State Agency Department of Transportation		3rd Amendment and Restatement Routing Number 20-HA2-XC-03013-M0007
Local Agency CITY OF PUEBLO		Original Agreement Routing Number 20-HA2-XC-03013
Agreement Maximum Amount	\$1,318,494.00	Original Agreement Beginning Date March 13, 2020
		Agreement Expiration Date March 12, 2030

THE PARTIES HERETO HAVE EXECUTED THIS 3rd AMENDMENT and RESTATEMENT
Each person signing this 3rd Amendment and Restatement represents and warrants that he or she is duly authorized to execute this 3rd Amendment and Restatement and to bind the Party authorizing his or her signature.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Stephen Harelson, P.E., Chief Engineer Date: _____	
LOCAL AGENCY CITY OF PUEBLO _____ Nick Gradisar, Mayor _____ Signature Date: _____	LOCAL AGENCY CITY OF PUEBLO _____ Marisa Stoller, City Clerk _____ Signature-Attested By Date: _____

In accordance with §24-30-202 C.R.S., this 3rd Amendment and Restatement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Office of the State Controller, Controller Delegate Effective Date: _____	
---	--

1) PARTIES

This 3rd Amendment and Restatement (the “Amendment”) to the Original Agreement shown on the Signature and Cover Page for this 3rd Amendment and Restatement (the “Agreement”) is entered into by and between the Local Agency and the State.

2) TERMINOLOGY

Except as specifically modified by this 3rd Amendment and Restatement, all terms used in this 3rd Amendment and Restatement that are defined in the 3rd Amendment and Restatement shall be construed and interpreted in accordance with the 3rd Amendment and Restatement.

3) EFFECTIVE DATE AND ENFORCEABILITY

A. History:

1. On March 13, 2020, the parties entered into an Intergovernmental Agreement to make improvements to Northern Avenue Streetscape, entering Phase 3 of this project. The Agreement total was \$625,000.00.

2. On December 23rd, 2020, the parties executed Option Letter 1, encumbering \$63,038.00 for the Design Phase.

3. On September 2nd, 2021, the parties Amended the Agreement to revise the Scope of Work and extend the Design performance period end date.

4. On September 15, 2021, the parties executed Option Letter 2, which increased encumbrance by \$25,007.00 to a total of \$88,045.00.

5. On March 22nd, 2022, the parties amended the Agreement to allocate \$34, 000.00, for ROW acquisition and/or allocation.

6. The Parties are amending and restating these agreements into this 3rd Amendment and Restatement of the Intergovernmental Agreement retaining the Original Agreement Effective Date of March 13,2020, all Option Letters, and Amendments to the Original Intergovernmental Agreement, Expiration Date of March 12, 2030.

7. The Parties hereby revoke all provisions of the Intergovernmental Agreement dated March 13th, 2020, excepting only the date of execution thereof, and amend the Intergovernmental Agreement as of the execution date of the 3rd Amendment and Restatement in its entirety, including the Amendments and Option Letters referenced in §3. A. 3, above. This 3rd Amendment and Restatement, without reference to those provisions revoked, shall hereafter constitute the Intergovernmental Agreement as amended and restated.

B. 3rd Amendment and Restatement Execution Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay the Local Agency for any Work performed or expense incurred under this Amendment either before or after the Amendment term shown in **§3.B** of this Amendment.

C. 3rd Amendment and Restatement Term

The Parties’ respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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EXHIBIT A, SCOPE OF WORK (Current version A-1)
EXHIBIT B, SAMPLE OPTION LETTER
EXHIBIT C, FUNDING PROVISIONS (Budget) (Current version C-5)
EXHIBIT D, LOCAL AGENCY RESOLUTION (Current version D-2)
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS
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1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase (“Phase Performance Period(s)”). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e.**, or the expiration of “Special Funding” if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term and Extension

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder. This subsection shall not apply to a termination of this ARPA Award by the State for breach by Local Agency.

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
 - xiv. **Exhibit N**, Federal Treasury Provisions
 - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
 - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
 - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
 - xviii. **Exhibit R**, Applicable Federal Awards
 - xix. **Exhibit S**, PII Certification
 - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in §2.B.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.

- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. STATEMENT OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
 - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
 - c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
 - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
 - e. Stamp the Plans as produced by a Colorado registered professional engineer.
 - f. Provide final assembly of Plans and all other necessary documents.
 - g. Ensure the Plans are accurate and complete.
 - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
 - 1) Right of way acquisition (3111) for federal participation and non-participation;
 - 2) Relocation activities, if applicable (3109);
 - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.
- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency’s risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency’s non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient’s previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient’s operations, in which failure could impact the Subrecipient’s ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient’s financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient’s non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency’s completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency’s performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency’s submission to the State of all deliverables defined in this Agreement, and Local Agency’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency’s failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information "PII"

If Local Agency or any of its Subcontracts will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a "Third Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Contractor's duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and

b. \$2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§13.B**, shall have all of the remedies listed in this **§14.A**, in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.C**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below

or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Don Scanga, Project Manager
CDOT Region 2
5615 Wills Boulevard
Pueblo, CO 81008
719-634-2323
donald.scanga@state.co.us

For the Local Agency

CITY OF PUEBLO
Kelly Grisham, Senior Planner
211 East D Street
PUEBLO, CO 81003
719-553-2254
kgrisham@pueblo.us

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**, Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

N. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

- i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado 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.
- ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.
- iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A-1
SCOPE OF WORK

Northern Avenue Streetscape PH III
TAP M086-082
22971

1. General Description

The Local Agency shall be responsible for design and construction of a trail, traffic signal improvements and landscaping in the City of Pueblo, Project M086-082, (22971). The design of the project will include acquisition of temporary easements and permanent easements/property acquisition. The project will construct a detached 10' wide concrete trail between Cambridge Avenue and Prairie Avenue. Additional sidewalk and curb ramp improvements will be made on Prairie Avenue from Northern Avenue to the Colorado State Fair Grounds entrance. The project will provide a pedestrian and bicycle counter and bicycle wayfinding signage.

STIP# (SR25079.078)

2. Definitions N/A

3. Personnel

3.1. Responsible Administrator.

The Local Agency's performance hereunder shall be under the direct supervision of the project manager identified in §16 of the Agreement.

3.2. Replacement

The Local Agency shall immediately notify the State if any key personnel cease to serve and seek its approval. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct the Local Agency to suspend performance on the Work until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with §16 of the Agreement.

4. Administrative Requirements

At all times from the effective date of this Agreement until completion of the Work, the Local Agency shall maintain properly segregated books of State Agreement funds, matching funds, and other funds associated with the Work. All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work Budget set forth herein.

5. Monitoring

CDOT shall monitor this Work on an as-needed basis. CDOT may choose to audit the business activities performed under this Agreement. The Local Agency shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Agreement. Such books and records shall contain documentation of the participant's pertinent activity under this Agreement in a form consistent with good accounting practice.

If ARPA funds are used all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

If this project is funded with Multimodal Transportation & Mitigation Options Funding (MMOF) these funding expenditures must be invoiced by June 1st of the year they expire.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

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EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Stephen Harelson, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C-5 - FUNDING PROVISIONS**City of Pueblo TAP M086-082 (22971)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$1,318,494.00, which is to be funded as follows:

1. FUNDING**TAP M086-082 (22971)**

a. Federal Funds (80% TAP of Award)	\$ 500,000.00
b. Local Agency Funds (20% TAP of Award)	\$ 125,000.00
c. Federal Funds ARPA US Treasury Expenditure Category EC6 (100% of ARPA Award)	\$ 693,494.00

TOTAL FUNDS ALL SOURCES	\$ 1,318,494.00
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2. OMB UNIFORM GUIDANCE

a. Federal Award Identification Number (FAIN):	TBD
b. Name of Federal Awarding Agency:	FHWA, USDT
c. Local Agency Unique Entity Identifier	NJK3BNUDRHJ7
d. Assistance Listing # Highway Planning and Construction	ALN 20.205
e. Assistance Listing # Coronavirus State and Local Fiscal Recovery Funds	ALN 21.027
f. Is the Award for R&D?	No
g. Indirect Cost Rate (if applicable)	N/A
h. Amount of Federal Funds Obligated by this Action:	\$0.00
i. Amount of Federal Funds Obligated to Date (including this Action):	\$ 97,636.00

3. ESTIMATED PAYMENT TO LOCAL AGENCY

a. Federal Funds Budgeted	\$ 500,00.00
b. ARPA Funds Budgeted	\$ 693,494.00
c. Less Estimated Federal Share of CDOT-Incurred Costs	\$ 0.00

TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	90.52%	\$ 1,193,494.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	9.48%	\$ 125,000.00

TOTAL PROJECT ESTIMATED FUNDING	100.00%	\$ 1,318,494.00
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4. FOR CDOT ENCUMBRANCE PURPOSES**TAP M086-082 (22971)**

a. Total Encumbrance Amount (Federal funds + Local Agency funds)	\$ 625,000.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	
Federal Funds 80% of ROW	\$27,200.00
Local Agency 20% of ROW	<u>\$ 6,800.00</u>
	\$ 34,000.00

ARPA Funds TAP M086-082 (22971)

a. Total Encumbrance Amount (Only ARPA funds are encumbered)	\$ 693,494.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$ 0.00

NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS	\$ 1,284,494.00
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Note: \$88,045.00 is currently available. Additional Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

TAP M086-082				
WBS Element 22971.10.30	Performance Period Start*/End Date 11/16/2020 - 12/31/2023	Design 3020		\$88,045.00
WBS Element 22971.20.10	Performance Period Start*/End Date TBD- TBD	Const. 3301		\$0.00
ARPA Funds TAP M086-082				
WBS Element 22971.10.30	Performance Period Start**/End Date TBD-TBD	Design 3020		\$0.00
WBS Element 22971.20.10	Performance Period Start**/End Date TBD-TBD	Const. 3301		\$0.00

* **TAP M086-082 (22971)** The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed these three (3) milestones are achieved will not be reimbursable.

** **ARPA Funds TAP M086-082 (22971)** The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

TAP M086-082 (22971)

The funding ratio for the federal funds for this Work is 80% federal funds to 20% Local Agency funds, and this ratio applies only to the \$625,000.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$625,000.00, and additional federal funds are available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$625,000.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described herein. **This applies to the entire scope of Work.**

ARPA Funds

TAP M086-082 (22971)

The funding ratio for the federal funds for this Work is 100% federal funds to 0% Local Agency funds, and this ratio applies only to the \$693,494.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$693,494.00, and additional federal funds are available for the Work, the Local Agency shall pay 0% of all such costs eligible for federal funding and 100% of all other costs. If additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$0.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described herein. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

TAP M086-082 (22971)

The maximum amount payable to the Local Agency under this Agreement shall be \$472,800.00 (federal funds of \$500,000.00 minus federal share of ROW of \$27,200.00). For CDOT accounting purposes, the federal funds of \$472,800.00 and the Local Agency funds of \$118,200.00 (Local Agency funds of \$125,000.00 minus Local Agency share of ROW of \$6,800.00) will be encumbered for a total encumbrance of \$591,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

ARPA Funds

TAP M086-082 (22971)

The maximum amount payable to the Local Agency under this agreement shall be \$693,494.00. For CDOT

accounting purposes, the federal funds of \$693,494.00, will be encumbered, but the Local Agency funds of \$0.00 will NOT be encumbered. The total budget of this project is \$693,494.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work. ARPA Funds can only originate from and after May 18th, 2021.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

Exhibit D-2 Local Agency Ordinance

ORDINANCE NO. 10121

AN ORDINANCE APPROVING AMENDMENT #2 TO THE INTERGOVERNMENTAL AGREEMENT, TAP M086-082 (22971) BETWEEN PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE STATE OF COLORADO, THE COLORADO DEPARTMENT OF TRANSPORTATION AND AUTHORIZING THE MAYOR TO EXECUTE SAME

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Amendment #2 to the Intergovernmental Agreement, TAP M086-082 (22971) between Pueblo, a Colorado Municipal Corporation, and State of Colorado for the use and benefit of Department of Transportation, a copy of which is attached hereto ("Amendment"), having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is authorized to execute and deliver the Amendment in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of the Ordinance and Amendment to implement the policies and procedures described therein.

SECTION 4.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on February 14, 2022.

Final adoption of Ordinance by City Council on February 28, 2022.



President of City Council

Action by the Mayor:

- ☒ Approved on March 2, 2022.
- ☐ Disapproved on _____ based on the following objections:

Nilda Leal
Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

Lydia
City Clerk

Exhibit E: Local Agency Contract Administration Checklist

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No. M086-082	STIP No. SR25079.078	Project Code 22971	Region 02
Project Location Northern Avenue between Cambridge Ave. and Prairie Ave			Date 11/6/19
Project Description Northern Avenue Streetscape Ph III			
Local Agency City of Pueblo CDOT Resident Engineer Lachelle Davis		Local Agency Project Manager Kelly Grisham, Project Manager CDOT Project Manager Don Scanga	
INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>. The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "Z" will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist. Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2 1	Review Project to ensure it is consistent with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4 1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5 1	Prepare Design Data - CDOT Form 463	X	X
5 2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5 3	Conduct Consultant Selection/Execute Consultant Agreement • Project Development • Construction Contract Administration (including Fabrication Inspection Services)	X X	
5 4	Conduct Design Scoping Review Meeting	X	
5 5	Conduct Public Involvement	X	
5 6	Conduct Field Inspection Review (FIR)	X	
5 7	Conduct Environmental Processes (may require FHWA concurrence/involvement)		X
5 8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5 9	Obtain Utility and Railroad Agreements	X	
5 10	Conduct Final Office Review (FOR)	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.11	Justify Force Account Work by the Local Agency	X	
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	X	
5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Lachelle Davis 11/6/2019 CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 1415 - Commitment Confirmation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety	X	
8.3	Conduct Conferences		
	Pre-Construction Conference (Appendix B)	X	
	• Fabrication Inspection Notifications	X	
	Pre-survey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	NA	
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	X	
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)	X	
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Charles Roy _____ 719-553-2271 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
	Fabrication inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task Charles Roy _____ 719-553-2271 Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare and Authorize Change Orders	X	
8.13	Submit Change Order Package to CDOT	X	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Lachelle Davis _____ 719-562-5516 CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed		X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	NA	
9.6	Approve Sources of Materials		
9.7	Independent Assurance Testing (IAT). Local Agency Procedures ☐ CDOT Procedures X • Generate IAT schedule • Schedule and provide notification • Conduct IAT	NA	
9.8	Approve mix designs • Concrete • Hot mix asphalt	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the 'Commercially Useful Function' Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate, Check Project Documentation, and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9).	X	
11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the Resident Engineer	X	
11.9	(FHWA Form 47 discontinued)	NA	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT).		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure		X
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: Business Programs Office

Colorado Department of Transportation

2829 West Howard Place Denver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR
PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design- build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:** The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

- a. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

- b. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

- c. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non- minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non- minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

1. Minimum wages:

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

2. Withholding:

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S.DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and

7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility:

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification– First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below.

The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL
ACCESSROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpartC;

- 1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2.** A foreign public entity;
- 1.5.3.** A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in SAM.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

 CDOT SUBRECIPIENT RISK ASSESSMENT		Date:	
Name of Entity (Subrecipient):			
Name of Project / Program:			
Estimated Award Period:			
Entity Executive Director or VP:			
Entity Chief Financial Officer:			
Entity Representative for this Self Assessment:			
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No
		N/A	
EXPERIENCE ASSESSMENT		Yes	No
		N/A	
1	Is your entity new to operating or managing federal funds (has not done so within the past three years)?	☐	☐
2	Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>	☐	☐
3	Does your staff assigned to the program have at least three full years of experience with this federal program?	☐	☐
MONITORING/AUDIT ASSESSMENT		Yes	No
		N/A	
4	Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?	☐	☐
5 a)	Were there non-compliance issues in this prior review?	☐	☐
5 b)	What were the number and extent of issues in prior review?	☐ 1 to 2	☐ >3
OPERATION ASSESSMENT		Yes	No
		N/A	
6	Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>	☐	☐
FINANCIAL ASSESSMENT		Yes	No
		N/A	
7 a)	Does your entity have an indirect cost rate that is approved and current?	☐	☐
7 b)	If Yes, who approved the rate, and what date was it approved?		
8	Is this grant/award 10% or more of your entity's overall funding?	☐ >10%	☐ <10%
9	Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.	☐	☐
10	Has your entity had difficulty meeting local match requirements in the last three years?	☐	☐
11	What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?		

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥ 6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	☐	☐	☐

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	☐	☐	☐
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	☐	☐	☐
Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.			
☐ By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.  Tool Version: v2.0 (081816)			

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

**Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

- 1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
- 1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
- 1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
- 1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
- 1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
- 1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
- 1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
- 1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

- 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

- 6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

- 6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N

Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.
 - 2.1.3. "Entity" means:
 - 2.1.3.1. a Non-Federal Entity;
 - 2.1.3.2. a foreign public entity;
 - 2.1.3.3. a foreign organization;
 - 2.1.3.4. a non-profit organization;
 - 2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only);

- 2.1.3.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
- 2.1.3.8. a foreign for-profit organization (for 2 CFR part 170 only).
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at www.treasury.gov.
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.7. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.8. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.9. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.10. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.10.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.10.2. Is not organized primarily for profit; and
 - 2.1.10.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.13. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.14. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

- 2.1.15. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.16.1. Salary and bonus;
 - 2.1.16.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.16.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.16.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.16.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.16.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.17. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee's information.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. Grantee shall report as set forth below.
 - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification

- v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

- a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

- a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

- a) Sector of employer
- b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
 - i. Presence of capital expenditure in project
 - ii. Total projected capital expenditure
 - iii. Type of capital expenditure
 - iv. Written justification
 - v. Labor reporting

Household Assistance (2.1-2.8)

- a) Number of households served
- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) (*Federal guidance may change this requirement in July 2022*)
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) (*Federal guidance may change this requirement in July 2022*)

Healthy Childhood Environments (2.11-2.13)

- a) Number of children served by childcare and early learning (*Federal guidance may change this requirement in July 2022*)
- b) Number of families served by home visiting (*Federal guidance may change this requirement in July 2022*)

Education Assistance (2.14, 2.24-2.27)

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs (*Federal guidance may change this requirement in July 2022*)

Housing Support (2.15, 2.16, 2.18)

- a) Number of people or households receiving eviction prevention services (*Federal guidance may change this requirement in July 2022*)
- b) Number of affordable housing units preserved or developed (*Federal guidance may change this requirement in July 2022*)

Small Business Economic Assistance (2.29-2.33)

- a) Number of small businesses served

Assistance to Non-Profits (2.34)

- a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

- a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

- a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage
- e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
 - i. Prevailing wage certification or detailed project employment and local impact report

- ii. Project labor agreement certification or project workforce continuity plan
- iii. Prioritization of local hires
- iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
 - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
 - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
 - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
 - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum

- speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.
- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient DUNS Number;
- 8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization DUNS Number;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
 - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.
 - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.
 - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
 - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
 - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and

location (for broadband, geospatial location data). For projects over \$10 million:

- 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.
- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
- 8.1.3.8.2. Whether the project prioritizes local hires.
- 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
- 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit O and submit to State Agency with signed grant agreement.

13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
- 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.
 - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
 - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
 - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

EXHIBIT Q
SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

Local Agency

Date

CDOT Program Manager

Date

EXHIBIT R
APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A
DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE APPROVING A DEPOSIT AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND SKY CREEK HOMES, LTD, LLC, A COLORADO LIMITED LIABILITY COMPANY, RELATED TO THE INSTALLATION AND CONSTRUCTION OF REQUIRED PUBLIC IMPROVEMENTS WITHIN SETTLERS VILLAGE FILING FIVE SUBDIVISION AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

SUMMARY:

The Ordinance will approve a deposit agreement with Sky Creek Homes, Ltd., LLC., a Colorado Limited Liability Company ("Sky Creek") which allows it to defer the construction and installation of specified public improvements within the subdivision for up to a year from the date of its first building permit application within the Phase 2 area of the subdivision.

PREVIOUS COUNCIL ACTION:

The Settlers Village Subdivision plat was approved by City Council under Ordinance No. 7461 on April 24, 2006.

BACKGROUND:

The developer of the Settlers Village Filing Five Subdivision is required to construct a 321-foot segment of Nolan Trace, a mixed-use collector roadway along the southern boundary of the Settlers Village Filing Five Subdivision under the current Subdivision Improvements Agreement. The phasing of construction of for public improvements in the subdivision is specified in a Phasing Modification Agreement dated February 6, 2020, and recorded with the Pueblo County Clerk and Recorder's Office under reception number 2170261.

The segment of Nolan Trace described above is tied to Phase 2 of the subdivision. If constructed at this time, this segment will not provide any transportation network connectivity until other roadway segments are constructed when adjacent properties are developed. Rather than constructing and maintaining a roadway segment that will

not serve any immediate public interest or need, the Public Works Director has agreed to accept a deposit in lieu of installing the improvements at this time in accordance with the terms and conditions outlined in the Subdivision Improvements Agreement.

At the time the road segment is required to facilitate transportation network connectivity or when an appropriate opportunity arises to construct the roadway, the City of Pueblo will be able to use the deposit to cause the required improvements to be constructed.

Alternatively, the developer may also elect to construct the improvements and request a refund of the deposit.

After estimating the value of the remaining unfinished improvements, a total deposit of \$68,955 is required as a guarantee that the required work will be completed.

FINANCIAL IMPLICATIONS:

Sky Creek Homes will provide a deposit of \$68,955 as its guaranty that the required public improvements in the Settlers Village Filing Five Subdivision will be installed.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Failure to approve this agreement will require the developer to construct improvements that are not in the public interest at this time.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Deposit Agreement - Settlers Village Filing 5 - v5 (220927)

ORDINANCE NO.

AN ORDINANCE APPROVING A DEPOSIT AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND SKY CREEK HOMES, LTD, LLC, A COLORADO LIMITED LIABILITY COMPANY, RELATED TO THE INSTALLATION AND CONSTRUCTION OF REQUIRED PUBLIC IMPROVEMENTS WITHIN SETTLERS VILLAGE FILING FIVE SUBDIVISION AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Deposit Agreement between the City of Pueblo, a Municipal Corporation and Sky Creek Homes, Ltd., LLC., a Colorado Limited Liability Company, a copy of which is attached hereto, having been approved as to form by the City of Pueblo Attorney, is hereby approved.

SECTION 2.

The Mayor is authorized to execute and deliver the Deposit Agreement in the name of the City of Pueblo, and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 3.

The officers of the City of Pueblo are authorized to perform any and all acts consistent with this Ordinance to implement the policies and procedures described herein.

SECTION 4.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

DEPOSIT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of October, 2022 by and between the CITY OF PUEBLO, a Municipal Corporation, hereinafter referred to as “City”, and SKY CREEK HOMES, LTD, LLC a Colorado limited liability company, hereinafter referred to as “Subdivider”.

W I T N E S S E T H:

WHEREAS, Subdivider is the owner and/or developer of Block 1, Lots 1-9; Block 2, Lots 1-8; Block 3, Lots 1-10; and Block 4, Lots 1-9; and Block 5, Lots 1-9 (“Subdivider’s Lots”) located within the Settler’s Village Filing No. 5 Subdivision, City of Pueblo, Colorado and legally described as set forth in Exhibit “A”, which is attached hereto and incorporated herein; and

WHEREAS, Subdivider is required, pursuant to Section 12-4-7(j) of the Code of Ordinances of the City, to construct certain public improvements including those set forth in Exhibit “B”, which is attached hereto and incorporated herein; and

WHEREAS, Subdivider’s predecessor-in-interest, Horizon Communities, Inc., and City entered into a Subdivision Improvements Agreement dated March 27, 2007 which requires Subdivider to construct and install at its sole cost all required public improvements within a specified timeframe; and

WHEREAS, Paragraph 2 of the Subdivision Improvements Agreement requires that the Subdividers or any subsequent owner of the land or any portion thereof shall deposit cash or other collateral if said improvements are not installed within the specified timeframe; and

WHEREAS, Subdivider agrees that the estimate of the City Director of Public Works to construct and install improvements necessary to satisfy Paragraph 2 of the Subdivision Improvement Agreement with respect to Subdivider’s Lots is reasonable; and

WHEREAS, Subdivider agrees to establish a Deposit Account with the City to guarantee payment of the costs of installation and construction of said public improvements according to City’s Subdivision Regulations and the Subdivision Improvement Agreement;

NOW THEREFORE, in consideration of the foregoing and mutual covenants contained herein, the City and Subdivider agree as follows:

I. Subdivider agrees:

1. To deposit with the City Director of Finance \$68,955.00 being an amount equal to the estimate of the public improvements necessary to satisfy Paragraph 2 of the Subdivision Improvement Agreement with respect to Subdivider's Lots and the City Subdivision Regulations. Such estimate and improvements are set forth in Exhibit "B", which is attached hereto and incorporated herein. It is agreed that interest, if any, which may accrue on such funds shall be paid to the City as an administrative fee in maintaining and administering this Agreement and such deposit.
2. To install the required public improvements in said Subdivision as described in Exhibit "B".
3. That the funds deposited by Subdivider shall be held by the City in a non-interest-bearing Deposit Account to be established by the Director of Finance who may disburse said funds only as herein provided. The Director of Finance shall release from said Deposit Account and pay out therefrom only such deposited funds as directed in writing by the Director of Public Works. Funds deposited with the Director of Finance may be withdrawn at the discretion of the Director of Public Works upon written request to the Director of Finance.
4. When Subdivider completes all or a portion of the improvements described in Exhibit "B", Subdivider may apply to the City for a partial or full release of the deposited funds and, upon written notice of the City's Director of Public Works to the Director of Finance, the Director of Finance shall release said funds to the Subdivider as directed by the Director of Public Works.
5. In the event that Subdivider fails to install all or any part of the required public improvements described in Exhibit "B" on or before one (1) year from the date of application for the first building permit issued on any of the Subdivider's Lots, the Director of Public Works may, upon written notice to the Director of Finance, withdraw the deposited funds to complete all or any part of the said improvements.

II. City agrees:

6. To have the Director of Public Works or his designee periodically inspect said improvements while under construction and inspect completed improvements within a reasonable time after receiving written notice that the improvement has been completed. The Director of Public Works shall notify Subdivider within 10 days after

inspection of the required public improvements if the same are satisfactorily completed and approved by the City and if so satisfactorily completed and approved, the Director of Public Works shall authorize a partial release and payment of said escrowed funds to be made to Subdivider in an amount determined by the Director of Public Works based on the percentage of improvements completed and approved.

III. City and Subdivider agree:

7. That this Deposit Agreement shall constitute full satisfaction of the covenants set forth in Paragraph 2 of the Subdivision Improvement Agreement with respect to Subdivider's Lots only. Nothing contained herein is intended to be, relied upon or otherwise act as an amendment of the Subdivision Improvement Agreement.

(SIGNATURE PAGE FOLLOWS)

CITY OF PUEBLO

By: _____
Nicholas A. Gradisar, Mayor

Subscribed and sworn to before me this _____ day of _____, 2022.

My commission expires: _____

Notary Public

Approved as to form.

City Attorney

SKY CREEK HOMES, LTD, LLC

By: _____

Subscribed and sworn to before me this _____ day of _____, 2022.

My commission expires: _____

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION - SETTLERS VILLAGE, FILING NO. 5

A parcel of land located in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 22, Township 21 South, Range 65 West of the 6th P.M. in the County of Pueblo and State of Colorado and being more particularly described as follows:

Considering the North line of Section 22, Township 21 South, Range 65 West of the 6th P.M. to bear N. $89^{\circ}40'00''$ E., and all bearings contained herein being relative thereto.

Beginning at a point from which the NE corner of said Section 22 bears N. $58^{\circ}42'58''$ E., a distance of 1490.65 feet, said point also being the SE corner of Lot 5, Block 6, in Settlers Village, Filing No. 3 according to the recorded plat thereof as filed for record at Reception No. 1572897 in the Pueblo County records and also being on the Westerly boundary line of Settlers Village, Filing No. 4 according to the recorded plat thereof as filed for record at Reception No. 1161187 in the Pueblo County records; thence along the Westerly boundary line of said Settlers Village, Filing No. 4 the following four (4) courses:

1. S. $00^{\circ}00'00''$ W., a distance of 70.69 feet;
2. N. $83^{\circ}12'20''$ E., a distance of 117.57 feet;
3. S. $06^{\circ}47'40''$ E., a distance of 127.50 feet;
4. N. $84^{\circ}08'24''$ E., a distance of 60.00 feet;

thence S., $06^{\circ}47'40''$ E., a distance of 118.05 feet; thence S. $83^{\circ}12'20''$ W., a distance of 60.00 feet; thence N. $06^{\circ}47'40''$ W., a distance of 4.03 feet; thence S. $85^{\circ}19'31''$ W., a distance of 132.67 feet; thence S $83^{\circ}27'21''$ W., a distance of 295.66 feet; thence S. $14^{\circ}50'32''$ W., a distance of 128.10 feet; thence S. $03^{\circ}10'38''$ E., a distance of 60.00 feet; thence S. $01^{\circ}20'34''$ E., a distance of 234.06 feet; thence S. $02^{\circ}02'47''$ w., a distance of 263.59 feet; thence S. $04^{\circ}20'49''$ E., a distance of 77.71 feet; thence S. $07^{\circ}03'15''$ E., a distance of 80.00 feet; thence S. $82^{\circ}56'45''$ W., a distance of 321.29 feet; thence N. $07^{\circ}03'15''$ W., a distance of 150.00 feet; thence N. $07^{\circ}30'32''$ E., a distance of 263.05 feet; thence N. $03^{\circ}31'42''$ E., a distance of 185.70 feet; thence N. $03^{\circ}09'25''$ W., a distance of 70.68 feet; thence S. $78^{\circ}03'28''$ W., a distance of 6.86 feet; thence N. $11^{\circ}56'32''$ W., a distance of 174.15 feet to a point on the Southerly boundary line of said Settlers Village, Filing No. 3; thence along the Southerly boundary line of said Settlers Village, Filing No. 3 the following seven (7) courses:

1. N. $52^{\circ}10'29''$ E., a distance of 5.56 feet;
2. N. $31^{\circ}48'46''$ E., 139.13 feet;

3. N. 13°44'48" E., a distance of 168.64 feet;
4. N. 03°26'18" W., a distance of 144.35 feet;
5. N. 84°30'10" E., a distance of 288.52 feet;
6. S. 00°00'00" W., a distance of 72.13 feet;
7. S. 90°00'00" E., a distance of 240.00 feet to the Point of Beginning;

Containing 11.47 acres, more or less.

Prepared by: NORTHSTAR ENGINEERING AND SURVEYING, INC.
111 E. 5TH STREET
PUEBLO, CO 81003

JANUARY 18, 2006

JN 96 105 29

SUBDIVISION IMPROVEMENTS AGREEMENT EXHIBIT "B"

SUBDIVISION NAME: SETTLERS VILLAGE, FILING NO. 5
 JN 9610529

DEVELOPER: HORIZON COMMUNITIES, INC.

ENGINEER: NORTHSTAR ENGINEERING AND SURVEYING, INC.

NOLAN TRACE

STREETS

5.5" Asphalt over 11" Base Course	1500 SY @ \$29.75 /SY =	\$44,625
Curb and Gutter	640 LF @ \$12.00 /LF =	\$7,680

WATER

8" PVC Water Main	320 LF @ \$47.50 /LF =	\$15,200
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STREET LIGHT

1 EA @ \$1,450.00 /EA =	\$1,450
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<u>SUBTOTAL</u>	<u>\$68,955</u>
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Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND PUEBLO DEVELOPMENT COMPANY, LLC, A COLORADO LIMITED LIABILITY COMPANY, RELATED TO THE COMPLETION OF THE WEST 18TH STREET EXTENSION PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

SUMMARY:

This Ordinance will approve an agreement between the City of Pueblo and Pueblo Development Company, LLC., which outlines the parties' roles and responsibilities related to the project to complete remaining public improvements along W. 18th Street between Perry Avenue and Sun Mountain Boulevard (formerly Spaulding Avenue).

PREVIOUS COUNCIL ACTION:

On December 13, 2021, under Ordinance No. 10067 City Council budgeted and appropriated \$1,300,000 for the extension of West 18th Street from Perry Street and Sun Mountain Boulevard.

BACKGROUND:

West 18th Street extends from Pueblo Boulevard on the west side to Mineral Palace Park at its easternmost end. It is not, however, a through street as there are two breaks in continuity along the route. One of the breaks occurs as West 18th Street approaches the campus of the Colorado Mental Health Institute at Pueblo. The other is a two-block stretch to the west of Chavez-Huerta K-12 Preparatory Academy between Perry Avenue and Sun Mountain Boulevard (formerly Spaulding Avenue). The City Council approved the establishment of Project No. CI2121 and budgeted and appropriated \$1,300,000 to complete the two-block section between Perry Street and Sun Mountain. The agreement that is the subject of this proposed Ordinance codifies the roles and responsibilities of the parties related to the installation of the public improvements to be installed as part of that construction project.

FINANCIAL IMPLICATIONS:

The City Council has already established a project and budgeted and appropriated funds for the work to be performed.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, the City will not be able to proceed with the project under the terms and conditions as currently agreed to between the parties.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. W.18th Street Extension Project Agreement

ORDINANCE NO.

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND PUEBLO DEVELOPMENT COMPANY, LLC, A COLORADO LIMITED LIABILITY COMPANY, RELATED TO THE COMPLETION OF THE WEST 18TH STREET EXTENSION PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Agreement between the City of Pueblo, a Municipal Corporation and Pueblo Development Company, LLC., a Colorado Limited Liability Company, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved

SECTION 2.

The Mayor is authorized to execute and deliver the Agreement in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same

SECTION 3..

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the polices and procedures described therein

SECTION 4.

This Ordinance shall become effective on the date of final action by the Mayor and City Council

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

AGREEMENT WITH RESPECT TO THE EXTENSION
OF WEST 18TH STREET IN THE CHAMBERLIN SUBDIVISION

This Agreement is made and entered into this _____ day of _____, 2022, by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as “City”) and Pueblo Development Company, LLC, a Delaware limited liability company (hereinafter referred to as “PDC”) Together all entities may be referred to herein as the "Parties" or each individually as a "Party".

WHEREAS, PDC desires to have constructed a two-block section of W. 18th Street between Perry Avenue and Spaulding Avenue and related site work which construction would have significant benefit to PDC;

WHEREAS, the construction of said portions of W. 18th Street would also further a public purpose unique and distinct from general developments in the City including but not limited to transportation network connectivity and reduced response times for emergency services on the City’s west side; and

WHEREAS, subject to the terms and conditions herein contained and PDC’s timely and complete performance of its obligations also herein contained, the City is willing to undertake such construction and pay for a portion of the construction.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants, terms, and conditions set forth herein, the Parties agree as follows:

1. **DEFINITIONS.** The following terms as used in this Agreement shall have the following meaning unless the context clearly indicates otherwise:

“Additional Engineering Services” means construction engineering services requested by City which are separate from and in addition to those services necessary to provide approved Plans and Specifications. Such services may include engineering, design, and other professional consulting services required to develop engineered construction drawings and specifications related to the project; preparation of project cost and material quantity estimates; administrative and field data collection; surveying; geotechnical evaluation; subsurface utility engineering; stormwater and drainage calculations and engineered drawings and specifications; wastewater calculations, basis of design, and engineered drawings and specifications; bid evaluation support; contract post-award construction engineering support such as evaluating construction contractor submittals for compliance with plans and specifications; responding to contractor- or City-generated requests for information (commonly referred to as RFI’s); evaluating proposed value engineering design changes; documentation of field changes and preparation of “as-built” drawings, and other related technical support necessary for the efficient and timely execution of the project.

“Awarded Contract” means that construction contract for the Project awarded pursuant and subject to Chapter 10 of Title I of the Pueblo Municipal Code.

“City Contractor” means that contractor who enters a construction contract with the City pursuant to the Awarded Contract.

“Director of Public Works” means the Director of Public Works of City.

“PDC’s Engineer” shall be a professional engineer properly licensed in the State of Colorado contracted by PDC and competent to perform the services herein provided including but not limited to preparation of the Plans and Specification and performance of the Additional Engineering Services.

“Plans and Specifications” means a complete set of engineered construction drawings, specifications, and a breakdown of estimated work and material quantities for all work activities to be performed under the Project.

“Project” means construction of a two-block section of W. 18th Street between Perry Avenue and Spaulding Avenue and related site work approved by City and PDC.

“Public Improvement Scope of Work” means that scope of work necessary for construction of a two-block section of W. 18th Street between Perry Avenue and Spaulding Avenue and required public improvements related to such street improvement to meet compliance with City construction standards, specifications, and design criteria.

2. ROLES AND RESPONSIBILITIES OF PDC

(a) PDC shall timely provide for approval by City the Plans and Specifications. Such Plans and Specifications shall comply with all applicable City construction standards, specifications, and design criteria, the Manual on Uniform Traffic Control Devices (MUTCD), building codes, and any requirements of regulatory agencies having any approval authority. Plans and Specifications shall expressly comply with ADA Accessibility Guidelines (ADAAG) Manual developed by the U. S. Architectural and Transportation Barriers Board (1998) or ADA Standards for Accessible Design published at 28 C.F.R. Part 36, Appendix A, whichever is applicable. All documents shall be signed and stamped by PDC’s Engineer and shall include an attest statement on each record drawing sheet of final plan drawings that certifies compliance with either the ADAAG Manual or 28 C.F.R. Part 36 Standards. No Plans and Specifications shall be approved by the Director of Public Works which do not meet the foregoing requirements, and all Plans and Specifications shall be approved in writing by PDC.

(b) PDC through PDC’s Engineer shall provide Additional Engineering Services as may be requested by City; provided that such Additional Engineering Services are necessary for the Project and the cost of such Additional Engineering Services requested by the City and incurred after the date of this Agreement shall not exceed \$20,000.00.

(c) PDC shall be liable and responsible to the City for the professional quality and technical accuracy of the Plans and Specifications and the Additional Engineering Services including all work performed by PDC’s Engineer irrespective of City’s approval of the Plans and Specifications. PDC shall, through PDC’s Engineer, provide the Director of Public Works with electronic files of drawings in AutoCAD format; provide design drawings and specifications in both Microsoft Word

and Adobe PDF formats, and provide the cost and material quantity estimates in Microsoft Excel format. PDC agrees to pay and the City will have no liability with respect to payment of any costs associated with such services including but not limited to all services performed by PDC's Engineer. PDC agrees to hold harmless, defend and indemnify City from and against any liability to third parties or to any claim if raised by PDC, arising out of negligent acts, errors or omissions in the performance of such services, including the Plans and Specifications and the Additional Engineering Services, and from and against any liability to PDC's Engineer or to third parties arising out of any claim for payment for such services including but not limited to all services performed by PDC's Engineer.

(d) Subject to Section 3(d) of this Agreement, PDC agrees that all costs associated with any element of the Project scope of work and any associated engineering or design work which is beyond the Public Improvement Scope of Work shall be paid by and be an obligation of PDC. Such costs payable by PDC shall include, by way of example only, cost of earthwork and other site improvements on privately-owned parcels (generally referred to as "overlot grading" on roadway cross section plans), installation of utility service connections, installation of driveway and associated curb cuts, and any other work that may be requested by PDC. The Director of Public Works, at his sole and absolute discretion, shall determine whether any element of the Project scope of work is beyond the Public Improvement Scope of Work and shall determine the costs for such work and notify PDC of same. All of such costs shall be paid by PDC and received by City prior to award of any contract for construction of the Project or, as may be subsequently applicable, any amendment or change order approved by City with respect to the contract awarded pursuant to Section 1-10-6, P.M.C., for construction of the Project.

(e) PDC shall pay and no provision of this Agreement shall be relied upon or maintained by PDC as waiving any public utility-related service connection, plant investment, and other established fees and charges at the time and in the manner required by the public utility including but not limited to City utilities such as wastewater and stormwater.

(f) PDC represents and warrants that they have not and will not communicate any procurement-sensitive information to any prospective contractor, subcontractor or supplier who may offer a bid or other proposal with respect to the advertisement for bid for construction of the Project required pursuant to Section 1-10-4, P.M.C. Procurement-sensitive information includes any project drawings and specifications, cost estimates, or other data that may give a prospective bidder an unfair competitive advantage in the procurement process. PDC stipulate acknowledge and agree that violation of this section shall be a basis for disqualification of such bid or proposal. PDC shall be liable to City for all costs associated with any violation of this section including costs of any process with respect to such disqualification. Further, the City may elect to abandon the Project and terminate this Agreement without claim by, remedy or liability to PDC.

3. ROLES AND RESPONSIBILITIES OF THE CITY

(a) City shall have no obligation to undertake construction of the Project including proceeding with any advertisement for bid required pursuant to Section 1-10-4, P.M.C., or awarding any contract pursuant to Section 1-10-6, P.M.C., for construction of the Project, absent

satisfaction and performance of all conditions and condition precedents in this Agreement including but not limited to:

(i) Timely receipt of Plans and Specifications approved by the Director of Public Works and approved in writing by PDC.

(ii) Timely payment and receipt by City of all costs associated with any element of the Project scope of work which is beyond the Public Improvement Scope of Work as calculated by the Public Works Director pursuant to above Section 2(d) and which has been approved by PDC, in its reasonable discretion and accepted by the Public Works Director.

(iii) The costs of the Public Improvement Scope of Work shall not exceed \$1,300,000.

(iv) Dedication and/or rededication by deed of dedication in a form acceptable to City and executed by all owners of that area of land approved by the Director of Public Works as a street right-of-way with respect to the two-block section of W. 18th Street between Perry Avenue and Spaulding Avenue and acceptance of same by City Council of City.

(b) Advertisements for bids with respect to construction of the Project shall comply with Section 1-10-4, P.M.C., and all applicable federal, state, and local regulations and policies. Award of any construction contract for the Project after such bid shall be subject to Section 1-10-6, P.M.C., as defined herein as the Awarded Contract, and shall be entered into by and between the City and the City Contractor only. PDC shall have no authority to direct or perform any work covered by or under the Awarded Contract.

(c) With respect to the Project and the Awarded Contract, City retains exclusive and sole authority over the administration and management of same including but not limited to approval of project scope, budget, schedule, acceptance of installed work, warranty, documentation, and other aspects of the Project and the Awarded Contract, provided, however, to the extent there is any increased cost associated with the Project that is the responsibility of PDC, PDC and the City shall reasonably cooperate to mutually approve any such increased costs and address how such additional costs are paid. In the event that PDC does not agree to pay any costs determined by the Director of Public Works to be the responsibility of PDC, the City may, at its sole discretion, amend the Awarded Contract and proceed with completion of the Public Improvement Scope of Work.

(d) With respect to any amendment or change order to the Awarded Contract approved by City and for which City authorizes any portion of such work to proceed without full receipt of the prior payment of costs as set forth under above Section 2(d), City shall have the unilateral right to modify the Project scope of work to eliminate any elements of work for which any prior payment of costs have not been timely received. Any costs incurred by the City as a result of delays caused by such failure to timely submit the prior payment of costs shall be the responsibility and liability of PDC.

(e) Subject to the terms and conditions herein contained, City agrees to provide reasonable efforts in prosecuting the Project and the Awarded Contract but makes no guarantees about timelines with respect to the Project including but not limited advertisement for bids, contract award, or construction.

4. SPECIFIC ACKNOWLEDGMENT, ASSUMPTION, RELEASE AND INDEMNIFICATION BY PDC

(a) PDC acknowledges that it is the sole owner of the real property adjacent to or upon which the Project shall be constructed. PDC acknowledges that the construction of the Project may result in impacts to its properties ("Impacts"). Impacts may include but are not limited to changes to site drainage characteristics, erosion, settlement, devaluation, and other physical and economic impacts, both anticipated and unforeseen, resulting from necessary site grading, earthwork, revegetation, and other construction activities undertaken to complete the Project. PDC further acknowledges that Impacts may result in the inability to construct structures on all parcels adjacent to the street right-of-way located at W. 18th Street between Perry Avenue and Spaulding Avenue. PDC acknowledges that their property shall be significantly benefited by the Project and absent the covenants set forth in this section 4(a), City would not proceed with the Project. PDC stipulates, acknowledges, and agrees that:

(i) PDC assumes all risk of loss associated with any and all Impacts, and any and all injury, damage, loss (financial or otherwise), or liabilities relating to the Impacts shall be borne by PDC at its sole expense;

(ii) Except for claims based upon bad faith or intentional acts of City, PDC forever releases and waives any and all claims, known and unknown, presently existing or arising in the future, and any suit or action in law or equity against the City and its officers, employees, agents and independent contractors, including City Contractor ("Released Parties"), in any court or tribunal, based on contract, tort, statute, or any other legal theory, any and all injury, damage, loss (financial or otherwise), or liabilities that may arise as a result of the Project or the Impacts; and

(iii) Except for claims permitted by law and based upon bad faith or intentional acts of City, PDC shall not file, pursue or prosecute any suit, action or proceeding, in law or in equity, in any court or tribunal, against the Released Parties, based on contract, tort, statute, or any other legal theory, for any and all injury, damage, loss (financial or otherwise), or liabilities that may arise as a result of the Project or the Impacts;

(iv) PDC shall indemnify, defend and hold harmless the Released Parties against any and all claims arising out of completed work which is beyond the Public Improvement Scope of Work or the Impacts.

5. MISCELLANEOUS.

(a) In the event of any litigation arising under this Agreement, exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado and each Party submits to the personal and subject matter jurisdiction of such District Court. To the extent allowed by law, each Party waives its right to a jury trial.

(b) This Agreement expresses the entire understanding of the Parties and supersedes and abrogates any and all prior dealings and commitments, whether oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended or modified except in writing signed by all Parties. Any waiver of any provision of this Agreement must be in writing and signed by the Party whose rights are being waived. No waiver of any breach of any provision hereof shall be or be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement. The failure of either Party to enforce or seek enforcement of the terms of this Agreement following any breach shall not be construed as a waiver of such breach.

(c) This Agreement shall be construed in accordance with and be governed by the laws of the State of Colorado without regard to conflict of law principles. This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor 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 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 the City which may arise under this Agreement in any fiscal year after 2022, 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 or breach of this Agreement.

(d) Any notices hereunder shall be sufficiently given if given in writing personally or mailed by first class, registered, or certified mail, postage prepaid, addressed as follows:

(i) To the City:

Mayor
1 City Hall Place
Pueblo, CO 81003

with copy to:

City Attorney
1 City Hall Place
Pueblo, CO 81003

and:

Director of Public Works
211 E. D Street
Pueblo, CO 81003

(ii) To Pueblo Development Company:

Pueblo Development Company
295 Seven Farms Drive, Suite 204
Charleston, SC 29492

or to such other person or address as either Party shall specify in written notice given to the other Party as necessary from time to time.

(e) Time is of the essence hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided PDC may not assign this Agreement or any interest herein without the express written consent of the City, which consent may not be unreasonably withheld.

(f) The persons signing this Agreement in the name of and on behalf of PDC represent and warrant that they have the requisite power and authority to enter into, execute, and deliver this Agreement, and that this Agreement is a valid legally binding obligation of PDC enforceable against PDC in accordance with its terms.

(g) If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the other provisions of this Agreement which shall remain in full force and effect.

(h) PDC shall not be, or hold itself out as, agent of, joint venturer with or partner of City under this Agreement.

(i) Each Party acknowledges that this Agreement was fully negotiated by the Parties and, therefore, no provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

(j) The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their successors and permitted assigns, and no third party shall be a beneficiary, or have any rights by virtue of this Agreement.

(k) This Agreement may be executed in any number of counterparts by physical or electronic signatures, and each such counterpart shall be deemed for all purposes to be an original, and all such counterparts shall together constitute but one and the same original.

Executed effective the day and year first above written.



Pueblo Development Company, LLC

(SEAL)

By: Chris Macri, President

The foregoing instrument was acknowledged before me on August 1st, 2022 by
Chris Macri, President, Pueblo Development Company, LLC

My commission expires: 6/8/2031



Notary Public

By: Nicholas Gradisar, Mayor

City Clerk

My commission expires: _____

APPROVED AS TO FORM:

City Attorney

ORDINANCE NO.

AN ORDINANCE APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE COLORADO STATE FAIR AUTHORITY, A SUBDIVISION OF THE STATE OF COLORADO, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The License Agreement for Use of a Facility between the City of Pueblo, a Colorado Municipal Corporation, and the Colorado State Fair Authority, a subdivision of the State of Colorado, a copy of which is attached hereto "Agreement", having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is authorized to execute and deliver the Agreement in the name of the City of Pueblo and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 3.

The officers of the City are authorized to perform any and all acts consistent with this Ordinance to implement the policies and procedures described herein.

SECTION 4.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE APPROVING A LICENSE AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE COLORADO STATE FAIR AUTHORITY, A SUBDIVISION OF THE STATE OF COLORADO, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves a license agreement for the use of facilities at the Colorado State Fairgrounds in support of a community clean up event scheduled to be held on October 29, 2022.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The City of Pueblo will be executing a City-wide clean up event to be held on October 29, 2022, at the Colorado State Fairgrounds for the benefit of City of Pueblo residents. The Colorado State Fair has requested the City enter into a license agreement for use of the facility to host the event. All fees associated with the use of the facility have been waived under the terms of the license agreement.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, the City of Pueblo will not be able to host the cleanup event as planned at the State Fairgrounds.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Clean Up Event Facility Use Agreement (October 2022)

**COLORADO STATE FAIR
LICENSEE AGREEMENT FOR USE OF FACILITY**

This agreement made and entered into this _____ day of _____, 2022 and between the Colorado State Fair Authority, hereinafter known as the FAIR, and

ORGANIZATION / EVENT NAME: CITY OF PUEBLO / PUEBLO TEAM UP TO CLEAN UP
CONTACT: ANDREW HAYES, DIRECTOR OF PUBLIC WORKS
ADDRESS: 211 E. D STREET
CITY: PUEBLO STATE: CO ZIP: 81003
PHONE: 719-553-2267 (office) / 719-252-4874 (cell) EMAIL: ahayes@pueblo.us

hereinafter known as the LICENSEE,
 WHEREAS, the FAIR agrees to rent the LICENSEE, where is, as is, CARNIVAL LOT (known hereinafter as the PREMISES) located on the Colorado State Fairgrounds for the purpose of **COMMUNITY CLEAN UP EVENT** (The "Event").

The Fair grants User the use and occupancy of the Premises for the following RENTAL PERIOD:

Date(s) of Event: SATURDAY, OCTOBER 29, 2022
Time of Event: 8:00 AM TO 3:00 PM
Authorized MOVE IN period: 8:00 AM to 7:00 PM on FRIDAY, OCTOBER 28, 2022
Move-Out Period: BY 5:00 PM MONDAY, OCTOBER 31, 2022.

Authorized Occupancy: Licensee shall have access to the Premises on dates and times listed above only. Authorized occupancy on event day(s) only shall be 07:00 AM to 7:00 PM. The Rental Period shall not be extended for any purpose without the written permission of the Fair's General Manager. User agrees to pay for any additional period of time in excess of the Rental Period.

Now, therefore, in consideration of rental price as follows:

RENTAL FEE: WAIVED - INCLUDES RENTAL PERIOD ABOVE.
DAMAGE DEPOSIT: WAIVED
ADDITIONAL MOVE-IN/MOVE-OUT FEES: WAIVED
SET-UP/CLEAN-UP FEE: WAIVED - CUSTOMER TO PERFORM SET UP & CLEAN UP.

ADJUSTABLE CHARGES: LICENSEE is responsible for setup of tables and chairs unless noted above. Additional tables and chairs may be rented from the FAIR should building capacity allow. Additional equipment fees are \$6.00 per table and \$1.00 per chair. Setup/clean up fees of no less than \$350 per occurrence will be charged if FAIR is required to perform setup and/or cleanup.

SECURITY: Licensee is required to use State Fair Security at a rate of up to \$27.00 per guard per hour and up to \$35.50 per uniformed police officer per hour. Number of security guards and/or uniformed police will be determined by security director and FAIR Management.

FOOD & BEVERAGE: Licensee may use caterer of choice for catered meals inside the facility; however all caterers must be pre-approved by FAIR management. Alcoholic Beverages may be **served** during your event; however, the SALE of alcoholic beverages is prohibited. The SALE of food or beverage is prohibited without approval from the FAIR. All concessions (sale of food or beverage) for events must be coordinate through the FAIR and all concessionaires must enter into a separate contract with the FAIR.

This signed contract is due back to the FAIR in ten (10) days with first payment to hold building. The LICENSEE will notify FAIR fourteen (14) days in advance of event set-up.

The LICENSEE agrees to make payments and final settlement as follows: No payment due with signed contract, all rental fees waived.

An additional \$0.75 and 2.25% service fee will be applied to the transaction amount for all credit card payments.

FAIR will charge and LICENSEE agrees to pay one and one-half percent (1.5%) per month interest on any unpaid balance after settlement date.

TERM OF LICENSEE

The FAIR and LICENSEE hereby agree, to wit (LICENSEE TO READ & INITIAL EACH TERM)

____1) PAYMENT: All base payments, estimated adjustable charges and refundable damage deposit payments are due fourteen days prior to

above stated event. Percentage and additional adjustable charge payments, if applicable, are due and payable immediately following said event. An additional \$0.75 and 2.25% service fee will be applied to the transaction amount for all credit card payments.

____2) AGREEMENT TERMINATION: FAIR reserves the right to terminate this agreement at any time, with cause upon giving written notice thereof.

____3) DATE RESERVATIONS AND CANCELLATIONS: FAIR will not guarantee availability of buildings/facilities nor hold date for those who have not submitted a non-refundable down payment. This non-refundable down payment shall be applied to payment due for rental of buildings/facilities if the event is held. Should LICENSEE cancel scheduled event at any time, a payment of \$ N/A shall be forfeited as an office charge.

____4) CURFEW: ALL events are to be concluded and buildings/facilities cleared per the Authorized Rental/Occupancy period above. OUTDOOR events are subject to curfew times established at the option and discretion of FAIR prior to each individual event. Security will be required for all events concluding after 9:00PM.

____5) PARKING: LICENSEE understands and agrees that parking on the fairgrounds is shared with other licensees and no exclusive rights are granted. FAIR reserves the right to restrict or designate parking and/or traffic patterns on the fairgrounds for the safety of patrons. The FAIR reserves the right to charge for parking at their discretion. The FAIR shall retain all parking revenue.

____6) SECURITY: LICENSEE agrees to pay for adequate security officers as directed by FAIR Manager and Security Director at above stated event.

____7) ALCOHOLIC BEVERAGES: Any use of alcoholic beverages on the Colorado State Fairgrounds is subject to FAIR approval and notification to State of Colorado, Department of Revenue, and Liquor Enforcement. The SALE of alcoholic beverages is prohibited without a valid liquor license and Food/Beverage contract with the FAIR.

____8) RESTROOM FACILITIES: Restroom facilities and supplies will be made available to LICENSEE by FAIR. LICENSEE, if required, will furnish restroom attendants.

____9) INSTALLATIONS/DECORATIONS: LICENSEE is hereby granted permission to install at LICENSEE'S expense such items as displays, exhibits, decorations, etc, but will not be permitted to move or change any permanent fixtures attached to and a part of the building/facility, or to nail or tack any materials to the walls or ceilings of said buildings/facilities. LICENSEE further agrees to refrain from marring or defacing said building/facilities in any form whatsoever, and return premises in same condition as when received, ordinary wear and tear accepted. LICENSEE also agrees not to put tape on floors (painters tape or electrical tape may be used but must be removed after event). USE OF GLITTER, CONFETTI AND FOG MACHINES IS STRICTLY PROHIBITED; use of these items will result in forfeiture of damage deposit and/or additional fees.

____10) REMOVAL OF EXHIBITS: LICENSEE agrees to pay FAIR (at current storage rate) for any material or merchandise left in buildings or on the premises after Authorized Rental/Occupancy period. FAIR shall not be responsible for loss or damage to any merchandise or materials left on premises after event. LICENSEE also agrees to remove all signs, banners, and any other promotional material or advertisements immediately upon completion of the event. Should the FAIR have to remove any of the above stated materials, the damage deposit will be retained as a clean-up/storage fee.

____11) CLEANING: LICENSEE agrees to remove LICENSEE'S exhibits, displays, decorations, and all garbage, debris, etc., no later than midnight. LICENSEE further agrees to return premises in same condition as when received, ordinary wear and tear accepted. All garbage must be removed from building and deposited in appropriate collection containers. FAIR agrees to remove all refuse and recycling from outside collection containers. Should LICENSEE fail to remove garbage, displays or decorations and fail to leave the building in an acceptably clean state, the damage deposit will be retained by the FAIR as a clean-up fee and additional charges may apply.

____12) ELECTRICAL POWER: Building/Facilities are rented where is, as is, with normal amount of electrical power, equipment, appliances, etc. Adnormal usage of power shall be paid by LICENSEE. No cutting into electrical lines is permitted. LICENSEE agrees to request any special electrical requirements for said event not later than two (2) weeks in advance of said event. The FAIR will be sole judge of determining the availability and/or overload of electrical services and shall exercise the right to control the same.

____13) LIABILITY: To the extent permitted by law, the LICENSEE hereby agrees to indemnify, save, defend and hold harmless the Colorado State Fair Authority, its officers, agents, servants and employees from any and all claims, causes of action, and suits accruing or resulting from damage, injury or loss to any person or persons or personal property, including all persons to whom the LICENSEE may be liable under any workmen's compensation laws, and the LICENSEE himself, and from any loss, damage, cause of action, claims, or suits for damage, including but not limited to loss of property, goods, wares, merchandise, or livestock, caused by, arising out of, or in any way connected with the exercise LICENSEE'S privileges herein.

____14) INSURANCE: LICENSEE understands and agrees LICENSEE shall assume all responsibilities for the acts and actions of LICENSEE'S guests or attendees and/or any and all damages which may be caused by LICENSEE'S guests or attendees as a result of this license for the use of fairground facilities. It is understood that FAIR, at its option, may require LICENSEE to provide proof of public liability insurance in amounts and coverage required by FAIR.

____15) GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

____16) INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF PUEBLO, THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AND THE COLORADO STATE UNIVERSITY TO MONITOR FOR SARS-COV-2 AND OTHER PATHOGENS OF CONCERN AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves a memorandum of understanding to provide wastewater influent samples to develop a statewide surveillance system of SARS-CoV-2 RNA and other pathogens of concern in the wastewater though funding the Colorado Department of Pueblo Health and Environment has received.

PREVIOUS COUNCIL ACTION:

Ordinance No. 9765 approved the memorandum of understanding to sample SARS-CoV-2 RNA from the incoming wastewater at the James R. Dilorio for SARS-CoV-2, on August 13, 2020.

BACKGROUND:

The wastewater entering the James R. Dilorio Water Reclamation Facility along with 18 other facilities across the state will be analyzed two times per week for 52 weeks to develop a surveillance system to provide early warning for state and local health authorities of significant changes in fecal shedding of SARS-CoV RNA, the etiological agent of COVID 19. The wastewater will also be evaluated for pathogens or target of public health concern. This testing will be performed by Colorado State University to obtain comparable data to determine trends to indicate the rate of infection and potentially identify hot spots statewide. Initial studies have shown good correlation with outbreaks.

FINANCIAL IMPLICATIONS:

The only cost will be to collect the samples and ship them to the lab to perform the analysis. This will be paid from sewer user fees.

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

The no-action alternative would not provide the infection rate information that might help the local health officials make good decisions.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 10-11-22 Sampling MOU

ORDINANCE NO.

AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF PUEBLO, THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AND THE COLORADO STATE UNIVERSITY TO MONITOR FOR SARS-COV-2 AND OTHER PATHOGENS OF CONCERN AND AUTHORIZING THE MAYOR TO EXECUTE SAME

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Memorandum of Understanding between the City of Pueblo, the Colorado Department of Public Health and Environment, and the Colorado State University attached hereto, having been approved as to form by the City Attorney, is hereby approved. The Mayor is authorized to execute said Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement which are necessary or desirable to implement the transactions described therein.

SECTION 3.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

Colorado Wastewater Monitoring Program

Memorandum of Understanding

September 2022

Section 1: Background

The Colorado Department of Public Health and Environment (CDPHE) is continuing to partner with Colorado State University and Colorado Wastewater Utilities to monitor for SARS-CoV-2 and other pathogens of concern in wastewater influent at wastewater utilities across the state. The goal of wastewater monitoring is to provide data that can be used by local public health agencies to understand the presence and/or trends of disease in their communities for public health action. Public health action may include community messaging about the pathogen detected, the importance of handwashing, encouragement to receive vaccines, and other resources providing more information about disease control for a specific pathogen.

Section 2: Purpose

The purpose of this Memorandum of Understanding is to set forth the terms and conditions, scope of work, and responsibilities of the parties associated with their collaboration on wastewater surveillance. The effort is scalable and may be expanded through future agreements.

Section 3: MOU Parties

The following entities are parties to this MOU, individually referred to as Wastewater Utilities, Universities, and Regulatory Agencies.

Participating Parties	
Regulatory Agencies:	Colorado Department of Public Health and Environment
Universities:	Colorado State University
Wastewater Utility:	City of Pueblo

Section 4 Responsibilities

The following is a description of the responsibilities of the MOU parties.

Colorado Department of Public Health and Environment

- Work with the Wastewater Utility to collect data necessary for interpretation of results. This may include wastewater collection catchment boundaries to allow for correlation with clinical case data for that area, flow rates, or other data as is requested by the CDC.
- Update, maintain, and enhance the CDPHE internal wastewater dashboard for participants of the program to view their data before it is published to the public dashboard.
 - For SARS-CoV-2 (the virus that causes COVID-19), data will include RNA viral concentration (reported as copies/L), case counts, and variant data by sewershed.
 - Other pathogens or targets of public health concern may be tested in wastewater samples and shared on the public dashboard.
- Update and maintain the public dashboard on the CDPHE website.
- Coordinate with CDC's National Wastewater Surveillance System (NWSS) to better understand the extent of disease in communities across the US.
- Quantify pathogen or other target concentrations from wastewater influent samples using reverse transcription digital droplet PCR, when possible.
- Test wastewater influent samples from all participating utilities for mutations indicative of SARS-CoV-2 variants of

concern.

- Establish trend classifications and alert local public health agency partners to trends in their area.
 - Provide technical assistance to local public health agencies to interpret the data.
- Recruit and onboard additional utilities to participate in the wastewater monitoring program.
- Provide a courier service to wastewater utilities to pick up samples and transport them to the CDPHE or CSU lab.
- Notify utilities and local public health partners when CDPHE begins testing for a new pathogen of concern.

Colorado State University

- Extract SARS-CoV-2 RNA from wastewater influent samples from participating samples who elect to send samples to CSU.
- Quantify SARS-CoV-2 RNA concentration from wastewater influent samples (from participating utilities who elect to send samples to CSU) using reverse transcription digital droplet PCR.
- Data will be reported to the WWTP and CDPHE as viral copies per liter.
- Will report results to CDPHE from each testing run within 3 days of sample receipt.
-

Participating Wastewater Facilities

- Follow sampling methods as outlined in the 'SOP for Transportation of Samples to CSU Molecular Quantification Core'.
- Sample wastewater influent at regular intervals that may be pathogen or target specific to ensure data consistency, at a minimum of twice per week.
- Sampling will be conducted through July 31, 2023.
- Samples will be left for the CDPHE courier at the designated pick-up spot and time to be transported to the selected lab for testing.
- Furnish GIS layer of the catchment area to CDPHE for interpretation of data on the dashboard.
- Provide CDPHE with information necessary for the interpretation of results. This may include flow rates or other data as is requested by the CDC.

Section 5: Special Provisions

Nonbinding Agreement

The parties agree that this MOU is to memorialize the intent of the parties regarding the program but does not create a legal agreement between the parties. It is agreed by the parties that nothing in this MOU will be deemed or construed as creating a joint venture, trust, partnership, or any other legal relationship among the parties. This MOU is for the benefit of the parties and does not create third-party rights.

Communications

Any communications affecting the operations covered by this agreement given by CDPHE, Colorado State University, or the Wastewater Utility is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

- To CDPHE or Colorado State University at the address specified in the MOU.
- To Wastewater Utilities, at the party's address shown in the MOU or such other address designated within the MOU.
- All communications with the media will be coordinated with CDPHE prior to the issuance of press releases and interviews.

Access to records and data flow

- Nothing in the agreement shall be deemed to waive or modify any public access or provision of the Colorado Open Records Act.
- All data relating to the project will be provided to CDPHE including, but not limited to, sample locations, frequencies, collection methods, analysis methods, results, and any analysis statistics.
- Laboratory results will also be made available to the wastewater entity that generated the samples.
- All data will be analyzed by CDPHE and provided to the wastewater utilities and local public health agencies concurrently via the CDPHE internal dashboard. If deemed appropriate to share on the public dashboard by CDPHE, data will be published to the public dashboard 24 hours after being available on the CDPHE internal dashboard.
- CDPHE will share the results of wastewater testing with the Centers for Disease Control and Prevention (CDC). This includes the CDC's National Wastewater Surveillance System, which houses a secure dashboard only accessible by public health departments.
- All abstracts, presentations, and publications that include data from this project must be reviewed by CDPHE staff prior to presentation or publication.

Effective date

This agreement shall become effective on the date of execution by the last signatory party. It may be amended or extended upon the mutual agreement of the MOU Parties. The MOU may be terminated by any party after thirty (30) days advance written notice. The MOU will expire on July 31, 2023, unless extended in writing by the parties.

Section 6: Approvals

The following pages include the approval of this MOU by the MOU Parties.

Nick Gradisar, Mayor
City of Puebl



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Scott Hobson, Acting Director Planning and Community Development

SUBJECT: AN ORDINANCE APPROVING A COOPERATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY, A BODY POLITIC AND CORPORATE ESTABLISHED PURSUANT TO C.R.S. 29-1-203 FOR THE PAYMENT OF PROFESSIONAL SERVICES RELATED TO THE SUBDIVISION OF CITY-OWNED PROPERTY FOR THE HISTORIC ARKANSAS RIVERWALK EXTENSION AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves a Cooperation Agreement between the City of Pueblo ("City") and the Historic Arkansas Riverwalk of Pueblo Authority ("Authority") for completion of the required re-subdivision, alley vacation, and rezoning of the city-owned properties that will be utilized for the extension of the Arkansas Riverwalk Channel and other associated improvements.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This Ordinance approves a Cooperation Agreement between the Authority and the City to jointly fund the cost of the re-subdivision, alley vacation, and rezoning of the city-owned properties that will be utilized for the extension of the Arkansas Riverwalk Channel and other associated improvements. The property is comprised of areas within three separate subdivisions containing public streets and alleys that need to be re-subdivide into a new subdivision. A legal description and exhibit from the new subdivision will be used for the Ordinance to rezone the property. The Authority engaged in a competitive bid process to hire a company to complete these tasks and has selected Edward James Surveying at a price of \$22,800. This Ordinance will authorize the payment \$12,600 from the Planning and Community Development Department's professional services account to the Authority.

FINANCIAL IMPLICATIONS:

City, upon approval of the Ordinance and receipt of an invoice from the Authority, will disperse \$12,600.00 in funds from the Planning and Community Development Professional Services Account, 101-11-1110-10-53001 to the Authority to assist in the payment of the \$22,800 contract. The Authority will be approving an agreement with Edward James Surveying to complete the required re-subdivision, alley vacation, and rezoning of the city-owned properties.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

If City Council does not approve this Ordinance, the re-subdivision, alley vacation, and rezoning of the city-owned properties will be delayed until sufficient funds are authorized which, will delay the progress of the HARP Channel Expansion Project.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. EXHIBIT A

ORDINANCE NO.

AN ORDINANCE APPROVING A COOPERATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE HISTORIC ARKANSAS RIVERWALK OF PUEBLO AUTHORITY, A BODY POLITIC AND CORPORATE ESTABLISHED PURSUANT TO C.R.S. 29-1-203 FOR THE PAYMENT OF PROFESSIONAL SERVICES RELATED TO THE SUBDIVISION OF CITY-OWNED PROPERTY FOR THE HISTORIC ARKANSAS RIVERWALK EXTENSION AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, the City and Historic Arkansas Riverwalk Authority are desirous of setting forth their mutual understanding relating to the completion of the required re-subdivision, alley vacation, and rezoning of the city-owned properties that will be utilized for the extension of the Arkansas Riverwalk Channel and other associated improvements; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Cooperation Agreement between the City of Pueblo, a Municipal Corporation ("City") and the Historic Arkansas Riverwalk of Pueblo Authority, a body politic and corporate established pursuant to C.R.S. 29-1-203 ("Authority") to pay for professional services required for the re-subdivision, alley vacation, and rezoning of the city-owned properties that will be utilized for the extension of the Arkansas Riverwalk Channel and other associated improvements, a copy of which is attached and incorporated herein, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement on behalf of Pueblo, a Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest to the same.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of the Ordinance to implement the policies and procedures described herein.

SECTION 4.

This Ordinance shall become effective immediately upon final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk



July 26, 2022

Pueblo Riverwalk
125 Riverwalk Place
Pueblo, CO 81003

ATTN: Daisy Jensen

RE: Proposal for Professional Survey services for a Re-Subdivision,
Street and Alley Vacation, and Rezoning for parcels shown in the
attached exhibit.

Dear Ms. Jensen:

Edward-James Surveying, Inc. greatly appreciates the opportunity to submit this proposal for professional surveying services on the above referenced project. We will base our scope of services upon the information provided by you. Please review the following Scope of Services. If you have any questions, please call me at 719-545-6240.

Scope of Services

Parcel Descriptions

Pueblo County Parcel 536425003, 536426004, 536426005, Richmond Avenue and Mechanic Street adjacent to said parcels, and the alley between Richmond Avenue and Alan Hamel Avenue.

Boundary and Design Survey

EJSI will perform a boundary and design survey for the parcels described above. This survey will consist of the following:

- Locate existing boundary corners for the above-described parcel.
- Set missing boundary corners as part of the final subdivision plat. (Found and/or set boundary corners will be described on the Subdivision Plat).
- Prepare a design survey for the above-described parcel extending east to the centerline of Santa Fe Avenue; and extending north, south, and west to the opposite side of the adjacent streets. This survey will include the location of all visible features such as paved surfaces and type, fencing, structures, utility structures, manholes, trees, etc. All elevations and the 1' contours generated will be based on same benchmark used by the engineer for the Riverwalk expansion project. EJSI will contract with a utility locate contractor to have **the utility locates marked prior to us beginning our survey. An additional budget fee of \$2,000.00 has been added for said locates.** We will locate all visible utilities as marked on the

ground by the utility locator. The design survey will be processed in Civil 3D and provided to you for your engineer's use.

Subdivision Plat and Supplemental Map

EJSI will prepare a Subdivision Plat and Supplemental Map of the parcels described above and per the Subdivision Review Checklist – Part 1. EJSI will only provide the Subdivision Plat and Supplemental Map as described on the Subdivision Submittal Checklist – Part 1. All other items in this list will be provided by you or your engineer.

Street and Alley Vacation

EJSI will prepare a Plat vacating the streets and alley shown in the attached exhibit. This survey will consist of the following:

- Prepare an Easement Vacation Plat and describe any necessary reservations.
- Provide a copy of the plat describing the streets and alley to be vacated.

Rezoning Exhibit

EJSI will prepare a Rezoning Exhibit indicating the area to be rezoned and prepare a legal description for the area to be rezoned. EJSI will work with you to complete forms and gather documents required for the submittal.

Coordination, Review, City Comments, Final Document Preparation

EJSI does will work with you and the engineer to prepare the applications or coordinate with other consultants to insure their items are being prepared in a timely fashion. We will have a Licensed Surveyor available for project meetings, public hearings, coordination, and review of the project documents. EJSI has budgeted for addressing one set of City comments and final preparation of mylar documents for recording.

Total cost of above-described services	\$22,800.00
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***This price does not include the following items.**

Said items to be provided by you or your engineer:

- Statement of Authority
- Plans for Fire Department Approval
- Traffic Study or waiver
- Preliminary Drainage Report
- Current Title Commitment
- Tax Certificate
- Certificate of Notice for Mineral Estate
- Address overhead electric lines if required
- Spreadsheet of street design standards
- Application and Recording Fees

We consider the above proposal to be a firm price based upon the information we have been able to obtain from you at this time. If any changes are made at a

later date, an agreement will be reached between us as to the additional services involved, for which you will be charged at our then prevailing rates. This proposal is void if not executed within 90 days of the date of submittal.

Limitation of Liability: In recognition of the relative risks and benefits of the project to both the Client and Edward-James Surveying, Inc., the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Edward-James Surveying, Inc. and subconsultants to the Client, and to all construction contractors and subcontractors on the project, for any and all claims, losses, costs, damages of any nature whatsoever or claims, expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of Edward-James Surveying, Inc. and their subconsultants to all those named shall not exceed \$50,000 or Edward-James Surveying, Inc.'s total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

It is not the intention of any party to this agreement that payment to Edward-James Surveying, Inc. be delayed past invoice due dates or job completion by Edward-James Surveying, Inc.. Payment under this agreement is not contingent upon: 1) the sub-contractor being reimbursed by any third party; 2) upon his obtaining financing; or 3) completion of the overall project contemplated after the completion by Edward-James Surveying, Inc. of its work. No contingency exercising or delaying payment to Edward-James Surveying, Inc. will apply to this project unless specifically set forth in writing.

You will be billed on or before the 25th of each month for work performed during the preceding month and payment will be expected within twenty (20) days. On past due amounts, 1.75% per month will be charged. If the account is not paid within sixty (60) days of the invoice date, Edward-James Surveying, Inc. will cease work on the project and will commence exercising their legal remedies including, but not limited to, mechanics' lien rights under Section 38-22-101 et seq of 1973 C.R.S. (as amended). It is a company policy that mechanics' liens be filed on completed work that is unpaid for a period of 75 days. On any past due charges requiring the services of an attorney for collection, you also, by signing below agree to pay reasonable attorney fees. This is a general policy, and not a reflection upon you as a valued client; it is necessary to ensure adequate cash flow, which in turn allows reasonable fees for our services.

If you accept this proposal, please sign one copy and return it to us for our file. Thank you again for the opportunity to be of service. We look forward to working with you and hope to hear from you soon. If you have any questions, please do not hesitate to contact me directly.

Respectfully submitted,

Edward-James Surveying, Inc.

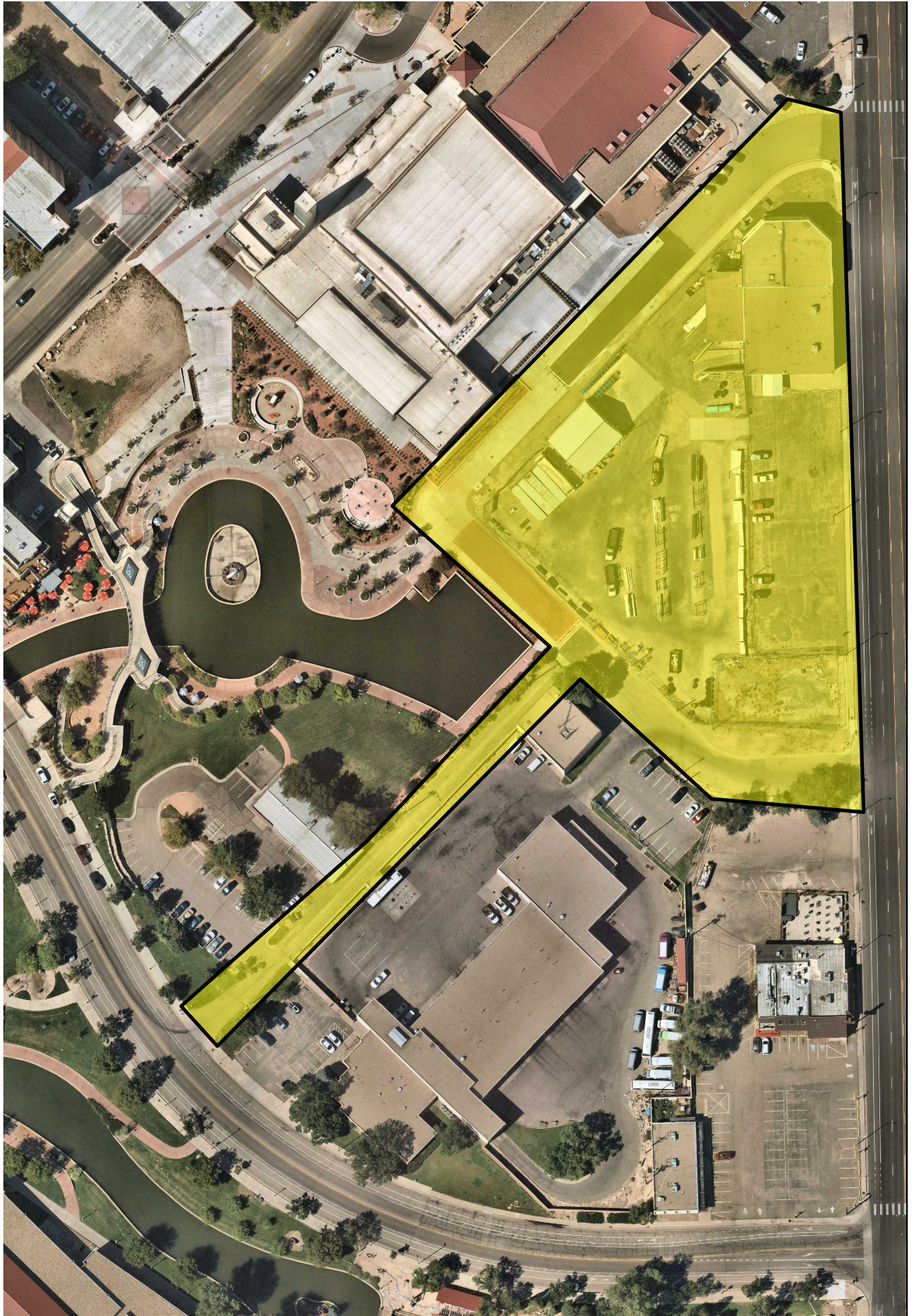
ACCEPTED BY:



Edward R. Fisher, PLS
President

Date _____

22129.doc





Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Marisa Pacheco, Director Human Resources
Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE AMENDING THE FISCAL YEAR 2022 STAFFING ORDINANCE BY ADDING ONE (1) FULL-TIME POSITION ENTITLED TRASH REMOVAL COORDINATOR TO THE AUTHORIZED STAFFING OF THE PARKS AND RECREATION DEPARTMENT

SUMMARY:

The Mayor requests that one full-time position be added on a temporary basis in support of the neighborhood clean up projects in Qualified Census Tracts ("QCT"s) of the city as funded through the American Rescue Plan Act and U. S. Treasuring Final Rule 31 CFR 35.6. This position will be responsible to coordinate the projects and supervise the clean-up crew members hired on a part-time, temporary basis to clean up designated areas.

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021, until December 31, 2024 (to be expended by December 31, 2026).

BACKGROUND:

The City of Pueblo desires to build a strong, healthy community by removing trash, garbage and debris from neighborhoods located in QCTs in the city. The Trash Removal Coordinator will be a classified, full-time, benefited position within the Pueblo Association of Government Employees bargaining unit and subject to Civil Service rules related to hiring and selection.

The new position of Trash Removal Coordinator will coordinate efforts associated with the neighborhood cleanup projects and related events to include budget and resource monitoring. This position will work with a great deal of independent authority and must

demonstrate substantial resourcefulness in the development and execution of creative solutions with respect to operational issues in the field. The neighborhood cleanup projects will require the hire of part-time, temporary staff members to accomplish the objectives of the various projects. The full -time Trash Removal Coordinator will be responsible for efficient staff and resource deployment and will supervise the part-time cleanup crew members performing the assigned work at designated worksites throughout the community.

FINANCIAL IMPLICATIONS:

The anticipated cost of hiring one (1) full-time Trash Removal Coordinator to include salary and benefits is approximately \$80,655.18 on an annual basis. Funding for this position will be paid out of Project CI2113 – American Rescue Plan.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

The Pueblo Association of Government Employees president was briefed on this new position and the City's intent for it to be a full-time position within the bargaining unit for the duration of the ARPA funding associated with such position.

ALTERNATIVES:

City Council could decide not to authorize the creation of this new full-time staff resource in support of the neighborhood cleanup projects.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING THE FISCAL YEAR 2022 STAFFING ORDINANCE BY ADDING ONE (1) FULL-TIME POSITION ENTITLED TRASH REMOVAL COORDINATOR TO THE AUTHORIZED STAFFING OF THE PARKS AND RECREATION DEPARTMENT

WHEREAS, it is necessary to revise the position for the ultimate efficiency and functionality for the neighborhood cleanup projects; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The following sections captioned "Parks & Recreation" of Ordinance No. 10085, being the 2022 Staffing Ordinance, is amended as follows:

<u>Parks & Recreation</u>	
Director of Parks	1
Assistant Director of Parks and Recreation	1
Parks Manager	1
Parks Supervisor	1
Ice Arena Manager	1
Parks Maintenance Mechanic	4
Recreation Supervisor	1
Gardener	1
Parks Senior Mechanic / Welder	1
Park Caretaker II	2
Park Caretaker II-Playground Inspector	1
Park Caretaker II - Irrigation	5
Parks Area Crew Leader	2
Park Ranger	1
Program Coordinator – Aquatics	1
Program Coordinator – Forestry	1
Program Coordinator – Horticulture	1
Program Coordinator – Marketing	1
Program Coordinator - Ice Arena	1
Program Coordinator – Park Ranger	1
Administrative Technician	1
Utility Worker / Park Caretaker I	11
Equipment Operator IV	1
Office Assistant/Parks & Rec Tech	1
Senior Office Assistant	1
<u>Trash Removal Coordinator</u>	<u>1</u>
Total	[44] 45

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance to implement and transactions described therein.

SECTION 3.

This Ordinance shall be deemed to amend the Fiscal Year 2022 Budget and staffing with respect to the number and allocation of positions within the Parks and Recreation Department and shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Marisa Pacheco, Director Human Resources
Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5 OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2022 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR TRASH REMOVAL COORDINATOR

SUMMARY:

Attached for consideration is an amended Pay Plan Ordinance that reflects the addition of the pay rate and salary schedule for the classification of Trash Removal Coordinator.

PREVIOUS COUNCIL ACTION:

On December 28, 2021, Ordinance No.10092 was approved by City Council. This Ordinance provided the classification and pay plan for fiscal year 2022.

BACKGROUND:

The City of Pueblo desires to support efforts to support neighborhood cleanup projects with the goal of building a strong, healthy community through the removal of trash, garbage and debris from neighborhoods located in Qualified Census Tracts of the city. This position will oversee operational program objectives and deploy and supervise part-time temporary staff assigned to perform the cleanup work.

FINANCIAL IMPLICATIONS:

Funding for this position will be paid out of Project CI2113 – American Rescue Plan.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

The suggested change establishes the 2022 salary range for the classification of Trash Removal Coordinator. If this Ordinance is not approved, and assuming the Trash Removal Coordinator position is approved, no salary range will be associated with the classification and the position cannot be filled.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 6-5-16 OF CHAPTER 5 OF TITLE VI OF THE PUEBLO MUNICIPAL CODE RELATING TO THE FY 2022 CLASSIFICATION AND PAY PLAN BY ESTABLISHING THE PAY SCALE FOR TRASH REMOVAL COORDINATOR

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

Section 6-5-16 (A) of Chapter 5, of Title VI, of the Pueblo Municipal Code referencing the Fiscal Year 2022 pay scale for the classification of Trash Removal Coordinator is established and enacted as follows:

6-5-16. Schedule, classification, work week and monthly salary.

The following shall constitute:

- A. The monthly pay range for the appointed classification of Trash Removal Coordinator 2022

<i>CLASS TITLE</i>	<i>Entrance</i>	<i>Step 2</i>	<i>Step 3</i>	<i>Step 4</i>	<i>Step 5</i>	<i>Step 6</i>	<i>Step 7</i>	<i>Step 8</i>	<i>Step 9</i>	<i>Step 10</i>
(A) GENERAL SERVICE										
<u>Trash Removal Coordinator</u>	<u>4206.56</u>	<u>4314.95</u>	<u>4533.05</u>	<u>4752.46</u>	<u>4859.56</u>	<u>4914.43</u>	<u>4983.62</u>	<u>5050.26</u>	<u>5118.17</u>	<u>5287.02</u>

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance to implement and transactions described therein.

SECTION 3.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Chief of Police

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A U.S. DEPARTMENT OF JUSTICE 2022 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE (2022 JAG) GRANT, AWARD NO. 15PBJA-22-GG-02214-JAGX, AND APPLICABLE CONDITIONS PERTAINING THERETO, ESTABLISHING PROJECT NUMBER PS2213, BUDGETING AND APPROPRIATING FUNDS NOT TO EXCEED \$101,117, AUTHORIZING THE MAYOR TO EXECUTE SAME AND RELATED CERTIFICATIONS, ASSURANCES AND OTHER DOCUMENTS, APPROVING AND RATIFYING THE JULY 26, 2022 MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME AND RATIFYING HIS SIGNATURE THERETO

SUMMARY:

Attached is Award No. 15PBJA-22-GG-02214-JAGX. It includes pages 1-19 which are the award's Special Conditions.

PREVIOUS COUNCIL ACTION:

The FY2022 JAG Local Solicitation is an annual formula grant that has been in existence for the past fifteen (18) years. The City and County of Pueblo have received \$2,230,297.00 in JAG Local Solicitation funds since its inception, including this award. On July 26, 2022 Council approved Resolution No. 14961 authorizing the application for the award and approving the required MOU with Pueblo County.

BACKGROUND:

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program provides funds to units of local government for the purpose of improving law enforcement technology and upgrading necessary equipment. The program is designed to help local communities address problems specific to their area.

The City's share will be used to fund seven (7) Police Department equipment

projects, including desktop, laptop, and other computer-related equipment for the entire Department, remote area lighting to assist with crime scene processing, and other law enforcement enhancing equipment projects as determined by the Chief of Police. See attachment for detailed list of proposed equipment. Mr. Gradisar will need to sign the award document and initial the lower right corner of each page of the Special Conditions.

FINANCIAL IMPLICATIONS:

This grant funding represents \$101,117.00 to the City and County of Pueblo with no required match. The City's share of the \$101,117.00 is \$76,849.00 and the remaining amount is paid to the County. The City is responsible for administering the drawdown of the grant. The County provides the City with quarterly reports which are monitored by the Police Department.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

City and County law enforcement leaders have met and agreed to the distribution terms of this annual formula grant since its inception in 2005. A signed MOU between the City and County is a requirement for acceptance of the award. City Council, and all other related stakeholders, signed the MOU in conjunction with approved Resolution No. 14961. Additionally, a public meeting, to receive public comments on the expenditures, is a requirement of the award. That public meeting occurred on July 26, 2022. The City and County Attorney Offices, as well as the City Finance Department, have reviewed and approved the attached award documents including the Special Conditions.

ALTERNATIVES:

The FY2022 JAG Local Solicitation is an annual formula grant that has been in existence for the past fifteen (18) years. The City and County of Pueblo have received \$2,230,297.00 in JAG funds since its inception, including this award. In order to receive the funds, the City and County of Pueblo must sign the award document and initial each page of the Special Conditions in the lower right-hand corner.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 2022 JAG Itemization of Projects Sept 29-2022
2. Award Letter
3. Award Information
4. Conditions
5. 2022 MOU Signed
6. 2022 Application Resolution 14961 signed

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A U.S. DEPARTMENT OF JUSTICE 2022 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE (2022 JAG) GRANT, AWARD NO. 15PBJA-22-GG-02214-JAGX, AND APPLICABLE CONDITIONS PERTAINING THERETO, ESTABLISHING PROJECT NUMBER PS2213, BUDGETING AND APPROPRIATING FUNDS NOT TO EXCEED \$101,117, AUTHORIZING THE MAYOR TO EXECUTE SAME AND RELATED CERTIFICATIONS, ASSURANCES AND OTHER DOCUMENTS, APPROVING AND RATIFYING THE JULY 26, 2022 MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME AND RATIFYING HIS SIGNATURE THERETO

WHEREAS, the City Council of Pueblo has the authority on behalf of the City of Pueblo, including its Police Department, to accept grants from the federal government for public and municipal purposes and to enter into agreements relating thereto; and

WHEREAS, the United States Department of Justice ("DOJ") has tendered a Justice Assistance Grant Award No. 15PBJA-22-GG-02214-JAGX (the "Award") in the amount of \$101,117.00 upon conditions recited therein or incorporated therein by reference; and

WHEREAS, acceptance of the Award for the purposes for which it has been made is in the best interest of the City and will benefit the health, welfare and safety of the citizens of the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Awarding of Grant No. 15PBJA-22-GG-02214-JAGX to the City of Pueblo, a true copy of which is attached hereto, is hereby approved and accepted in accordance with its terms and conditions.

SECTION 2.

The Mayor of the City is authorized to execute the Grant Award acceptance in the name of and on behalf of the City, and the Mayor is authorized to execute any and all other certifications, assurances and other documents associated therewith.

SECTION 3.

Project Number PS2213 (2022 JAG) is hereby established, and the amount of \$101,117.00 is budgeted and appropriated therefore.

SECTION 4.

The Grant Award Funds shall be deposited in an interest bearing trust fund account that is specifically designated for the Justice Assistance Grants Program ("Program"). The funds in the account, including interest thereon, shall only be expended and used for the Program, and shall be so obligated and expended by September 30, 2026, provided, however, that none of the funds shall be spent or obligated until all applicable conditions precedent for expenditure of Grant Funds have been satisfied, as set forth in the Grant's Special Conditions.

SECTION 5.

The July 26, 2022 Memorandum of Understanding ("MOU"), by and between the City of Pueblo, a Municipal Corporation, and Pueblo County, Colorado concerning the receipt and disbursement of the 2022 JAG funds, a copy of which is attached hereto and incorporated herein, having been approved as to form by the City Attorney, is hereby approved and ratified. The Mayor is hereby authorized to execute said MOU on behalf of the City and his prior signature to same is hereby ratified.

SECTION 6.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance and the attached award to implement the policies and procedures described herein.

SECTION 7.

The Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

**FY2022 Justice Assistance Grant (JAG) Local Solicitation
Projects & Programs**

Grant # 2022 JAG Project # PS2213

Disparate Certification

A disparate allocation occurs when a city or municipality is scheduled to receive one and one-half times (150 percent) more than a county with concurrent jurisdiction, while that county bears more than 50 percent of the costs associated with prosecution or incarceration of the municipality's Part 1 violent crime. Multiple disparate allocations occur when multiple cities or municipalities are collectively eligible to receive four times (400 percent) more than the county.

JAG disparate jurisdictions are certified by the Director of the Bureau of Justice Assistance (BJA), based in part on input from the state's Attorney General. For a listing of disparate jurisdictions, go to www.ojp.usdoj.gov/BJA/recoveryJAG/recoveryallocations.html.

Proj #	Name of Project	Agency	Amount	Description
1	Desktop/Laptop and Related Computer Replacement Project	PPD Services	\$50,159	This project proposes to purchase technical computer equipment for law enforcement and public safety use including desk top computers (towers, monitors, keyboards, etc), laptop computers, and other related computer componets such as mobile printers, and applicable and related software.
2	Remote area lighting (portable)	PPD CAProp	\$3,410	This project proposes to purchase two (2) 9490 Remote Area Lights and four (4) back-up batteries. These lights will be used by Property Crimes for processing crime scenes, especially remote ones without power.
3	D2M Cable Package	PPD Traffic	\$12,000	This project proposes to purchase a Bosch crash data recorder cable package which will enable the Traffic section to better analyze fatal/SBI traffic accidents
4	Wireless microphone/headsets	PPD SID	\$2,775	This project proposes to purchase 15 Air Pro wireless combo kits for wireless earbuds to be used by SID during surveillance.
5	Bluetooth wireless headsets for Crisis Negotiation Team	PPD CNT	\$1,600	This project proposes to purchase 8 Bluetooth wireless headsets for use by the Crisis Negotiation Team allowing for hands free communication with suspects.
6	Grappling mats for academy	PPD Academy	\$3,168	This project proposes to purchase 77 grappling mats for use in the Training section for the academy and for in-service training. These mats will ensure safer training for all involved. These will also allow for multiple classes.
7	Loudspeaker	PPD Patrol	\$3,738	This project proposes to purchase 25 handheld controllers which will enable officers to utilize the loudspeaker from the rear of the car providing for increased safety to the officers.
\$76,849				
1	Automated Defibrillators for Patrol Deputies.	PCSO	\$19,414	This project proposes to purchase AED's to equip all patrol deputies with this life saving technology. The devices cost \$1,495.00 each. This funding will provide for nearly 13 of the reqired 18 AED's needed. Agency funds will cover the remaining devices.
\$19,414				
1	Technical projects/training and equipment.	PCDA	\$4,854	Purchase technology, supplies, equipment and system upgrades, including the potential purchase of computers, monitors, color printers, and fax
\$4,854				
Total Grant Amount =			\$101,117	

✓ Award Letter

September 23, 2022

Dear Bri Reyes,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Justice Programs (OJP) has approved the application submitted by CITY OF PUEBLO for an award under the funding opportunity entitled 2022 BJA FY 22 Edward Byrne Memorial Justice Assistance Grant Program - Local Solicitation. The approved award amount is \$101,117.

Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by OJP, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven't already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

Maureen Henneberg
Deputy Assistant Attorney General

Office for Civil Rights Notice for All Recipients

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance to give assurances that they will comply with those laws. Taken together, these civil rights laws prohibit recipients of federal financial assistance from DOJ from discriminating in services and employment because of race, color, national origin, religion, disability, sex, and, for grants authorized under the Violence Against Women Act, sexual orientation and gender identity. Recipients are also prohibited from discriminating in services because of age. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with DOJ awards, see <https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm>.

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria. These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a nondiscriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOPs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEOP requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5).

The OCR is available to help you and your organization meet the civil rights requirements that are associated with DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to contact the OCR at askOCR@ojp.usdoj.gov.

Memorandum Regarding NEPA

NEPA Letter Type

OJP - Ongoing NEPA Compliance Incorporated into Further Developmental Stages

NEPA Letter

The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system, some of which could have environmental impacts. All recipients of JAG funding must assist BJA in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the grantee or by a subgrantee or third party.

Accordingly, prior to obligating funds for any of the specified activities, the grantee must first determine if any of the specified activities will be funded by the grant.

The specified activities requiring environmental analysis are:

- a. New construction;
- b. Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

Complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. Further, for programs relating to methamphetamine laboratory operations, the preparation of a detailed Mitigation Plan will be required. For more information about Mitigation Plan requirements, please see <https://www.bja.gov/Funding/nepa.html>.

NEPA Coordinator

First Name

Middle Name

Last Name

Orbin

—

Terry

- › **Award Information**
- › **Project Information**
- › **Financial Information**
- › **Award Conditions**
- › **Award Acceptance**

> **Award Letter**

✓ **Award Information**

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

 Recipient Information

Recipient Name
CITY OF PUEBLO

UEI
NJK3BNUDRHJ7

Street 1
1 CITY HALL PL

City
PUEBLO

Zip/Postal Code
81003

County/Parish

Street 2

State/U.S. Territory
Colorado

Country
United States

Province

Award Details

Federal Award Date

9/23/22

Award Number

15PBJA-22-GG-02214-JAGX

Federal Award Amount

\$101,117.00

Award Type

Initial

Supplement Number

00

Funding Instrument Type

Grant

Assistance Listing Number Assistance Listings Program Title

16.738

Edward Byrne Memorial Justice Assistance Grant Program

Statutory Authority

Title I of Pub. L. No. 90-351 (generally codified at 34 U.S.C. 10101-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151 - 10158); see also 28 U.S.C. 530C(a)

☐ *I have read and understand the information presented in this section of the Federal Award Instrument.*

- › **Project Information**
- › **Financial Information**
- › **Award Conditions**
- › **Award Acceptance**

- **Award Letter**
- **Award Information**
- **Project Information**
- **Financial Information**
- ▼ **Award Conditions**

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.



Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2022, are set out at <https://www.ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.



Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2022 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2022 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2022 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

3

Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

4

OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees>.

5

Required training for Grant Award Administrator and Financial Manager

The Grant Award Administrator and all Financial Managers for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

In the event that either the Grant Award Administrator or a Financial Manager for this award changes during the period of performance, the new Grant Award Administrator or Financial Manager must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after the date the Entity Administrator enters updated Grant Award Administrator or Financial Manager information in JustGrants. Successful completion of such a training on or after January 1, 2020, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

6

Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

7

Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or - unenforceable, such provision shall be deemed severable from this award.

8

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.



Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.



Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."



Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.



Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

13

Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

14

Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

15

Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

16

Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

17

Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

18

Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

19

Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

20

Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or

other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

21

Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity,

will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

22

Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

23

All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

24

Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

25

Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

26

Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

27

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

28

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

29

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

30

FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$30,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$30,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

31

The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant

monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

32

Required monitoring of subawards

The recipient must monitor subawards under this award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

33

Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

34

Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://it.ojp.gov/gsp_grantcondition. The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

35

Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.



Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The recipient may not satisfy such a fine with federal funds.



Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.



Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.



The award recipient agrees to participate in a data collection process measuring program outputs and outcomes. The data elements for this process will be outlined by the Office of Justice Programs.



The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.



Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

42

Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the OJP program office prior to obligation or expenditure of such funds.

43

The recipient understands that, in accepting this award, the Authorized Representative declares and certifies, among other things, that he or she possesses the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accepts (or adopts) all material requirements that relate to conduct throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the individual has the requisite legal authority.

44

Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA.

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

- a. New construction;
- b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly

change its size;

- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

Application of This Condition to Recipient's Existing Programs or Activities: For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

45

Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 C.F.R. 200.305(b)(8)). The trust fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.

46

All State and Local JAG recipients must submit quarterly Federal Financial Reports (SF-425). Additionally, State JAG and Local JAG Category Two (\$25K or more) must submit semi-annual performance reports through JustGrants and Local JAG Category One (Less than \$25K) must submit annual performance reports through JustGrants. Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

47

Required data on law enforcement agency training

Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.

48

Expenditures prohibited without waiver

No funds under this award may be expended on the purchase of items prohibited by the JAG program statute, unless, as set forth at 34 U.S.C. 10152, the BJA Director certifies that extraordinary and exigent circumstances exist, making such expenditures essential to the maintenance of public safety and good order.

49

Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2021

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2021), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via an Award Condition Modification (ACM)). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through an Award Condition Modification (ACM), the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

50

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS. No profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA. Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Booking agencies should work with their state CODIS agency to ensure all requirements are met for participation in Rapid DNA (see National Rapid DNA Booking Operational Procedures Manual).

51

Recipients utilizing award funds for forensic genealogy testing must adhere to the United States Department of Justice Interim Policy Forensic Genealogical DNA Analysis and Searching (<https://www.justice.gov/olp/page/file/1204386/download>), and must collect and report the metrics identified in Section IX of that document to BJA.

52

Submission of eligible records relevant to the National Instant Background Check System

Consonant with federal statutes that pertain to firearms and background checks -- including 18 U.S.C. 922 and 34 U.S.C. ch. 409 -- if the recipient (or any subrecipient at any tier) uses this award to fund (in whole or in part) a specific project or program (such as a law enforcement, prosecution, or court program) that results in any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the National Instant Background Check System (NICS), or that has as one of its purposes the establishment or improvement of records systems that contain any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS, the recipient (or subrecipient, if applicable) must ensure that all such court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS are promptly made available to the NICS or to the "State" repository/database that is electronically available to (and accessed by) the NICS, and -- when appropriate -- promptly must update, correct, modify, or remove such NICS-relevant "eligible records".

In the event of minor and transitory non-compliance, the recipient may submit evidence to demonstrate diligent monitoring of compliance with this condition (including subrecipient compliance). DOJ will give great weight to any such evidence in any express written determination regarding this condition.

53

Prohibition on use of award funds for match under BVP program

JAG funds may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

54

Certification of body armor "mandatory wear" policies, and compliance with NIJ standards

If recipient uses funds under this award to purchase body armor, the recipient must submit a signed certification that each law enforcement agency receiving body armor purchased with funds from this award has a written "mandatory wear" policy in effect. The recipient must keep signed certifications on file for any subrecipients planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

Ballistic-resistant and stab-resistant body armor purchased with award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards, and is listed on the NIJ Compliant Body Armor Model List. In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information and the NIJ Compliant Body Armor List may be found by following the links located on the NIJ Body Armor page: <https://nij.ojp.gov/topics/equipment-and-technology/body-armor>

55

Body armor - impact on eligibility for other program funds

The recipient understands that the use of funds under this award for purchase of body armor may impact eligibility for funding under the Bulletproof Vest Partnership (BVP) program, a separate program operated by BJA, pursuant to the BVP statute at 34 USC 10531(c)(5).

56

Extreme risk protection programs funded by JAG must include, at a minimum: pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses; the right to be represented by counsel at no expense to the government; pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed, irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation; and penalties for abuse of the program.

57

The recipient agrees that no funds under this grant award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.

58

Initial period of performance; requests for extension.

The recipient understands that for award amounts of less than \$25,000 under JAG (Category 1), the initial period of performance of the award is two years. The recipient further understands that any requests for an extension of the period of performance for an award of less than \$25,000 will be approved automatically for up to a total of two additional years, pursuant to 34 U.S.C. 10152(f) and in accordance with the program solicitation associated with this award.

Any request for an extension of the period of performance beyond a four-year award period will require approval, and the approval (if any) will be at the discretion of the Director of BJA.

59

BJA- JAG - Withholding of Funds for Chief Executive Certification

Withholding of funds: Required certification from the chief executive of the applicant government

The recipient may not expend or draw down any award funds until the recipient submits the required "Certifications and Assurances by the Chief Executive of the Applicant Government," properly-executed (as determined by OJP), and an Award Condition Modification has been issued to remove this condition.

60

BJA- JAG - Withholding of funds for budget documentation

Withholding of funds: Budget narrative or information

The recipient may not expend or draw down any award funds until the recipient submits, and OJP reviews and accepts, the required budget information or narrative for the award, and an Award Condition Modification has been issued to remove this condition.

61

In accepting this award, the recipient agrees that grant funds cannot be used for Facial Recognition Technology (FRT) unless the recipient has policies and procedures in place to ensure that the FRT will be utilized in an appropriate and responsible manner that promotes public safety, and protects privacy, civil rights, and civil liberties and complies with all applicable provisions of the U.S. Constitution, including the Fourth Amendment's protection against unreasonable searches and seizures and the First Amendment's freedom of association and speech, as well as other laws and regulations. Recipients utilizing funds for FRT must make such policies and procedures available to DOJ upon request.

62

The recipient may not expend or draw down any award funds until: (1) it has provided to the grant manager for this OJP award either an "applicant disclosure of pending applications" for federal funding or a specific affirmative statement that no such pending applications (whether direct or indirect) exist, in accordance with the detailed instructions in the program solicitation, (2) OJP has completed its review of the information provided and of any supplemental information it may request, (3) the recipient has made any adjustments to the award that OJP may require to prevent or eliminate any inappropriate duplication of funding (e.g., budget modification, project scope adjustment), (4) if appropriate adjustments to a discretionary award cannot be made, the recipient has agreed in writing to any necessary reduction of the award amount in any amount sufficient to prevent duplication (as determined by OJP), and (5) an Award Condition Modification (ACM) has been issued to remove this condition.

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☐ *I have read and understand the information presented in this section of the Federal Award Instrument.*

➤ **Award Acceptance**

**MEMORANDUM OF UNDERSTANDING
CONCERNING RECEIPT AND DISBURSEMENT OF
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
FUNDS FOR FY 2022
(GRANT OPPORTUNITY#_O-BJA-2022-171368)**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 26th day of July, 2022, by and between the City of Pueblo, a Municipal Corporation (hereafter referred to as the "City") and Pueblo County, Colorado (hereafter referred to as the "County").

WITNESSETH:

WHEREAS, the parties recognize that for FY 2022 Edward Byrne Memorial Justice Assistance Grant (JAG) funding, administered by the U.S. Office of Justice Programs, Pueblo County has been certified as a disparate jurisdiction by the Colorado State Attorney General's Office; and

WHEREAS, Federal Edward Byrne Memorial Justice Assistance Grant funding requires that a certified disparate county and the city or cities within the county are to divide available funds to their mutual satisfaction, and that if the parties are unable to reach a mutual agreement, no jurisdiction is eligible to receive funds; and

WHEREAS, the parties reached an agreement over the receipt of \$101,117.00 in JAG funds and the disbursement of those funds and wish to set such agreement as follows.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in accordance with Federal law, the parties agree as follows:

1. The \$101,117.00 JAG Grant Funds will be allocated as follows: The City will receive \$76,849.00 and will use these resources to fund one or more projects/programs that are outlined in the Program Narrative attachment of the application. The County will receive \$24,268.00 of which the Pueblo County Sheriff's Department will receive \$19,414.00 to fund one or more different projects/programs that are outlined in the Program Narrative attachment of the application. The Pueblo County District Attorney will receive \$4,854.00 of the County's allocation to fund one or more different projects/programs that are outlined in the Program Narrative attachment of the application. The City will serve as the applicant/fiscal agent.

2. The City, County, Pueblo County Sheriff's Department and Pueblo County District Attorney shall each meet and comply with the assurances, certifications, general and special conditions set forth in the FY 2022 JAG Grant Funds Award which are incorporated herein as if set out herein in full and shall expend their respective funds solely for their approved projects.

Memorandum of Understanding
Concerning Receipt and Disbursement of
Edward Byrne Memorial Justice Assistance Grant Funds for FY 2022

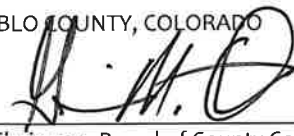
Page – 2

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Understanding the day and year first written above.

ATTEST:

By 
Clerk to the Board

PUEBLO COUNTY, COLORADO

By 
Chairman, Board of County Commissioners

ATTEST:

By 
City Clerk

CITY OF PUEBLO, A Municipal Corporation

By 
Mayor

ATTEST:

By 
Attestor

PUEBLO COUNTY SHERIFF

By 
Kirk Taylor, Sheriff

ATTEST:

By 
Attestor

CITY OF PUEBLO POLICE DEPARTMENT

By 
Chris Noeller, Chief of Police

ATTEST:

By 
Attestor

10TH JUDICIAL DISTRICT ATTORNEY

By 
Jeff Chostner, District Attorney



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: August 8, 2022

TO: President Heather Graham and Members of City Council
CC: Mayor Nicholas A. Gradisar
VIA: Marisa Stoller, City Clerk
FROM: Chief Chris Noeller, Police Department
SUBJECT: A RESOLUTION AUTHORIZING THE CITY OF PUEBLO TO APPLY FOR A 2022 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) AND APPROVING A MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS FROM SAID GRANT AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

Attached is a Memorandum of Understanding between the City of Pueblo and Pueblo County concerning the disbursements of the FY2022 JAG Local Solicitation award.

PREVIOUS COUNCIL ACTION:

The FY2022 JAG Local Solicitation is an annual formula grant that has been in existence for the past eighteen (18) years. The City and County of Pueblo have received \$2,129,180 in JAG Local Solicitation funds since its inception.

BACKGROUND:

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program provides funds to units of local government for the purpose of improving law enforcement technology and upgrading necessary equipment. The program is designed to help local communities address problems specific to their area.

FINANCIAL IMPLICATIONS:

This grant funding represents \$101,117.00 to the City and County of Pueblo with no required match. The City's share of the \$101,117.00 is \$76,849.00.

The City's share will be used to fund seven (7) Police Department equipment projects, including desktop, laptop, and other computer-related equipment for the entire Department, additional investigative tools for the Traffic Unit, and other law enforcement enhancing equipment projects as determined by the Chief of Police. (See attachment for detailed list of proposed equipment). Mr. Gradisar will need to sign the award document and initial the lower right corner of each page of the Special Conditions.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable

STAKEHOLDER PROCESS:

City and County law enforcement leaders have met and agreed to the distribution terms of this annual formula grant since its inception in 2005. A signed MOU between the City and County is a requirement for acceptance of the award. Additionally, a public meeting, to receive public comments on the expenditures, is a requirement of the award. That public meeting will occur on July 26th, 2022. The City and County Attorney Offices, as well as the City Finance Department, will review and approve the attached MOU.

ALTERNATIVES:

The FY2022 JAG Local Solicitation is an annual formula grant that has been in existence for the past eighteen (18) years. The City and County of Pueblo have received \$2,129,180 in JAG funds since its inception. In order to receive the funds, the City and County of Pueblo must sign the MOU. If either entity does not sign the MOU, no JAG funds will be received by either entity.

RECOMMENDATION:

Approval of the Resolution.

Attachments:

Memorandum of Understanding (MOU)

Listing of FY2022 JAG Local Solicitation Projects

RESOLUTION NO. 14961

A RESOLUTION AUTHORIZING THE CITY OF PUEBLO TO APPLY FOR A 2022 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) AND APPROVING A MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS FROM SAID GRANT AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, the City of Pueblo Police Department is requesting the City of Pueblo submit an application to the United States Department of Justice (DOJ) for the 2022 Edward Byrne Memorial Justice Assistance Grant (JAG); and

WHEREAS, the funds from this grant will be utilized by the Police Department, Sheriff's Department, and the District Attorney's Office to benefit the health, welfare, and safety of the citizens of the City; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The 2022 JAG Local Solicitation Application O-BJA-2022-171368 (Grant Application), a copy of which is attached hereto, is hereby approved and authorized for submittal to the United States Department of Justice.

SECTION 2.

The Memorandum of Understanding dated as of July 26th, 2022, by and between the City of Pueblo, a Municipal Corporation, and Pueblo County, Colorado concerning the receipt and disbursement of the 2022 JAG funds, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 3.

The Mayor of the City is authorized to execute the Grant Application and Memorandum of Understanding in the name of the City, and his prior signature thereto is hereby ratified and approved. The City Clerk is directed to affix the seal to the Memorandum of Understanding and attest same. The Mayor is also authorized to execute any and all other certifications, assurances and other documents associated therewith.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Resolution to implement the policies and procedures described herein.

SECTION 5.

The Resolution shall become effective on the date of final action by the Mayor and City Council.

INTRODUCED August 8, 2022

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Chief of Police

SUBJECT: AN ORDINANCE APPROVING TWO COST REIMBURSEMENT AGREEMENTS, DELINEATING THE RESPONSIBILITIES OF THE SOUTHERN COLORADO VIOLENT GANG SAFE STREETS TASK FORCE (SCVGSSTF) AND THE SOUTHERN COLORADO TOC-W TASK FORCE (SCTOCWTF), BETWEEN THE FEDERAL BUREAU OF INVESTIGATION (FBI) AND THE CITY OF PUEBLO, AND RATIFYING THE MAYOR'S SIGNATURE THEREOF

SUMMARY:

The purpose of these agreements is to formalize relationships between participating agencies for policy guidance, planning, training, public and media relations, and to maximize inter-agency cooperation.

PREVIOUS COUNCIL ACTION:

Previous Cost Reimbursement Agreements regarding this matter have been approved in the past.

BACKGROUND:

The mutual aid agreement concept, which utilizes an interagency approach involving the FBI and the PPD, is necessary for the public safety of the citizens of Pueblo and to provide for an appropriate and timely response to incidents involving matters of violent crime.

FINANCIAL IMPLICATIONS:

Administration of this Cost Agreement will require staff time within the Police Department to work cooperatively with the agencies and professionals at the FBI.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

There is no stakeholder process required for these Cost Reimbursement Agreements.

ALTERNATIVES:

Decline the opportunity to work together with the FBI, hindering service to Pueblo citizens.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. PPD_SCTOCWTF_TFO_Cost_Reimbursement_Agreement-2022
2. PPD_SCVGSSTF_TFO_Cost_Reimbursement_Agreement-2022

ORDINANCE NO.

AN ORDINANCE APPROVING TWO COST REIMBURSEMENT AGREEMENTS, DELINEATING THE RESPONSIBILITIES OF THE SOUTHERN COLORADO VIOLENT GANG SAFE STREETS TASK FORCE (SCVGSSTF) AND THE SOUTHERN COLORADO TOC-W TASK FORCE (SCTOCWTF), BETWEEN THE FEDERAL BUREAU OF INVESTIGATION (FBI) AND THE CITY OF PUEBLO, AND RATIFYING THE MAYOR'S SIGNATURE THEREOF

WHEREAS, the City Council and Mayor of Pueblo have the authority on behalf of the City of Pueblo, including its Police Department, to accept the Cost Reimbursement Agreements between the Federal Bureau of Investigation (FBI) and the City of Pueblo (City); and

WHEREAS, acceptance of the Cost Reimbursement Agreements for the purposes for which they have been made is in the best interest of the City and will benefit the health, welfare, and safety of the citizens of the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The two Cost Reimbursement Agreements, between the FBI and the City, relating to the operation of the Southern Colorado Gang Crime Safe Streets Task Force and the Southern Colorado TOC-W Task Force, a true copy of which are attached hereto, having been approved as to form by the City Attorney, are hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute both Cost Reimbursement Agreements on behalf of Pueblo, a Municipal Corporation, and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance to implement the policies and procedures described herein.

SECTION 4.

This Ordinance shall become effective immediately upon final passage.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

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FEDERAL BUREAU OF INVESTIGATION
Southern Colorado TOC-W Task Force
Cost Reimbursement Agreement

SCTOCWTF File No.: 281-DN-A3647434-MOU

Pursuant to Congressional appropriations, the Federal Bureau of Investigation (FBI) receives authority to pay overtime for police officers assigned to the formalized Southern Colorado TOC-W Task Force (SCTOCWTF), as set forth below, for expenses necessary for detection, investigation, and prosecution of crimes against the United States. It is hereby agreed between the FBI and the Mayor of the City of Pueblo for the Pueblo Police Department (PPD), located at 200 S. Main St., Pueblo, CO 81003, Taxpayer Identification Number: 84-6000615 and Telephone Number: 719-553-2498, that:

1. This Agreement is entered into pursuant to, and as an annex to, the FBI SCTOCWTF Memorandum of Understanding (MOU) signed by the Mayor of the City of Pueblo on _____, 2022 and shall be read and interpreted in conformity with all terms of that document. Month Day

2. Commencing upon execution of this Agreement, the FBI will, subject to availability of required funding, reimburse PPD for overtime payments made to officers assigned to and working full time on SCTOCWTF related matters.

3. Requests for reimbursement shall be made on a monthly basis utilizing the United States Department of the Treasury Invoice Processing Platform (IPP) software system and shall be submitted to the FBI Denver Field Office immediately after the first of the month which follows the month for which reimbursement is requested. The reimbursement request shall be approved by the appropriate Supervisor (or their designee) at PPD prior to the invoice submission in IPP. The invoice submitted in IPP will automatically route to the FBI SCTOCWTF personnel for their review, approval, and processing for payment.

4. Overtime reimbursement payments from the FBI will be made via electronic funds transfer (EFT) directly to PPD using the FBI's Unified Financial Management System (UFMS). To facilitate EFT, PPD shall establish an account online in the System for Award Management (SAM) at www.SAM.gov. Verification of PPD banking information is required on an annual basis in order to keep payment information current. For additional information regarding the UFMS and SAM, contact the FBI Denver Financial Liaison Specialist.

5. Overtime reimbursements will be calculated at the usual rate for which the individual officer's time would be compensated in the absence of this Agreement. However, said reimbursement, per officer, shall not exceed monthly and/or annual limits established annually by the FBI. The limits, calculated using Federal pay tables, will be in effect for the Federal fiscal year running from October 1st of one year through September 30th of the following year, unless changed during the period. The FBI reserves the right to change the reimbursement limits, upward or downward, for subsequent periods based on fiscal priorities and appropriations limits. The FBI will notify PPD of the applicable annual limits prior to October 1st of each year.

6. The number of PPD deputies assigned full-time to the SCTOCWTF and entitled to overtime reimbursement by the FBI shall be approved by the FBI in advance of each fiscal year. Based on the needs of the SCTOCWTF, this number may change periodically, upward or downward, as approved in advance by the FBI.

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Revised 05/24/2022

7. Prior to submission of any overtime reimbursement requests, PPD shall prepare an official document setting forth the identity of each officer assigned full-time to the SCTOCWTF, along with the regular and overtime hourly rates for each officer. Should any officers change during the fiscal year, a similar statement shall be prepared regarding the new officers prior to submitting any overtime reimbursement requests for the officers. If the rate changes during the fiscal year for a previously assigned officer, an updated letter shall be attached with the invoice submission in IPP that reflects the new rate. The updated letter shall be mailed to the Denver Field Office SCTOCWTF personnel to maintain in FBI records.

8. Each request for reimbursement shall be submitted via IPP to the FBI. The request for reimbursement shall include an invoice number, invoice date, the name, overtime compensation rate, number of reimbursable hours claimed, and the dates of those hours for each officer for whom reimbursement is sought. An attachment signed and dated by an authorized Agency representative noting the dates and hours for each officer overtime reimbursement claimed shall be uploaded in IPP as supporting documentation for the invoice to confirm the information described in this paragraph is accurate, and the personnel for whom reimbursement is claimed were assigned full-time to the SCTOCWTF.

9. Requests for reimbursement shall be submitted monthly and all requests shall be received by the FBI no later than December 31st of the next fiscal year for which the reimbursement applies. For example, reimbursements for the fiscal year ending September 30, 2022, shall be received by the FBI monthly and not later than December 31, 2022. The FBI is not obligated to reimburse any requests received untimely and not in accordance herewith.

10. This Agreement is effective upon signatures of the parties and will remain in effect for the duration of PPD's participation on the SCTOCWTF, contingent upon approval of necessary funding, and unless terminated in accordance with the provisions herein. This Agreement may be modified at any time by written consent of the parties or based on changing business operations and practices of the FBI. It may be terminated at any time upon mutual consent of the parties, or unilaterally upon written notice from the terminating party to the other party at least 30 days prior to the termination date.

Signatories:

Michael H. Schneider
Special Agent in Charge
Federal Bureau of Investigation

Date: _____

Nicholas A. Gradisar
Mayor
City of Pueblo, Colorado

Date: _____

Financial Liaison Specialist
Federal Bureau of Investigation

Date: _____

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FEDERAL BUREAU OF INVESTIGATION
Southern Colorado Violent Gang Safe Streets Task Force
Cost Reimbursement Agreement

SCVGSSTF File No.: 281-DN-A3647441-MOU

Pursuant to Congressional appropriations, the Federal Bureau of Investigation (FBI) receives authority to pay overtime for police officers assigned to the formalized Southern Colorado Violent Gang Safe Streets Task Force (SCVGSSTF), as set forth below, for expenses necessary for detection, investigation, and prosecution of crimes against the United States. It is hereby agreed between the FBI and Pueblo Police Department (PPD), located at 200 S. Main St., Pueblo, CO 81003, Taxpayer Identification Number: 84-60006-15, and Telephone Number: 719-553-2498, that:

1. This Agreement is entered into pursuant to, and as an annex to, the FBI SCVGSSTF Memorandum of Understanding (MOU) signed by the Chief of PPD on _____, 2022 and shall be read and interpreted in conformity with all terms of that document. Month Day

2. Commencing upon execution of this Agreement, the FBI will, subject to availability of required funding, reimburse PPD for overtime payments made to officers assigned to and working full time on SCVGSSTF related matters.

3. Requests for reimbursement shall be made on a monthly basis utilizing the United States Department of the Treasury Invoice Processing Platform (IPP) software system and shall be submitted to the FBI Denver Field Office immediately after the first of the month which follows the month for which reimbursement is requested. The reimbursement request shall be approved by the appropriate Supervisor (or their designee) at PPD prior to the invoice submission in IPP. The invoice submitted in IPP will automatically route to the FBI SCVGSSTF personnel for their review, approval, and processing for payment.

4. Overtime reimbursement payments from the FBI will be made via electronic funds transfer (EFT) directly to PPD using the FBI's Unified Financial Management System (UFMS). To facilitate EFT, PPD shall establish an account online in the System for Award Management (SAM) at www.SAM.gov. Verification of PPD banking information is required on an annual basis in order to keep payment information current. For additional information regarding the UFMS and SAM, contact the FBI Denver Financial Liaison Specialist.

5. Overtime reimbursements will be calculated at the usual rate for which the individual officer's time would be compensated in the absence of this Agreement. However, said reimbursement, per officer, shall not exceed monthly and/or annual limits established annually by the FBI. The limits, calculated using Federal pay tables, will be in effect for the Federal fiscal year running from October 1st of one year through September 30th of the following year, unless changed during the period. The FBI reserves the right to change the reimbursement limits, upward or downward, for subsequent periods based on fiscal priorities and appropriations limits. The FBI will notify PPD of the applicable annual limits prior to October 1st of each year.

6. The number of PPD deputies assigned full-time to the SCVGSSTF and entitled to overtime reimbursement by the FBI shall be approved by the FBI in advance of each fiscal year. Based on the needs of the SCVGSSTF, this number may change periodically, upward or downward, as approved in advance by the FBI.

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Revised 05/24/2022

7. Prior to submission of any overtime reimbursement requests, PPD shall prepare an official document setting forth the identity of each officer assigned full-time to the SCVGSSTF, along with the regular and overtime hourly rates for each officer. Should any officers change during the fiscal year, a similar statement shall be prepared regarding the new officers prior to submitting any overtime reimbursement requests for the officers. If the rate changes during the fiscal year for a previously assigned officer, an updated letter shall be attached with the invoice submission in IPP that reflects the new rate. The updated letter shall be mailed to the Denver Field Office SCVGSSTF personnel to maintain in FBI records.

8. Each request for reimbursement shall be submitted via IPP to the FBI. The request for reimbursement shall include an invoice number, invoice date, the name, overtime compensation rate, number of reimbursable hours claimed, and the dates of those hours for each officer for whom reimbursement is sought. An attachment signed and dated by an authorized Agency representative noting the dates and hours for each officer overtime reimbursement claimed shall be uploaded in IPP as supporting documentation for the invoice to confirm the information described in this paragraph is accurate, and the personnel for whom reimbursement is claimed were assigned full-time to the SCVGSSTF.

9. Requests for reimbursement shall be submitted monthly and all requests shall be received by the FBI no later than December 31st of the next fiscal year for which the reimbursement applies. For example, reimbursements for the fiscal year ending September 30, 2022, shall be received by the FBI monthly and not later than December 31, 2022. The FBI is not obligated to reimburse any requests received untimely and not in accordance herewith.

10. This Agreement is effective upon signatures of the parties and will remain in effect for the duration of PPD's participation on the SCVGSSTF, contingent upon approval of necessary funding, and unless terminated in accordance with the provisions herein. This Agreement may be modified at any time by written consent of the parties or based on changing business operations and practices of the FBI. It may be terminated at any time upon mutual consent of the parties, or unilaterally upon written notice from the terminating party to the other party at least 30 days prior to the termination date.

Signatories:

Michael H. Schneider
Special Agent in Charge
Federal Bureau of Investigation

Date: _____

Nicholas A. Gradisar
Mayor
City of Pueblo

Date: _____

Financial Liaison Specialist
Federal Bureau of Investigation

Date: _____

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**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000) FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR NEIGHBORHOOD CLEANUP PROJECTS IN QUALIFIED CENSUS TRACTS OF THE CITY OF PUEBLO AND TO PROVIDE EMPLOYMENT TO LOW-INCOME UNEMPLOYED AND UNDEREMPLOYED INDIVIDUALS WHO WERE DISPROPORTIONATELY IMPACTED BY THE COVID-19 PANDEMIC, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6

SUMMARY:

This Resolution authorizes payment in the amount of \$1,000,000 from Project CI2113 American Rescue Plan Act ("ARPA") for neighborhood cleanup projects in Qualified Census Tracts ("QCTs") of the City and to provide employment to low-income unemployed and underemployed individuals who were disproportionately impacted by the COVID-19 pandemic. This payment is authorized by section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6.

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI-2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026).

BACKGROUND:

The purpose of this ARPA Resolution is two-fold. The first goal is to build strong, healthy communities by removing trash, garbage and debris from neighborhoods located in QCTs in the City. The second goal is to mitigate poverty in the City by providing work opportunities to low-income adults, giving them the chance to earn real wages and connect with services, while cleaning up the low-income neighborhoods in

the City. This program provides a meaningful solution for people experiencing poverty and will instill in them a sense of dignity and self-worth and will result in the City having a cleaner and safer appearance.

FINANCIAL IMPLICATIONS:

Funding for these projects will be paid out of Project CI2113 – American Rescue Plan

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

City Council could decide not to authorize payment for the neighborhood cleanup projects.

RECOMMENDATION:

Approval of this Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000) FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR NEIGHBORHOOD CLEANUP PROJECTS IN QUALIFIED CENSUS TRACTS OF THE CITY OF PUEBLO AND TO PROVIDE EMPLOYMENT TO LOW-INCOME UNEMPLOYED AND UNDEREMPLOYED INDIVIDUALS WHO WERE DISPROPORTIONATELY IMPACTED BY THE COVID-19 PANDEMIC, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount \$1,000,000 is hereby authorized from Project CI2113 – American Rescue Plan for neighborhood cleanup projects in Qualified Census Tracts (“QCTs”) located in the City of Pueblo. The budget for this neighborhood cleanup program shall be as follows:

Description	Cost Estimate
<u>Personnel</u>	
Full Time - Trash Removal Coordinator	\$ 80,655.18
Part Time - Trash Removal Workers (as needed)	<u>\$ 604,995.10</u>
sub-total	<u>\$ 685,650.28</u>
<i>Note: 1) FT- does not include the proposed 6.5% raise for FY2023.</i>	
<u>Equipment</u>	
4 – Pickup Trucks	\$ 145,000.00
1 – Dump Trailer	<u>\$ 15,000.00</u>
sub-total	<u>\$ 160,000.00</u>
<u>Operational Supplies</u>	
Misc Supplies	\$ 23,349.72
Dumpster	\$ 15,000.00
Traffic Control	\$ 10,000.00
Fuel	\$ 30,000.00
Professional Services (payroll entity)	\$ 15,000.00
Outreach to Homeless Persons	<u>\$ 60,000.00</u>
sub-total	<u>\$ 154,349.72</u>
TOTAL	<u>\$1,000,000.00</u>

SECTION 2.

The Cleanup Program authorized by this Resolution shall be conducted only in neighborhoods located in QCTs in the City of Pueblo.

SECTION 3.

The following individuals shall receive a preference when hiring any Part Time positions:

- a. Persons residing in households which qualify for assistance under the following programs:
 - Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*)
 - Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*)
 - Free and Reduced School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773)
 - Medicare Part D Low-Income Subsidies (42 U.S.C. 1395 w – 114)
 - Supplemental Security Income (42 U.S.C. 1381 *et seq.*)
 - Head Start (42 U.S.C. 9831 *et seq.*)
 - Early Head Start (42 U.S.C. 9831 *et seq.*)
 - Special Supplemental Nutrition Program for Women, Infants and Children (42 U.S.C. 1786)
 - Section 8 Vouchers (42 U.S.C. 1437 f)
 - Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*)
 - Pell Grants (20 U.S.C. 1070 a)
- b. Persons residing in low-income neighborhoods located in QCTs in the City of Pueblo;
- c. Unhoused persons residing in the City of Pueblo.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with this Resolution which are necessary or desirable to implement the transactions described herein.

SECTION 5.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 11, 2022

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Dennis Flores, Councilor

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE PARKVIEW MEDICAL CENTER IN THE AMOUNT OF \$350 TO SPONSOR A TABLE AT THE MAMMOS & MIMOSAS EVENT AT 11:30 AM ON OCTOBER 20, 2022 IN THE OCCHIATO BALLROOM AT CSU PUEBLO

SUMMARY:

Attached for consideration is a request for support of the Mammos & Mimosas event at 11:30 am on October 20 in the Occhiato Ballroom at CSU Pueblo.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

City Council Member Dennis Flores is requesting \$350 to sponsor the Mammos & Mimosas event at 11:30 am on October 20 in the Occhiato Ballroom at CSU Pueblo. The luncheon will be held during Breast Cancer Awareness and feature Pueblo's Breast Experts, Pricilla Nobecourt, MD Breast Surgeon, Suraj Singh, MD, Director of Radiology Oncology at Parkview and Travis Archuleta, MD Medical Oncologist / Hematologist. The breast health experts will discuss the new Parkview Comprehensive Cancer Center in Pueblo, and how it offers the most advanced and comprehensive care available, using the latest technology - all housed under one roof. This center incorporates a full range of the most advanced radiation and chemo/immunotherapies, and provides a collaborative, strategic approach to cancer care.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$350 would be paid from the Council Contingencies Account in the 2022 General Fund Budget to the Parkview Medical Center.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

City Council could choose not to authorize funding for this association.

RECOMMENDATION:

This Resolution is at the request of Council Member Dennis Flores.

ATTACHMENTS:

1. 10-11-2022 Contingencies (Council) Mammos and Mimosas
2. 10-11-2022 Mammos Mimosas Info

RESOLUTION NO. 15030

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE PARKVIEW MEDICAL CENTER IN THE AMOUNT OF \$350 TO SPONSOR A TABLE AT THE MAMMOS & MIMOSAS EVENT AT 11:30 AM ON OCTOBER 20, 2022 IN THE OCCHIATO BALLROOM AT CSU PUEBLO

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$350 from the Council Contingencies Account in the 2022 General Fund Budget is authorized to be paid to Parkview Medical Center in support of the Mammos & Mimosas event at 11:30 am on October 20 in the Occhiato Ballroom at CSU Pueblo.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Resolution to implement the policies and procedures described herein.

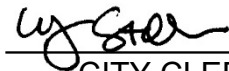
SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: October 11, 2022

BY: Lori Winner
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

DATE	BALANCE IN 2022 CONTINGENCIES ACCOUNT	DEBIT	CREDIT	BALANCE
	Beginning Balance			\$ 100,000.00
1/24/22	Pueblo United Way Mentoring Collaborative Community Event	\$ 500.00		\$ 99,500.00
1/24/22	PAACO Annual Stars and Lights Dinner & Dance	\$ 750.00		\$ 98,750.00
2/14/22	Boys and Girls Club Champions of Youth Dinner Table	\$ 1,350.00		\$ 97,400.00
2/14/22	Latino Chamber Annual Dinner Table	\$ 950.00		\$ 96,450.00
2/28/22	Memorial Bench for Renee F. Dominguez	\$ 1,600.00		\$ 94,850.00
2/28/22	Summer Solstice Arkansas River Event	\$ 500.00		\$ 94,350.00
3/14/22	Pueblo Has Talent - Use of Memorial Hall	\$ 5,189.70		\$ 89,160.30
3/14/22	Child Advocacy Center's Blue Tie Gala Table	\$ 1,200.00		\$ 87,960.30
3/28/22	AMR Safety Jam	\$ 1,000.00		\$ 86,960.30
3/28/22	Southern Colorado Press Club Sheep Dip	\$ 500.00		\$ 86,460.30
4/11/22	CSU Pueblo President's Gala	\$ 1,500.00		\$ 84,960.30
4/11/22	Trees Please Dutch Clark Renovation Project	\$ 5,000.00		\$ 79,960.30
5/9/22	Latino Veterans Profiles in Courage Ceremony	\$ 2,000.00		\$ 77,960.30
5/9/22	Parkview Ladies and Lemons Event	\$ 500.00		\$ 77,460.30
5/9/22	Pueblo Downtown Association Levee Walk	\$ 700.00		\$ 76,760.30
5/9/22	Dogpatch Cleanup/Recycling 3RTS Inc.	\$ 500.00		\$ 76,260.30
5/9/22	Goodnight Barn Chuck Wagon Rendeuous	\$ 15,000.00		\$ 61,260.30
5/23/22	Southern Colorado Equality Alliance LGBTQ+ Pride Event	\$ 1,500.00		\$ 59,760.30
5/23/22	Rollin on the Riverwalk HARP Event	\$ 9,000.00		\$ 50,760.30
6/13/22	2022 Leadership Pueblo Project	\$ 300.00		\$ 50,460.30
6/27/22	Pueblo Symphony Season Support	\$ 294.32		\$ 50,165.98
7/25/22	Assistance League Holiday Event	\$ 1,000.00		\$ 49,165.98
7/25/22	United Way / SoCoYoGo App	\$ 2,500.00		\$ 46,665.98
8/22/22	United Way Campaign Kickoff Luncheon Table Sponsor	\$ 500.00		\$ 46,165.98
8/22/22	Pueblo County Courthouse Lighting Ceremony	\$ 500.00		\$ 45,665.98
8/22/22	Ybarra's Boxing Showcase	\$ 1,500.00		\$ 44,165.98
9/12/22	Latino Chamber Lifetime Achievement Award Ceremony Table	\$ 750.00		\$ 43,415.98
9/12/22	Pueblo Chile Balloon Fiesta (match Mayor)	\$ 2,500.00		\$ 40,915.98
9/12/22	Song of Pueblo	\$ 3,000.00		\$ 37,915.98
9/12/22	District 60 Education Foundation Cornhole at the Dutch	\$ 1,000.00		\$ 36,915.98
9/26/22	Damon Days Event/Historic Pueblo Inc	\$ 1,000.00		\$ 35,915.98
9/26/22	NAACP Banquet	\$ 700.00		\$ 35,215.98
9/26/22	Scott Richards Scholarship - PCC	\$ 2,000.00		\$ 33,215.98
9/26/22	Scott Richards Broadcast Room Plaque	\$ 26.50		\$ 33,189.48
9/26/22	Parade of Lights - Downtown Association	\$ 1,000.00		\$ 32,189.48
10/11/22	Parkview event "Mammos & Mimosas"	\$ 350.00		\$ 31,839.48
				\$ 31,839.48
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				\$ 31,839.48
				\$ 31,839.48
				\$ 32,189.48

From: [Dennis Flores](#)
To: [Alyssa Parga](#)
Subject: [External] Re: Sponsorship Request
Date: Wednesday, September 14, 2022 8:54:01 PM
Attachments: [image.png](#)
[image.png](#)

External email. Please use caution.

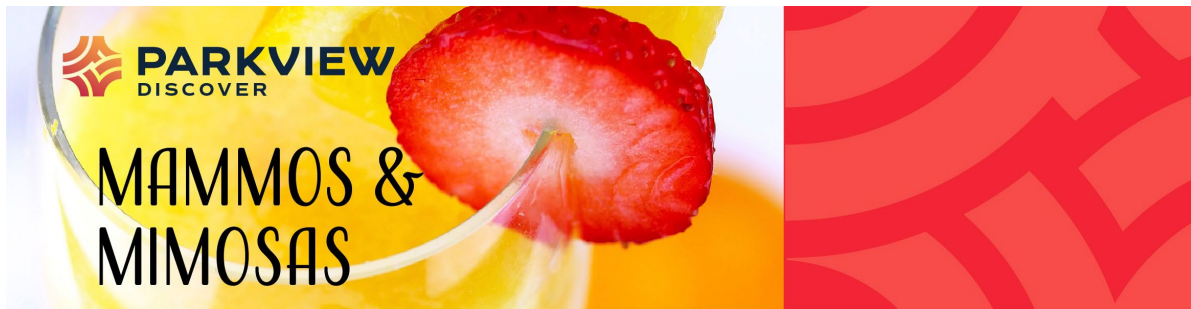
Alyssa: You can put me down as the primary sponsor. Dennis

On Thu, Sep 15, 2022 at 7:00 AM Alyssa Parga <AParga@pueblo.us> wrote:

Dear All,

Parkview has requested City Council give a sponsorship for their event (details below).

Please let me know if you would like to “sponsor” a resolution for the next Council meeting for this to come from contingencies.



10.20.22

Hello,

I wanted to send you the upcoming October Breast Health Event information in case the Mayor's Office and Pueblo City Council would be interested in attending the Mammos & Mimosas event and possibly purchasing corporate tables.

Save-the-Date for the Parkview Discover Signature event “Mammos & Mimosas.” The “Mamos & Mimosas” luncheon will be held this October, during Breast Cancer Awareness Month. Mark your calendar for October 20th at the Occhiato Ballroom at CSU Pueblo.

I am reaching out to you today to provide you with an opportunity to purchase a corporate table for the event. This community event is a celebration for the opening of the Parkview Comprehensive Cancer Center. It will also have a focus on breast health, overall wellness and it will encourage women to schedule their mammograms, which can detect cancer at an early stage.

The luncheon will feature Pueblo's Breast Experts, Pricilla Nobecourt, MD Breast Surgeon, Suraj Singh, MD, Director of Radiology Oncology at Parkview and Travis Archuleta, MD Medical Oncologist / Hematologist. The breast health experts will discuss the new **Parkview Comprehensive Cancer Center** in Pueblo, and how it offers the most advanced and comprehensive care available, using the latest technology - ***all housed under one roof***. This center incorporates a full range of the most advanced radiation and chemo/immunotherapies, and provides a collaborative, strategic approach to cancer care.

The event includes a keynote address from three breast experts, a gourmet luncheon, specialty mimosas, pampering gifts, boutique shopping and breast cancer prevention education, and a chance to win a Pink Volcum Cruiser Bike! And most important, guests will have the opportunity to schedule their mammogram appointments.

This event is a celebration for not only Parkview but for the Pueblo Community as we grow with the best healthcare and treatment in Southern Colorado. Your involvement in "Mamos & Mimosas" will elevate this event and women's health. As a corporate table sponsor, we will promote the Mayor's Office and Pueblo City Council with Logo Table Signage as well as seating for 8 guests at each table.

Here is a link with additional event information

<https://www.parkviewmc.com/classes-events/details/?eventId=b610ec9f-51e7-ec11-a855-000d3a611c21>

Please feel free to reach out to me anytime with any questions,

Jeannette Micheli

Community Outreach Coordinator

719.584.4878

400 W. 16th Street | Pueblo, CO 81003 | Parkviewmc.com





Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, President

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE PUEBLO CHORAL SOCIETY, INC. IN THE AMOUNT OF \$5,000 TO SUPPORT THE "JUBILATION" HOLIDAY CONCERT ON DECEMBER 8, 2022, AT 7 PM IN MEMORIAL HALL

SUMMARY:

Attached for consideration is a request for support of the "Jubilation" holiday concert on December 8, 2022, at 7 pm at Memorial Hall.

PREVIOUS COUNCIL ACTION:

Council supported this event with \$5,000 in 2021.

BACKGROUND:

City Council President Heather Graham is requesting \$5,000 to sponsor the "Jubilation" holiday concert on December 8, 2022, at 7 pm at Memorial Hall. This is a free concert open to the public. The Choral Society invites local musical groups, including other choirs and local brass and string ensembles to entertain on this day. The Pueblo Choral Society, now in its 36th season, is a non-profit organization whose members are all volunteers.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$5,000 would be paid from the Council Contingencies Account in the 2022 General Fund Budget to the Pueblo Choral Society, Inc.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

City Council could choose not to authorize funding for this association.

RECOMMENDATION:

This Resolution is at the request of Council President Heather Graham.

ATTACHMENTS:

1. 10-11-2022 Contingencies (Council) Choral Society
2. Pueblo Choral Society Sponsorship Request 2022

RESOLUTION NO. 15031

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO THE PUEBLO CHORAL SOCIETY, INC. IN THE AMOUNT OF \$5,000 TO SUPPORT THE "JUBILATION" HOLIDAY CONCERT ON DECEMBER 8, 2022, AT 7 PM IN MEMORIAL HALL

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$5,000 from the Council Contingencies Account in the 2022 General Fund Budget is authorized to be paid to Pueblo Choral Society, Inc. in support of the "Jubilation" holiday concert on December 8, 2022, at 7 pm at Memorial Hall.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Resolution to implement the policies and procedures described herein.

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

DATE	BALANCE IN 2022 CONTINGENCIES ACCOUNT	DEBIT	CREDIT	BALANCE
	Beginning Balance			\$ 100,000.00
1/24/22	Pueblo United Way Mentoring Collaborative Community Event	\$ 500.00		\$ 99,500.00
1/24/22	PAACO Annual Stars and Lights Dinner & Dance	\$ 750.00		\$ 98,750.00
2/14/22	Boys and Girls Club Champions of Youth Dinner Table	\$ 1,350.00		\$ 97,400.00
2/14/22	Latino Chamber Annual Dinner Table	\$ 950.00		\$ 96,450.00
2/28/22	Memorial Bench for Renee F. Dominguez	\$ 1,600.00		\$ 94,850.00
2/28/22	Summer Solstice Arkansas River Event	\$ 500.00		\$ 94,350.00
3/14/22	Pueblo Has Talent - Use of Memorial Hall	\$ 5,189.70		\$ 89,160.30
3/14/22	Child Advocacy Center's Blue Tie Gala Table	\$ 1,200.00		\$ 87,960.30
3/28/22	AMR Safety Jam	\$ 1,000.00		\$ 86,960.30
3/28/22	Southern Colorado Press Club Sheep Dip	\$ 500.00		\$ 86,460.30
4/11/22	CSU Pueblo President's Gala	\$ 1,500.00		\$ 84,960.30
4/11/22	Trees Please Dutch Clark Renovation Project	\$ 5,000.00		\$ 79,960.30
5/9/22	Latino Veterans Profiles in Courage Ceremony	\$ 2,000.00		\$ 77,960.30
5/9/22	Parkview Ladies and Lemons Event	\$ 500.00		\$ 77,460.30
5/9/22	Pueblo Downtown Association Levee Walk	\$ 700.00		\$ 76,760.30
5/9/22	Dogpatch Cleanup/Recycling 3RTS Inc.	\$ 500.00		\$ 76,260.30
5/9/22	Goodnight Barn Chuck Wagon Rendeuous	\$ 15,000.00		\$ 61,260.30
5/23/22	Southern Colorado Equality Alliance LGBTQ+ Pride Event	\$ 1,500.00		\$ 59,760.30
5/23/22	Rollin on the Riverwalk HARP Event	\$ 9,000.00		\$ 50,760.30
6/13/22	2022 Leadership Pueblo Project	\$ 300.00		\$ 50,460.30
6/27/22	Pueblo Symphony Season Support	\$ 294.32		\$ 50,165.98
7/25/22	Assistance League Holiday Event	\$ 1,000.00		\$ 49,165.98
7/25/22	United Way / SoCoYoGo App	\$ 2,500.00		\$ 46,665.98
8/22/22	United Way Campaign Kickoff Luncheon Table Sponsor	\$ 500.00		\$ 46,165.98
8/22/22	Pueblo County Courthouse Lighting Ceremony	\$ 500.00		\$ 45,665.98
8/22/22	Ybarra's Boxing Showcase	\$ 1,500.00		\$ 44,165.98
9/12/22	Latino Chamber Lifetime Achievement Award Ceremony Table	\$ 750.00		\$ 43,415.98
9/12/22	Pueblo Chile Balloon Fiesta	\$ 2,500.00		\$ 40,915.98
9/12/22	Song of Pueblo	\$ 3,000.00		\$ 37,915.98
9/12/22	District 60 Education Foundation Cornhole at the Dutch	\$ 1,000.00		\$ 36,915.98
9/26/22	Damon Days Event/Historic Pueblo Inc	\$ 1,000.00		\$ 35,915.98
9/26/22	NAACP Banquet	\$ 700.00		\$ 35,215.98
9/26/22	Scott Richards Scholarship - PCC	\$ 2,000.00		\$ 33,215.98
9/26/22	Scott Richards Broadcast Room Plaque	\$ 26.50		\$ 33,189.48
9/26/22	Parade of Lights - Downtown Association	\$ 1,000.00		\$ 32,189.48
9/26/22	Parkview event "Mammos & Mimosas"	\$ 350.00		\$ 31,839.48
10/11/22	Pueblo Choral Society "Jubilation" holiday performance	\$ 5,000.00		\$ 26,839.48
				\$ 26,839.48
				\$ 26,839.48
				\$ 26,839.48
				\$ 26,839.48
				\$ 32,189.48



Pueblo Choral Society, Inc.

P.O. Box 3780, Pueblo, CO 81005 / 719-281-6823 / www.pueblochoralsociety.org

August 4, 2022

City Council
Attn: Tracey Sample
1 City Hall Place
Pueblo, CO 81003

Dear Tracey,

The Pueblo Choral Society is most grateful for the support which City Council gave us for our inaugural *Old Fashioned Christmas* concert which we presented last December at Memorial Hall. As you may recall, this was a FREE Christmas event which brought the public together to celebrate this special time of year. It was a great success! Attendance was impressive.

As we embark on our 36th Season, titled *The Power of Music*, we would like to again have our Christmas Concert at Memorial Hall. We will be inviting a variety of local musical groups to join us, including other choirs and local brass and string ensembles. You are most certainly aware that there are many costs involved in using this venue. The Pueblo Choral Society is a non-profit organization whose members are all volunteers. Therefore, we rely on the generous donations of our sponsors and advertisers, in addition to ticket sales, to present quality concerts to the community.

In order to produce this special concert, we humbly ask the City Council to support us with \$6,500.00. This will allow us to cover the expenses of Memorial Hall, as well as the hiring of some additional performing groups. I am enclosing a copy of last year's invoice from Spectra. Kevin Ortiz has assured us the cost would remain the same as last year.

We greatly appreciate your thoughtful consideration of our request and value your support in making this concert possible.

Sincerely,

Judith A. Hastall

Judith A. Hastall
Past President



SETTLEMENT



EVENT: Pueblo Choral Society
 DATE(S): 12/19/2021
 PROMOTER: Pueblo Choral Society
 # OF SHOWS: 1

# COMP TICKETS:	994
# PAID TICKETS:	0
TOTAL TICKETS OUT:	0
drop	250

NET TICKET SALES	\$	-
BUILDING EXPENSES		
EVENT STAFF	\$	-
SECURITY (IN HOUSE)		\$110.00
SECURITY (SERVICES)	\$	-
EVENT TIX SELLERS	\$	-
BUILDING RENT	\$	1,900.00
FLYER DISTRIBUTION	\$	-
OPERATIONS STAFF (SETUP-CLEANING)	\$	380.00
CLEANING SUPPLIES-TRASH REMOVAL	\$	-
EQUIPMENT RENTAL	\$	-
INSURANCE	\$	250.00
LICENSES (ASCAP/BMI, OTHER)	\$	-
PR/MARKETING	\$	760.00
GROUPON COMMISSIONS	\$	-
OTHER :		
CATERING	\$	-
CREDIT CARD FEES	\$	-
RUNNER	\$	-
GROUPON COMMISSION	\$	-
COMMISSIONS	\$	-
PRODUCTIONS:		
SPECTRA STAGEHANDS	\$	-
DEHERRERA SOUND	\$	-
CENTERSTAGE ENTERTAINMENT	\$	2,772.89
ERIC BRAVO	\$	-
PRODUCTIONS	\$	-
ARTISTS TALENT FEE	\$	-
ARTIST MARKETING EXPENSE	\$	-
TOTAL BUILDING EXPENSES	\$	6,152.89
PROCEEDS (LOSS)	\$	(6,152.89)

SETTLEMENT

Promoter Sales	\$	-
Less:		
Building Expenses	\$	(6,152.89)
Plus:		
Deposit	\$	-
NET PROCEEDS DUE AT SETTLEMENT	\$	(6,152.89)

AGREED TO & ACCEPTED BY,

Pueblo Choral Society



Pueblo Memorial Hall/ Spectra Venue Management



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Vicente Martinez Ortega, Councilor Martinez

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO EL MOVIMIENTO SIGUE IN THE AMOUNT OF \$1,500 TO SUPPORT THE MULTICULTURAL FESTIVAL ON OCTOBER 8, 2022 AT 11 AM IN MINERAL PALACE PARK

SUMMARY:

Attached for consideration is a request for support of the Multicultural Festival on October 8 at 11 am in Mineral Palace Park.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

City Council Member Vicente Martinez Ortega is requesting \$1,500 to support the free Multicultural Festival which celebrates the culture, education, dance, song, crafts, food and vendors of people of the world in Pueblo, Colorado. Dance groups represented include Aztec, Russian, Turkish, Filipino, Egyptian, Native American, African, Mexican, Cambodian, and more. Food trucks will be on site along with vendors and booths.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,500 would be paid from the Council Contingencies Account in the 2022 General Fund Budget to El Movimiento Sigue.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

City Council could choose not to authorize funding for this association.

RECOMMENDATION:

This Resolution is at the request of Council Member Vicente Martinez Ortega.

ATTACHMENTS:

1. 10-11-2022 Contingencies (Council) Multicultural Festival
2. 10-11-2022 Sponsorship Request Multicultural Festival

RESOLUTION NO. 15032

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2022 GENERAL FUND BUDGET TO EL MOVIMIENTO SIGUE IN THE AMOUNT OF \$1,500 TO SUPPORT THE MULTICULTURAL FESTIVAL ON OCTOBER 8, 2022 AT 11 AM IN MINERAL PALACE PARK

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$1,500 from the Council Contingencies Account in the 2022 General Fund Budget is authorized to be paid to El Movimiento Sigue in support of the Multicultural Festival on October 8 at 11 am in Mineral Palace Park.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Resolution to implement the policies and procedures described herein.

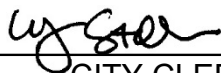
SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: October 11, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

DATE	BALANCE IN 2022 CONTINGENCIES ACCOUNT		DEBIT	CREDIT	BALANCE
	Beginning Balance				\$ 100,000.00
1/24/22	Pueblo United Way Mentoring Collaborative Community Event		\$ 500.00		\$ 99,500.00
1/24/22	PAACO Annual Stars and Lights Dinner & Dance		\$ 750.00		\$ 98,750.00
2/14/22	Boys and Girls Club Champions of Youth Dinner Table		\$ 1,350.00		\$ 97,400.00
2/14/22	Latino Chamber Annual Dinner Table		\$ 950.00		\$ 96,450.00
2/28/22	Memorial Bench for Renee F. Dominguez		\$ 1,600.00		\$ 94,850.00
2/28/22	Summer Solstice Arkansas River Event		\$ 500.00		\$ 94,350.00
3/14/22	Pueblo Has Talent - Use of Memorial Hall		\$ 5,189.70		\$ 89,160.30
3/14/22	Child Advocacy Center's Blue Tie Gala Table		\$ 1,200.00		\$ 87,960.30
3/28/22	AMR Safety Jam		\$ 1,000.00		\$ 86,960.30
3/28/22	Southern Colorado Press Club Sheep Dip		\$ 500.00		\$ 86,460.30
4/11/22	CSU Pueblo President's Gala		\$ 1,500.00		\$ 84,960.30
4/11/22	Trees Please Dutch Clark Renovation Project		\$ 5,000.00		\$ 79,960.30
5/9/22	Latino Veterans Profiles in Courage Ceremony		\$ 2,000.00		\$ 77,960.30
5/9/22	Parkview Ladies and Lemons Event		\$ 500.00		\$ 77,460.30
5/9/22	Pueblo Downtown Association Levee Walk		\$ 700.00		\$ 76,760.30
5/9/22	Dogpatch Cleanup/Recycling 3RTS Inc.		\$ 500.00		\$ 76,260.30
5/9/22	Goodnight Barn Chuck Wagon Rendeuous		\$ 15,000.00		\$ 61,260.30
5/23/22	Southern Colorado Equality Alliance LGBTQ+ Pride Event		\$ 1,500.00		\$ 59,760.30
5/23/22	Rollin on the Riverwalk HARP Event		\$ 9,000.00		\$ 50,760.30
6/13/22	2022 Leadership Pueblo Project		\$ 300.00		\$ 50,460.30
6/27/22	Pueblo Symphony Season Support		\$ 294.32		\$ 50,165.98
7/25/22	Assistance League Holiday Event		\$ 1,000.00		\$ 49,165.98
7/25/22	United Way / SoCoYoGo App		\$ 2,500.00		\$ 46,665.98
8/22/22	United Way Campaign Kickoff Luncheon Table Sponsor		\$ 500.00		\$ 46,165.98
8/22/22	Pueblo County Courthouse Lighting Ceremony		\$ 500.00		\$ 45,665.98
8/22/22	Ybarra's Boxing Showcase		\$ 1,500.00		\$ 44,165.98
9/12/22	Latino Chamber Lifetime Achievement Award Ceremony Table		\$ 750.00		\$ 43,415.98
9/12/22	Pueblo Chile Balloon Fiesta		\$ 2,500.00		\$ 40,915.98
9/12/22	Song of Pueblo		\$ 3,000.00		\$ 37,915.98
9/12/22	District 60 Education Foundation Cornhole at the Dutch		\$ 1,000.00		\$ 36,915.98
9/26/22	Damon Days Event/Historic Pueblo Inc		\$ 1,000.00		\$ 35,915.98
9/26/22	NAACP Banquet		\$ 700.00		\$ 35,215.98
9/26/22	Scott Richards Scholarship - PCC		\$ 2,000.00		\$ 33,215.98
9/26/22	Scott Richards Broadcast Room Plaque		\$ 26.50		\$ 33,189.48
9/26/22	Parade of Lights - Downtown Association		\$ 1,000.00		\$ 32,189.48
10/11/22	Parkview event "Mammos & Mimosas"		\$ 350.00		\$ 31,839.48
10/11/22	Pueblo Choral Society Holiday Performance		\$ 5,000.00		\$ 26,839.48
10/11/22	Multicultural Festival		\$ 1,500.00		\$ 25,339.48
					\$ 25,339.48
					\$ 25,339.48
					\$ 25,339.48
					\$ 32,189.48



city of

PUEBLO

colorado

CITY OF PUEBLO SPONSORSHIP REQUEST

Date of Request: 09-08-22

Name: Javier Quinones

Business/Non-Profit Name: El movimiento Sigue

Phone: 847-863-2852 E-Mail: javier41@hotmail.com

Name of Event: 4th Annual Multicultural Festival

Date of Event: Sat. Oct. 8th, 2022 Amount requested: \$1,500

*****Supporting event documents must be attached to this request*****

Make check payable to:

Business/Non-Profit Name: _____

Address: _____

Phone: _____

Please note: If the payee listed above is not an established vendor with the City of Pueblo, the application must be completed before payment can be processed. If payee is an active vendor with the City of Pueblo we will confirm the information listed above. If the information does not match our records, it must be updated before payment can be processed.

OFFICE USE ONLY:

Amount approved: _____ Supporting Councilmember: _____

Agenda date: _____ Vendor Confirmation Date: _____

4TH ANNUAL MULTICULTURAL FESTIVAL



SATURDAY OCT. 8TH
11AM - 6PM
MINERAL PALACE PARK
PUEBLO, COLORADO



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Heather Graham, President

SUBJECT: A RESOLUTION AUTHORIZING THE PRESIDENT OF CITY COUNCIL TO NEGOTIATE A PROPOSED AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND A REPUTABLE ACCOUNTING FIRM, TO PERFORM A FORENSIC AUDIT, SUBJECT TO SUBSEQUENT APPROVAL OF SAID AGREEMENT BY ORDINANCE

SUMMARY:

The attached Resolution authorizes the President of City Council to negotiate and present City Council with a proposed agreement for professional services between the City and a reputable accounting firm to perform a forensic audit.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Section 3-5 (g) of the City Charter and Section 1-4-6 (b) of the Pueblo Municipal Code authorize City Council to hire such personnel and retain such independent contractors as Council deems necessary to carry out Council's duties.

At City Council's regular meeting on April 25, 2022, Council President Heather Graham requested that the attached Resolution be prepared for consideration at Council's next regular meeting.

FINANCIAL IMPLICATIONS:

Unknown at this time.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

ALTERNATIVES:

If City Council does not approve this Resolution, City Council will not begin the process of retaining an accounting firm to perform a forensic audit.

RECOMMENDATION:

None.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE PRESIDENT OF CITY COUNCIL TO NEGOTIATE A PROPOSED AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND A REPUTABLE ACCOUNTING FIRM, TO PERFORM A FORENSIC AUDIT, SUBJECT TO SUBSEQUENT APPROVAL OF SAID AGREEMENT BY ORDINANCE

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The President of City Council shall be and hereby is authorized to negotiate and present City Council with a proposed agreement for professional services between the City and a reputable accounting firm, to perform a forensic audit. As required by City Charter Sec. 3-9, such proposed agreement must be subsequently approved by ordinance.

SECTION 2.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 11, 2022

BY: Lori Winner
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Dan Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE SOUTHEASTERN COLORADO HERITAGE CENTER, INC., D/B/A THE PUEBLO HERITAGE MUSEUM, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF TEN THOUSAND DOLLARS (\$10,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign a Grant Agreement with the Southeastern Colorado Heritage Center, Inc. d/b/a Pueblo Heritage Museum, a Colorado nonprofit corporation (hereinafter referred to as the "Heritage Museum") to mitigate the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic (hereinafter "Project") as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6. Funds for the project, in the amount of \$10,000 will be paid out of Project No. CI2113, the American Rescue Plan Act.

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026).

BACKGROUND:

The Pueblo Heritage Museum was closed in the 2020 fiscal year in compliance with local and state public health mandates. The museum made the decision to keep the staff that was employed at the time on the payroll. Although the museum's doors remained closed during these times, the costs for businesses overhead continued to

accumulate, including insurance costs, utilities, staff salaries, taxes, and other general operating expenses. In general, the museum had a total expense broken into two main categories: salaries and other compensation which totaled \$40,669 and other expenses which totaled \$45,151. As a result of the pandemic, the museum's admissions fell from 1,842 visitors in 2019 to 587 visitors in 2020. The Heritage Museum reopened in June, 2021 after a revamp of staff and exhibit space.

The Heritage Museum is a nonprofit organization disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (3) (C). In addition, the Museum is a member of the tourism industry eligible for reimbursement of payroll costs and covered benefits for employees, the compensation of returning employees and financial support for operations and maintenance of existing equipment and facilities under 31 CFR 35.6.(b) (3) (D).

FINANCIAL IMPLICATIONS:

The Heritage Museum will receive \$10,000 in ARPA funds from Project No.CI2113.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to support the Heritage Museum.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Heritage Museum - Proposed Grant Agreement - ARPA Funds

ORDINANCE NO. 10293

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE SOUTHEASTERN COLORADO HERITAGE CENTER, INC., D/B/A THE PUEBLO HERITAGE MUSEUM, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF TEN THOUSAND DOLLARS (\$10,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter "ARPA"); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds ("CLFRF") to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Final Rule 31 CFR 35.6(b)(7) recipients may use CLFR Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Grant Agreement ("Agreement") dated October 11, 2022, between and the City of Pueblo, a Colorado Municipal Corporation and the Southeastern Colorado Heritage Center, Inc. d/b/a Pueblo Heritage Museum, a Colorado Nonprofit Corporation (hereinafter referred to as the "Heritage Museum"), a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

Funds in the amount of \$10,000 are hereby authorized to be paid from Project No. CI2113 – American Rescue Plan Act, to the Heritage Museum for purposes of mitigating the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic as described in the attached Agreement.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the policies and procedures described herein.

SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

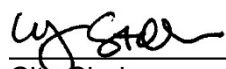
☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk

GRANT AGREEMENT

THIS GRANT AGREEMENT ("Agreement") is made and entered into this 11th day of October, 2022, (hereinafter "Effective Date") by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the "City" and the Southeastern Colorado Heritage Center, Inc. d/b/a Pueblo Heritage Museum, a Colorado nonprofit corporation, hereinafter referred to as the "Grantee" or "Museum." City and Grantee/Museum are sometimes each referred to as a "Party" and collectively "Parties."

RECITALS

The following recitals are incorporated in and made a part of this Agreement.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter "ARPA"); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, by Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds ("CLFRF") to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, Grantee has requested that the City use CLRF funds to mitigate the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic (hereinafter "Project"); and

WHEREAS, the City desires to disburse funds from Project No. CI2113 to the Grantee for the aforesaid purpose.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. FACTUAL BASIS FOR THE GRANT AWARD

(a) Pueblo Heritage Museum was closed in the 2020 fiscal year in compliance with local and state public health mandates. The museum made the decision to keep the staff that was employed at the time on the payroll.

(b) Although the museum's doors remained closed during these times, the costs for businesses overhead continued to accumulate, including insurance costs, utilities, staff salaries, taxes, and other general operating expenses. In general, the museum had a total expense broken into two main categories: salaries and other compensation which totaled \$40,669 and other expenses which totaled \$45,151.

(c) As a result of the pandemic, the museum's admissions fell from 1,842 visitors in 2019 to 587 visitors in 2020.

(d) Grantee reopened in June, 2021 after a revamp of staff and exhibit space.

(e) Grantee is a nonprofit organization disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (3) (C).

(f) Grantee is a member of the tourism industry eligible for reimbursement of payroll costs and covered benefits for employees, the compensation of returning employees and financial support for operations and maintenance of existing equipment and facilities under 31 CFR 35.6.(b) (3) (D).

2. RESPONSIBILITIES OF GRANTEE

Prior to receiving ARPA funds under this Agreement, Grantee is required to provide the City with the following information and documentation:

1. Federal SAM Unique Entity ID;
2. City Sales Tax License;
3. State Sales Tax License;
4. Certificate of Good Standing from the Office of the Secretary of State.

3. PAYMENTS TO GRANTEE

(a) The aggregate of all payments made hereunder shall not exceed Ten Thousand Dollars (U.S. \$10,000). Payment will be made within thirty (30) days following approval of this Agreement by the City Council of the City of Pueblo and execution of this Agreement by the Grantee.

(b) Upon expiration of the term of this Agreement or upon any prior termination, Grantee shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

4. TERM OF PROJECT AND AGREEMENT

(a) The term of the Project shall be from Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

(b) The term of this Agreement shall be from the Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Grantee, upon ten (10) days written notice to Grantee including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Grantee. Cause for termination shall include any material failure by Grantee to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Grantee, which decision shall not be subject to appeal.

(c) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Grantee shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City.

6. ASSIGNABILITY

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

7. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in 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 provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Grantee and City.

8. GOVERNMENTAL IMMUNITY.

The City does not waive or intend to waive, by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the

Colorado Governmental Immunity Act § 24-10-101 to 120, C.R.S., or otherwise available under applicable law.

9. NO THIRD-PARTY BENEFICIARIES.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under the Agreement shall be deemed an incidental beneficiary only.

10. LITIGATION, VENUE AND WAIVER OF TRIAL BY JURY.

In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

11. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

12. RULES OF CONSTRUCTION.

The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

13. WAIVER.

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

14. NO MONETARY DAMAGES AGAINST CITY.

In consideration of City entering into the Agreement, Grantee waives and discharges City, its officers, agents and employees from any and all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

15. COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

16. SIGNATURES.

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

IN WITNESS, WHEREOF, the Grantee and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

CITY OF PUEBLO
A COLORADO MUNICIPAL
CORPORATION

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

Grantee:

SOUTHEASTERN COLORADO
HERITAGE CENTER, INC. D/B/A
PUEBLO HERITAGE CENTER
a Colorado nonprofit corporation

ATTEST:

By _____
Signature

By _____
Signature

Name _____

Name _____

Title _____

Title _____



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Dan Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE STATE HISTORIC SOCIETY OF COLORADO D/B/A THE EL PUEBLO HISTORY MUSEUM, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF FIVE THOUSAND DOLLARS (\$5,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign a Grant Agreement with the State Historic Society of Colorado d/b/a El Pueblo History Museum, a Colorado Nonprofit Corporation (hereinafter referred to as the "El Pueblo Museum") to mitigate the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic (hereinafter "Project") as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6. Funds for the project, in the amount of \$5,000 will be paid out of Project No. CI2113, the American Rescue Plan Act

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026).

BACKGROUND:

The El Pueblo History Museum was closed from March 13, 2020 through June, 2020 in compliance with local and state public health mandates. During this time, the Museum had 13 employees on the payroll, 8 full time and 5 part-time. Due to a lack of revenue, the Museum was required to lay off one part-time employee, but the remaining staff

were able to work remotely and in the office with special permission on select days and hours in order to attend to continuing education, financial and facilities issues. Although the Museum's doors remained closed during these times, the costs for overhead continued to accumulate, including in person maintenance of the building, landscaping, utilities, communication costs, and increased cleaning and disinfecting supplies. As a result of the pandemic, the Museum's admissions fell from 13,016 in 2019, to 2,239 in 2020.

In addition to the complete halt of the History Museum's rentals program, tours, and Hands-On History Friday classes, the Museum lost additional revenue by being forced to close its gift shop. In addition, the Museum was required to refund tuition from its education programming and deposits and payments made towards its rentals program. In addition to the vastly reduced revenue throughout most of the year, the Museum had to cancel its biggest in person fundraiser of the year and delay or cancel the opening of many new exhibits and annual programs throughout the pandemic. The History Museum's major education fundraiser of the year was revamped from an in person Bruja Brew Fest to creating a ticket book which allowed individual visits to participating breweries at their locations. The Museum went from raising over \$10,000 in previous years to less than \$1,000 in the fall of 2020.

The El Pueblo Museum is a nonprofit organization disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (3) (C). In addition, the Museum is a member of the tourism industry eligible for reimbursement of payroll costs and covered benefits for employees, the compensation of returning employees and financial support for operations and maintenance of existing equipment and facilities under 31 CFR 35.6.(b) (3) (D).

FINANCIAL IMPLICATIONS:

The El Pueblo History Museum will receive \$5,000 in ARPA funds from Project No.CI2113.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to support the El Pueblo History Museum.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. El Pueblo Museum - Proposed Grant Agreement - ARPA Funds

ORDINANCE NO. 10294

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE STATE HISTORIC SOCIETY OF COLORADO D/B/A THE EL PUEBLO HISTORY MUSEUM, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF FIVE THOUSAND DOLLARS (\$5,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds (“CLFRF”) to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Final Rule 31 CFR 35.6(b)(7) recipients may use CLFR Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Grant Agreement (“Agreement”) dated October 11, 2022, between and the City of Pueblo, a Colorado municipal corporation and the State Historic Society of Colorado d/b/a El Pueblo History Museum a Colorado nonprofit corporation (hereinafter referred to as the “El Pueblo Museum”) a Colorado nonprofit corporation, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

Funds in the amount of \$5,000 are hereby authorized to be paid from Project No. CI2113 – American Rescue Plan Act, to the El Pueblo Museum for purposes of mitigating the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic as described in the attached Agreement.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the policies and procedures described herein.

SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk

GRANT AGREEMENT

THIS GRANT AGREEMENT ("Agreement") is made and entered into this 11th day of October, 2022, (hereinafter "Effective Date") by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the "City" and the State Historic Society of Colorado d/b/a El Pueblo History Museum, a Colorado nonprofit corporation, hereinafter referred to as the "Grantee" or "Museum." City and Grantee/Museum are sometimes each referred to as a "Party" and collectively "Parties."

RECITALS

The following recitals are incorporated in and made a part of this Agreement.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter "ARPA"); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, by Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds ("CLFRF") to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, Grantee has requested that the City use CLRF funds to mitigate the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic (hereinafter "Project"); and

WHEREAS, the City desires to disburse funds from Project No. CI2113 to the Grantee for the aforesaid purpose.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. FACTUAL BASIS FOR THE GRANT AWARD

(a) The El Pueblo History Museum was closed from March 13, 2020 through June 2020 in compliance with local and state public health mandates. During this time, the Museum had 13 employees on the payroll, 8 full time and 5 part-time. Due to a lack of revenue, the Museum

was required to lay off one part-time employee, but the remaining staff were able to work remotely and in the office with special permission on select days and hours in order to attend to continuing education, financial and facilities issues.

(b) Although the Museum's doors remained closed during these times, the costs for overhead continued to accumulate, including in person maintenance of the building, landscaping, utilities, communication costs, and increased cleaning and disinfecting supplies.

(c) As a result of the pandemic, the Museum's admissions fell from 13,016 in 2019, to 2,239 in 2020.

(d) In addition to the complete halt of the History Museum's rentals program, tours, and Hands-On History Friday classes, the Museum lost additional revenue by being forced to close its gift shop. In addition, the Museum was required to refund tuition from its education programming and deposits and payments made towards its rentals program. In addition to the vastly reduced revenue throughout most of the year, the Museum had to cancel its biggest in person fundraiser of the year and delay or cancel the opening of many new exhibits and annual programs throughout the pandemic.

(e) The History Museum's major education fundraiser of the year was revamped from an in person Bruja Brew Fest to creating a ticket book which allowed individual visits to participating breweries at their locations. The Museum went from raising over \$10,000 in previous years to less than \$1,000 in the fall of 2020.

(f) The El Pueblo History Museum is a nonprofit organization disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (3) (C).

(g) The History Museum is a member of the tourism industry eligible for reimbursement of payroll costs and covered benefits for employees, the compensation of returning employees and financial support for operations and maintenance of existing equipment and facilities under 31 CFR 35.6.(b) (3) (D).

2. RESPONSIBILITIES OF GRANTEE

Prior to receiving ARPA funds under this Agreement, Grantee is required to provide the City with the following information and documentation:

1. Federal SAM Unique Entity ID;
2. City Sales Tax License;
3. State Sales Tax License;
4. Certificate of Good Standing from the Office of the Secretary of State.

3. PAYMENTS TO GRANTEE

(a) The aggregate of all payments made hereunder shall not exceed Five Thousand Dollars (U.S. \$5,000). Payment will be made within thirty (30) days following approval of this Agreement by the City Council of the City of Pueblo and execution of this Agreement by the Grantee.

(b) Upon expiration of the term of this Agreement or upon any prior termination, Grantee shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

4. TERM OF PROJECT AND AGREEMENT

(a) The term of the Project shall be from Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

(b) The term of this Agreement shall be from the Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Grantee, upon ten (10) days written notice to Grantee including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Grantee. Cause for termination shall include any material failure by Grantee to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Grantee, which decision shall not be subject to appeal.

(c) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Grantee shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City.

6. ASSIGNABILITY

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

7. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in 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 provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Grantee and City.

8. GOVERNMENTAL IMMUNITY.

The City does not waive or intend to waive, by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act § 24-10-101 to 120, C.R.S., or otherwise available under applicable law.

9. NO THIRD-PARTY BENEFICIARIES.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under the Agreement shall be deemed an incidental beneficiary only.

10. LITIGATION, VENUE AND WAIVER OF TRIAL BY JURY.

In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

11. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

12. RULES OF CONSTRUCTION.

The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

13. WAIVER.

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

14. NO MONETARY DAMAGES AGAINST CITY.

In consideration of City entering into the Agreement, Grantee waives and discharges City, its officers, agents and employees from any and all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

15. COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

16. SIGNATURES.

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

IN WITNESS, WHEREOF, the Grantee and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

CITY OF PUEBLO
A COLORADO MUNICIPAL
CORPORATION

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

Grantee:

STATE HISTORIC SOCIETY OF
COLORADO D/B/A EL PUEBLO HISTORY
MUSEUM
a Colorado nonprofit corporation

ATTEST:

By _____
Signature

By _____
Signature

Name _____

Name _____

Title _____

Title _____



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Dan Kogovsek, City Attorney

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COLORADO ARCHAEOLOGICAL SOCIETY, INC. D/B/A THE PUEBLO ARCHEOLOGICAL AND HISTORICAL SOCIETY, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF FIVE THOUSAND DOLLARS (\$5,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

SUMMARY:

This Ordinance approves and authorizes the Mayor to sign a Grant Agreement with the Colorado Archaeological Society, Inc., d/b/a the Pueblo Archaeological and Historical Society, a Colorado Nonprofit Corporation (hereinafter referred to as the "PAHS Museum") to mitigate the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic (hereinafter "Project") as authorized by Section 603 of the American Rescue Plan Act and U.S. Treasury Final Rule 31 CFR 35.6. Funds for the project, in the amount of \$5,000 will be paid out of Project No. CI-2113, the American Rescue Plan Act.

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI-2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from the American Recovery Plan Act ("ARPA") for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026).

BACKGROUND:

The Pueblo Archaeological and Historical Society ("PAHS") is a founding member of what is today known as the Pueblo Heritage Museum. As such, PAHS hosts a museum exhibit, located at 201 W. B Street near the Union Avenue Historic District, which is regularly updated. PAHS is an all-volunteer organization vested in fostering a strong

arts and culture sector able to not only attract businesses that are considering locating to Pueblo, but also helping to grow and contribute to a vibrant tourism and hospitality economic sector.

In accordance with local and state public health mandates, the museum cycled through times of closure and reopening in the 2020-2021 timeframe. PAHS's operation costs remained constant during the pandemic and yet as a result of COVID, admissions and room rentals fell along with associated revenue.

While PAHS membership remained relatively steady and as did that segment of its revenue, PAHS did experience a significant reduction in physical attendance at its monthly presentations as follows:

Year	Attendance
2019	747
2020	224
2021	45

The COVID-related decline in attendance also resulted in a loss of revenue from t-shirt and hat sales, as well as new memberships and donations.

The PAHS Museum is a nonprofit organization disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (3) (C). In addition, the Museum is a member of the tourism industry eligible for reimbursement of payroll costs and covered benefits for employees, the compensation of returning employees and financial support for operations and maintenance of existing equipment and facilities under 31 CFR 35.6.(b) (3) (D).

FINANCIAL IMPLICATIONS:

The PAHS Museum will receive \$5,000 in ARPA funds from Project No.CI2113.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to support the PAHS Museum.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. PAHS Museum (Archeological) - Proposed Grant Agreement - ARPA Funds

ORDINANCE NO. 10296

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A GRANT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COLORADO ARCHAEOLOGICAL SOCIETY, INC. D/B/A THE PUEBLO ARCHEOLOGICAL AND HISTORICAL SOCIETY, A COLORADO NONPROFIT CORPORATION, AS AUTHORIZED BY SECTION 603 OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6 AND AUTHORIZING THE PAYMENT OF FIVE THOUSAND DOLLARS (\$5,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds (“CLFRF”) to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Final Rule 31 CFR 35.6(b)(7) recipients may use CLFR Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Grant Agreement (“Agreement”) dated October 11, 2022, between and the City of Pueblo, a Colorado municipal corporation and the Colorado Archaeological Society, Inc., d/b/a the Pueblo Archaeological and Historical Society, a Colorado nonprofit corporation (hereinafter referred to as the “PAHS Museum”) a Colorado nonprofit corporation, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 3.

Funds in the amount of \$5,000 are hereby authorized to be paid from Project No. CI2113 – American Rescue Plan Act, to the PAHS Museum for purposes of mitigating the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic as described in the attached Agreement.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the policies and procedures described herein.

SECTION 5.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk

GRANT AGREEMENT

THIS GRANT AGREEMENT ("Agreement") is made and entered into this 11th day of October, 2022, (hereinafter "Effective Date") by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the "City" and the Colorado Archaeological Society, Inc., d/b/a the Pueblo Archaeological and Historical Society, a Colorado nonprofit corporation, hereinafter referred to as the "Grantee" or "PAHS." City and Grantee/PAHS are sometimes each referred to as a "Party" and collectively "Parties."

RECITALS

The following recitals are incorporated in and made a part of this Agreement.

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter "ARPA"); and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, by Ordinance No. 9931, approved on May 17, 2021, the City Council established Project No. CI2113 and budgeted and appropriated up to \$36.7 million in funds which were expected to be distributed to the City from ARPA for covered costs and eligible expenses to be incurred during the period which began on March 3, 2021 until December 31, 2024 (to be expended by December 31, 2026); and

WHEREAS, on January 6, 2022, the U.S. Treasury issued, with an effective date of April 1, 2022, the Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations ("CFR"); and

WHEREAS, under the Final Rule, recipients may use Coronavirus Local Fiscal Recovery Funds ("CLFRF") to respond to the COVID-19 public health emergency and the negative economic consequences resulting therefrom; and

WHEREAS, Grantee has requested that the City use CLRF funds to mitigate the financial hardship caused by a decline in visitors and revenue as a result of the COVID-19 pandemic (hereinafter "Project"); and

WHEREAS, the City desires to disburse funds from Project No. CI2113 to the Grantee for the aforesaid purpose.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. FACTUAL BASIS FOR THE GRANT AWARD

(a) The Pueblo Archaeological and Historical Society ("PAHS") is a founding member of what is today known as the Pueblo Heritage Museum. As such, PAHS hosts a museum exhibit, located at 201 W. B Street near the Union Avenue Historic District, which is regularly updated. PAHS is an all-volunteer organization vested in fostering a strong arts and culture sector able to

not only attract businesses that are considering locating to Pueblo, but also helping to grow and contribute to a vibrant tourism and hospitality economic sector.

(b) In accordance with local and state public health mandates, the museum cycled through times of closure and reopening in the 2020-2021 timeframe. PAHS's operation costs remained constant during the pandemic and yet as a result of COVID, admissions and room rentals fell along with associated revenue.

(c) While PAHS membership remained relatively steady and as did that segment of its revenue, PAHS did experience a significant reduction in physical attendance at its monthly presentations as follows:

Year	Attendance
2019	747
2020	224
2021	45

The COVID-related decline in attendance also resulted in a loss of revenue from t-shirt and hat sales, as well as new memberships and donations.

(d) PAHS is a nonprofit organization disproportionately impacted by the COVID-19 public health emergency, operating in a qualified census tract under 31 CFR 35.6.(b) (3) (C).

(e) PAHS a member of the tourism industry eligible for reimbursement of payroll costs and covered benefits for employees, the compensation of returning employees and financial support for operations and maintenance of existing equipment and facilities under 31 CFR 35.6.(b) (3) (D).

2. RESPONSIBILITIES OF GRANTEE

Prior to receiving ARPA funds under this Agreement, Grantee is required to provide the City with the following information and documentation:

1. Federal SAM Unique Entity ID;
2. City Sales Tax License;
3. State Sales Tax License;
4. Certificate of Good Standing from the Office of the Secretary of State.

3. PAYMENTS TO GRANTEE

(a) The aggregate of all payments made hereunder shall not exceed Five Thousand Dollars (U.S. \$5,000). Payment will be made within thirty (30) days following approval of this Agreement by the City Council of the City of Pueblo and execution of this Agreement by the Grantee.

(b) Upon expiration of the term of this Agreement or upon any prior termination, Grantee shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

4. TERM OF PROJECT AND AGREEMENT

(a) The term of the Project shall be from Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

(b) The term of this Agreement shall be from the Effective Date set forth above to December 31, 2023 unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Grantee, upon ten (10) days written notice to Grantee including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Grantee. Cause for termination shall include any material failure by Grantee to comply with any term of this Agreement.

(b) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Grantee, which decision shall not be subject to appeal.

(c) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Grantee shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City.

6. ASSIGNABILITY

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

7. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in 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 provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Grantee and City.

8. GOVERNMENTAL IMMUNITY.

The City does not waive or intend to waive, by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act § 24-10-101 to 120, C.R.S., or otherwise available under applicable law.

9. NO THIRD-PARTY BENEFICIARIES.

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of

action by any other third party. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under the Agreement shall be deemed an incidental beneficiary only.

10. LITIGATION, VENUE AND WAIVER OF TRIAL BY JURY.

In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

11. SEVERABILITY.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

12. RULES OF CONSTRUCTION.

The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

13. WAIVER.

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

14. NO MONETARY DAMAGES AGAINST CITY.

In consideration of City entering into the Agreement, Grantee waives and discharges City, its officers, agents and employees from any and all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

15. COUNTERPARTS.

This Agreement may be executed in two (2) or more counterparts and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

16. SIGNATURES.

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

IN WITNESS, WHEREOF, the Grantee and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

ATTEST:

CITY OF PUEBLO
A COLORADO MUNICIPAL CORPORATION

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

Grantee:

COLORADO ARCHAEOLOGICAL SOCIETY, INC.
D/B/A PUEBLO ARCHAEOLOGICAL AND HISTORICAL SOCIETY
a Colorado nonprofit corporation

ATTEST:

By _____
Signature

Name _____

Title _____

By _____
Signature

Name _____

Title _____



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A SUBGRANT IN THE AMOUNT OF \$44,000 FROM ONE COLORADO EDUCATION FUND FOR THE PUEBLO FOOD PROJECT, AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT, CREATING PROJECT NO. CI2213, AND BUDGETING AND APPROPRIATING \$44,000 TO PROJECT NO. CI2213

SUMMARY:

Attached is an Ordinance approving and accepting a grant in the amount of \$44,000.00 from One Colorado Education Fund to provide funds to continue food systems work by the Pueblo Food Project through One Colorado's subgrantee program. This Ordinance creates Project No. CI2213, budgets and appropriates the grant funds to Project No. CI2213, and authorizes the Mayor to sign the Grant Agreement.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The Pueblo Food Project ("PFP") has been working in partnership with One Colorado Education Fund as it worked to improve food access, health, and nutrition for LGBTQ+ individuals in the community. One Colorado is a long standing LGBTQ+ organization in Colorado and has been charged with assisting food initiatives in Pueblo County. Over the course of the last six (6) months PFP and One Colorado have been working together to solve issues in Pueblo's food system. Over the last few weeks One Colorado approached PFP with a subgrantee offer to continue PFP's regular work in food systems and to work with One Colorado to increase outreach to the LGBTQ+ community.

FINANCIAL IMPLICATIONS:

There are no matching funds required for this grant. The City of Pueblo will receive \$44,000.00 for the Pueblo Food Project on an invoice and reimbursement basis. The total grant budget for Project No. CI2213 will become \$44,000.00.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the proposed Ordinance is not approved, the Pueblo Food Project will not receive the grant funds.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 09-26-22 One Colorado Grant PFP CI2213 Grant

ORDINANCE NO. 10297

AN ORDINANCE APPROVING AND ACCEPTING A SUBGRANT IN THE AMOUNT OF \$44,000 FROM ONE COLORADO EDUCATION FUND FOR THE PUEBLO FOOD PROJECT, AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT, CREATING PROJECT NO. CI2213, AND BUDGETING AND APPROPRIATING \$44,000 TO PROJECT NO. CI2213

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Memorandum of Understanding dated July 31, 2022 ("Agreement") between the City of Pueblo, a Municipal Corporation, by and through the Pueblo Food Project, and One Colorado Education Fund, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute the Agreement on behalf of the City of Pueblo, a Colorado Municipal Corporation, and the City Clerk is authorized to affix the seal of the City thereto and attest the same.

SECTION 3.

Project No. CI2213 is hereby created.

SECTION 4.

Funds in the amount of \$44,000.00 shall be accepted pursuant to the Agreement and budgeted and appropriated to Project No. CI2213.

SECTION 5.

The officers and staff of the City are hereby authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the transactions described therein.

SECTION 6.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

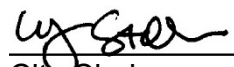
☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk

MEMORANDUM OF UNDERSTANDING

PARTIES

This Memorandum of Understanding (hereinafter referred to as the “**Agreement**”) is entered into on July 31, 2022 (the “**Effective Date**”) and will end on June 30, 2023, by and between One Colorado Education Fund, with an address of 303 East 17th Avenue, Suite 400, Denver, CO 80203 and the City of Pueblo, by and through the Pueblo Food Project, with an address of 1 City Hall Place, Pueblo, Colorado 81003 (collectively referred to as the “**Parties**”).

PURPOSE

This Agreement is entered into for the following reasons:

1. To formalize a collaboration between One Colorado Education Fund and Pueblo Food Project to focus on reducing food insecurity in Pueblo County and around Colorado.
2. To establish an agreement in accordance with the Colorado Department of Public Health and Environment’s (CDPHE) Health Disparities and Community Grant Program (HDCGP).
3. To set guidelines, expectations, and timelines around grant deliverables, invoicing, and reporting.

RESPONSIBILITIES OF ONE COLORADO EDUCATION FUND

1. To be the lead organization on the Health Disparities and Community Grant Program through the Colorado Department of Public Health and Environment.
2. To be accountable to CDPHE and to Pueblo Food Project on deliverables outlined in our Statement of Work and agreed to in our contract with CDPHE.
3. To include Pueblo Food Project in planning and implementation of grant deliverables.
4. To invoice CDPHE 45 days after the end of the month for reimbursement of approved grant related expenses.
5. To request and receive invoices from Pueblo Food Project within 20 days after the month for reimbursement of approved grant related expenses.
6. To reimburse Pueblo Food Project for approved grant related expenses within 45 days after the end of the month.
7. To collaborate with Pueblo Food Project on the upcoming FY23 (July 2022-June 2023) Statement of Work and planning with CDPHE and the following Statements of Work outlining deliverables through grant period ending December 31, 2024.

RESPONSIBILITIES OF PUEBLO FOOD PROJECT

1. To be accountable to One Colorado Education Fund on deliverables outlined in this agreement.
2. To work with One Colorado Education Fund on planning and implementation of HDCGP related goals.
3. To provide proof of insurance to One Colorado Education Fund, showing the City of Pueblo is a self-insured entity in accordance with Colorado law.
1. To invoice One Colorado Education Fund for approved grant related expenses within 30 days of the month end. Total FY23 amount: \$44,000. Approved expense areas include:
 - a. Staff time
 - b. Data collection
 - c. Collaboration for SNAP PEAS and other partners
 - d. Healthy School Meals for All (Educational Purposes Only, No Lobbying)
 - e. Travel
 - f. Marketing/Social Media
4. To collaborate with One Colorado Education Fund on the upcoming FY23 (July 2022-June 2023) Statement of Work and planning with CDPHE and the following Statements of Work outlining deliverables through grant period ending December 31, 2024.
5. To collaborate with One Colorado Education Fund on HDCGP grant deliverables and goals:
 - a. Community advisory group
 - b. Food insecurity coalition
 - c. LGBTQ competency training, part one, implementation
 - d. LGBTQ competency training, part two, development
 - e. Identify individuals and organizations to participate in trainings
 - f. Data collection and sharing
 - g. Identifying existing and future policy goals

GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.

AMENDMENTS

The Parties agree that any amendments made to this Agreement must be in writing and they must be signed by both Parties to this Agreement.

As such, any amendments made by the Parties will be applied to this Agreement.

ASSIGNMENT

The Parties hereby agree not to assign any of the responsibilities in this Agreement to a third party unless consented to by both Parties in writing.

ENTIRE AGREEMENT

This Agreement contains the entire agreement and understanding among the Parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

REPRESENTATION AND WARRANTIES

The Parties agree and disclose that they are authorized fully for entering this Agreement. Both Parties' performances and obligations are not to violate the rights of any third party or else violate other, if any, agreements made between them and/or any other organization, person, business or law/governmental regulation.

LIMITATION OF LIABILITY

Under no circumstances will either party be liable for any indirect, special, consequential, or punitive damages (including lost profits) arising out of or relating to this Agreement or the transactions it contemplates (whether for breach of contract, tort, negligence, or other form of action) in case such is not related to the direct result of one Party's negligence or breach.

Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law, including but not limited to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.

SEVERABILITY

In an event where any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, then the remaining provisions will remain to be enforced in accordance with the Parties' intention.

SIGNATURE AND DATE

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.

The Parties hereby agree to the terms and conditions set forth in this Agreement and such is demonstrated throughout by their signatures below:

Name: _____

Title: _____

Organization: _____

Signature: _____

Date: _____

-

Name: _____

Title: _____

Organization: _____

Signature: _____

Date: _____

Name: _____

Title: _____

Organization: _____

Signature: _____

Date: _____

-

Name: _____

Title: _____

Organization: _____

Signature: _____

Date: _____

Name: _____

Title: _____

Organization: _____

Signature: _____

Date: _____

Name: _____

Title: _____

Organization: _____

Signature: _____

Date: _____



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A GRANT IN THE AMOUNT OF \$20,000 FROM THE COLORADO HOUSING AND FINANCE AUTHORITY FOR THE PUEBLO FOOD PROJECT, AUTHORIZING THE MAYOR TO SIGN THE AWARD LETTER, CREATING PROJECT NO. CI2214, AND BUDGETING AND APPROPRIATING \$20,000 TO PROJECT NO. CI2214

SUMMARY:

Attached is an Ordinance approving and accepting a grant in the amount of \$20,000.00 from the Colorado Housing and Finance Authority to provide funds for hunger relief work by the Pueblo Food Project through the Food Pantry Assistance Grant Program. This Ordinance creates Project No. CI2214, budgets and appropriates the grant funds to Project No. CI2214, and authorizes the Mayor to sign the Award Letter.

PREVIOUS COUNCIL ACTION:

City Council previously approved Ordinance No. 9703 on April 27, 2020, approving the initial Trailhead Grant Award, establishing Project No. CI2009, and budgeting and appropriating the initial grant funds to Project No. CI2009. City Council approved Ordinance No. 9733 on July 14, 2020, approving a second Trailhead Grant Award and budgeting and appropriating the grant funds to Project No. CI2009. City Council also approved Ordinance No. 9833 on December 14, 2020 approving another Trailhead Grant Award and budgeting and appropriating the grant funds to Project No. CI2009. City Council also approved Ordinance No. 9936, on May 24, 2021, approving another Trailhead Grant Award, of \$10,450 and budgeting and appropriating funds to Project No. CI2112. City Council also approved Ordinance No. 10063 on December 13, 2021 Trailhead Grant Award for Food Pantry Assistance establishing Project No. CI2122.

BACKGROUND:

The Pueblo Food Project applied for a grant administered by the Colorado Housing and Finance Authority, to support hunger relief efforts in Pueblo via the Pueblo Food Project community pantry. The grant proposal was accepted and awarded in the amount of \$20,000. These funds are to be used in accordance with the submitted proposal. All activities are geared towards hunger relief especially those supported by our community pantry.

FINANCIAL IMPLICATIONS:

There are no matching funds required for this grant. Upon passage of the Ordinance, the City of Pueblo will receive the entire \$20,000.00 on behalf of the Pueblo Food Project. The total grant budget for Project No. CI2214 will become \$20,000.00.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the proposed Ordinance is not approved, the Pueblo Food Project will not receive the grant funds.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 09-26-22 PFP CHFA Grant Application 20k
2. 09-26-22 PFP CHFA Award letter 20k

ORDINANCE NO. 10298

AN ORDINANCE APPROVING AND ACCEPTING A GRANT IN THE AMOUNT OF \$20,000 FROM THE COLORADO HOUSING AND FINANCE AUTHORITY FOR THE PUEBLO FOOD PROJECT, AUTHORIZING THE MAYOR TO SIGN THE AWARD LETTER, CREATING PROJECT NO. CI2214, AND BUDGETING AND APPROPRIATING \$20,000 TO PROJECT NO. CI2214

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Award Letter for Colorado Housing and Finance Authority assistance purposes dated August 30, 2022 ("Agreement") between the City of Pueblo, a Municipal Corporation, on behalf of the Pueblo Food Project, and the Colorado Housing and Finance Authority, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement on behalf of the City of Pueblo, a Colorado Municipal Corporation, and the City Clerk is authorized to affix the seal of the City thereto and attest the same.

SECTION 3.

Project No. CI2214 is hereby created.

SECTION 4.

Funds in the amount of \$20,000.00 shall be accepted pursuant to the Agreement and budgeted and appropriated to Project No. CI2214.

SECTION 5.

The officers and staff of the City are hereby authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the transactions described therein.

SECTION 6.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

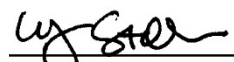
☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk

corporate giving direct effect awards application form

Prepared by L. Martinez

Submitted via <https://directeffect.chfainfo.com/> on June 8, 2022

Please fill out the following application and submit with your written entry for the CHFA Corporate Giving Direct Effect Awards. The application must be included with your written submission to be considered for an Award. In addition, please include a copy of the organization's IRS exemption letter demonstrating proof of the organization's tax-exempt status or a state charter, articles of incorporation, or other establishing documents designating the organization as a nonprofit or not-for-profit entity under the laws of Colorado, and the Colorado Secretary of State's Certificate of Good Standing.

Nonprofit Information

Please fill out the following information for your organization:

Organization Name: Pueblo Food Project, a philanthropic arm of City of Pueblo, a municipal corporation

Contact Person: Megan Moore

Address: One City Hall Place, Pueblo, CO 81003

Phone: 719-252-1657

Website: <https://www.pueblofoodproject.org>

Annual Organizational Budget: \$400,000

All Counties your organization serves: Pueblo County

Does your organization offer group or individual volunteer opportunities that CHFA may share with its staff?



Yes



No

Volunteer Contact Information: Megan Moore, mmoore@pueblofoodproject.org

What is your direct effect?

To be eligible, nonprofits must have a mission that aligns with CHFA. Please select the ways your organization aligns with CHFA's mission to strengthen Colorado by investing in affordable housing and community development. Select all that apply:



Affordable Homeownership: Strengthening low- and moderate- income Coloradans ability to achieve or sustain affordable homeownership, financial literacy and education, home maintenance repairs and renovations, housing counseling, or foreclosure prevention.



Affordable Rental Housing: The development or preservation of affordable rental housing, or providing support and wrap-around services for residents, rental assistance, tenant legal aid and fair housing support, or rental housing search services, or eviction prevention, or support for people experiencing homelessness.



Economic Development: Strengthening economic development and small business access to capital, fresh food access in food deserts, entrepreneurship, leadership, business-readiness, job training and skill development, or nonprofit-sector development and support.

Does your organization work in any of the following areas that further CHFA’s vision that everyone in Colorado will have the opportunity for housing stability and economic prosperity? Select all that apply:

- ☐ Education: Increasing access to or achievement in early childhood education, K-12, higher education, or financial education; mentoring and scholarships; or narrowing the education gap particularly among diverse, rural, and economically disadvantaged populations
- ☐ Mobility: Mobility, transit, and alternative modes of transportation, increasing access and affordability, jobs and housing in proximity to transit
- ☒ Health: Increasing health access and affordability, improving health outcomes for underserved populations inclusive of either physical, mental, or behavioral health
- ☐ Energy: Providing energy cost assistance for low income households, weatherization, retrofits, or upgrades for energy efficiency
- ☒ Other: Is there a different way that your organization meets our broad mission of affordable housing and economic development? If so, please describe.

Please note if your work is aligned with the following CHFA priorities, if applicable. Please check all that apply.

- ☐ Supporting rural communities
- ☒ Serving special needs populations such as homeless, veterans, seniors, or the disabled
- ☒ Addressing systemic racial/ethnic inequities and creating opportunities for communities of color
- ☐ Advancing innovation in construction practices, service delivery, community collaboration and partnerships, or other kinds of change-making endeavors that support housing stability and economic prosperity

Written Entry

Please tell us how your nonprofit organization has supported the Colorado community in the past, and how you would use the Award to further your mission by answering the following questions.

Describe, in 150 words or less, how your organization has made the state stronger by helping Coloradans access affordable housing and/or by furthering economic development.

Pueblo Food Project (PFP) supports the local economy by prioritizing products produced and sold locally. In turn, the local food chain is strengthened, and jobs are created. PFP nurtures the growth of a resilient food supply by incubating and supporting food and farm enterprises. PFP extends local vendors’ reach by partnering with vendors outside Pueblo to carry their products. PFP organized the first restaurant association in Pueblo, thereby creating a pathway for food and beverage enterprises to start and scale their businesses. PFP also fosters training and career opportunities and institutional partnerships that build a capable workforce for the local food system. It has an entrepreneur incubator with (currently) 12 entrepreneurs planning to start businesses in Pueblo County, each focused on specific food areas. For sustainability, PFP coalition convenes monthly to coalesce and optimize community resources, and to craft policy and systems change strategies to increase healthy, equitable food access.

What is the dollar amount you are requesting? \$20,000

Describe in 500 words or less, the specific program you are seeking funding for and how Direct Effect dollars will be used. Be sure to describe the anticipated impact (people supported etc.) of the project.

Foremost, Pueblo Food Project (PFP) helps ensure equitable access to affordable, nutritious, food that is culturally relevant, geographically convenient, and sustainably produced for every eater in Pueblo County. It is the largest institutional procurer of local food in the county; PFP sources bulk food products from over 22 local vendors to

distribute to more than twenty hunger relief organizations. Funds will be used to supply the pantry and redistribute products directly to clients and entrepreneurs. Products are generally ones that are in short supply on a donation basis -- mostly proteins. PFP frequently sources whole cows, butchered, at great prices because it qualifies as a bulk purchase. Pending full funding, PFP will purchase \$10K of beef, \$7K of tortillas, and \$3K of jam - the three items in most demand. Approximately 2,000 families will benefit.

What is the total budget for the program or service you are seeking funding for? \$200,000

Describe, in 300 words or less, who else has contributed to and/or is being asked to contribute towards the funding goal, including committed or anticipated dollar amounts. What is your plan to fulfill the total budget needed? If you receive partial funding from CHFA, how will you fill the gap? (Be sure to include cash support and in-kind, include value of in-kind).

The budget fluctuates with resources received. Pueblo Food Projects has low administrative costs (staff, occupancy, office supplies). All other revenue is converted into product for distribution, or to support education and outreach.

Cash supporters of Pueblo Food Project:

Colorado Health Foundation: \$200,000 for FY22 and FY23, unrestricted
Colorado Blueprint to End Hunger/Denver Foundation for Pueblo Fooducates: \$20,000
American Rescue Plans from City of Pueblo: \$20,000 restricted for Community Garden Sustainability program
American Rescue Plans from City of Pueblo: \$8,000 restricted for All Pueblo Grows Seed Project
Gerone-Nicsish Foundation: \$20,000 restricted for the Entrepreneur Development Program
Colorado Blueprint to End Hunger \$100,000 restricted for food pantry assistance
Colorado Department of Law: \$250,000 fir FY22, FY23 and FY 24 restricted for Community Meal Prep, Fooducate Youth Council Support, Community Chicken Coop, and staffing.

In-Kind donors to Pueblo Food Project: none

Describe in 300 words or less how your organization strives to advance equity through your programs, who you serve, staff, board, and volunteers, and/or engagement with community.

To ensure bringing a myriad of voices are heard, the Pueblo Food Project (PFP) Working Group (a community coalition) develops strategic partnerships with organizations who represent groups underrepresented by the Pueblo Food Project, but impacted by Pueblo Food Project work. Building strong relationships across all sectors of the food system is crucial.

The strategies put forth by the food and farm literacy and education working group build in inclusivity. Activities foster multigenerational participation, are inclusive of all skill levels, and available at no or little cost. Activity venues are accessible by public transportation. Resources are available in multiple languages. Learning opportunities are broadcast widely, targeting a variety of audiences. Activity leaders represent all the different facets of the Pueblo Community. The PFP's economic hardship policy which enables people to request compensation for their time when attending meetings by receiving a gift card for gasoline as offset.

It is notable that many of the Working Group volunteers have the "lived experience" of food scarcity/insecurity.

Based on your anticipated impact, describe, in 300 words or less, at least three ways you will measure success for this effort. Examples of success measures could include but are not limited to: total number of households expected to be supported, program launch date, or project completion date. Please note: Award recipients will

be asked to provide a brief written summary report within one year of receiving their award documenting their progress in reaching the success measures defined in this response.

- 1) Amount of product purchased from local vendors. These funds will stay in the community.
- 2) Number of vendors experience increased revenue from purchases and, possibly, extended loyalty from food recipients.
- 3) Number of people/households positively impacted by receiving food.
- 4) Number of people engaged in food education by attending classes and thereby improving their own and family's health.
- 5) Consistency of food distributions measured in frequency and regular scheduling.

Please note: Award recipients will be asked to provide a brief written summary report within one year of receiving their award documenting their progress in reaching the success measures defined in this response.

2023 David W. Herlinger Golf Tournament



I would like our application to be considered as beneficiary candidate for the 2023 David W. Herlinger Golf Tournament. I understand that selection requires nonprofit support in soliciting event sponsors, volunteers, and donation items for the event which will be held in 2023. I understand that if my organization is selected as the golf tournament beneficiary, it will not be eligible for a Direct Effect Award in 2023.

IRS Exemption Letter

Please upload a copy of your organization's IRS exemption letter demonstrating proof of the organization as a nonprofit or not-for-profit entity.

Upload Document (PDF): Certificate of Good Standing

Please upload a copy of the Colorado Secretary of State's Certificate of Good Standing.

Additional Eligibility Criteria

Eligible nonprofit and not-for-profit organizations include public housing authorities, cities, counties, and local municipalities. Organizations awarded a Direct Effect Award in Round One or Round Two 2021 are ineligible for an award in Round One 2022. The Colorado Housing and Finance Authority's contribution is restricted to supporting the general operations and programs of the organization and may not be used to support any activity proscribed by Section 1-45-117 of the Colorado Fair Campaign Practices Act or advocacy in support or opposition to any state, federal, or local legislation and may not be used to prepare a site or application for a future state or Federal Low Income Housing Tax Credit (LIHTC) application, nor may they be used as gap funds for a development previously awarded credit.

Funds may not be used for predevelopment costs.



I have read and understand the additional eligibility criteria

Use of Entrants' and Winner's Entries and Privacy Consent and Release

All entries submitted in connection with the Awards shall become the sole property of CHFA and, as such, may be used by CHFA in its sole discretion for purposes related to CHFA's mission, including art, publicity, marketing, trade, and promotion of CHFA and its various programs without compensation to Award entrants. Submitted entries may be copied and distributed by means of various media, including video presentations, television, radio, news bulletins, mail-outs, billboards or signs, brochures, placement on CHFA websites, other electronic delivery or publications, as well as other social media, such as Facebook and Twitter, and use of submitted entries will be further subject to the user agreements for those media applications. Award entrants waive any and all rights to inspect or approve the finished product, any accompanying text, or any material in which CHFA may eventually use the submitted entries. By submitting an entry for these Awards, entrants relinquish and give CHFA all rights, title,

and interests in and to the submitted entries, including any copyright. This consent and release shall be binding on the entrants' heirs, successors, assigns and legal representatives. Award entrants may only revoke the consent provided in this application in writing and only with respect to the future use of submitted entries by CHFA after the date CHFA receives written notice of entrants' or winner's request of revocation of consent pursuant to this section.

CHFA will use the submitted entries in accordance with this Application and with standards of good judgment; however, CHFA does not warrant or guarantee that any further dissemination by third parties of submitted entries will be subject to CHFA's supervision or control, even after CHFA's receipt of a request of revocation of consent. Additionally, please note that records held by CHFA may be subject to the Colorado Open Records Act (CORA), C.R.S. 24-72-201, et seq. By submitting an entry for these Awards, entrants release CHFA and its directors, members, officers, agents, employees, personnel, successors, and assigns from any and all liability related to the dissemination of the submitted entries, reproduction, distribution, and display of the submitted entries in print or any and all other media, and any alteration, blurring, use in composite form, distortion, or illusionary effect, whether intentional or otherwise, that may be produced in taking, processing, reduction, or production of the finished product, its publication, or distribution.

The Award winner must agree to be interviewed and featured in communication pieces related to CHFA's mission, including art, publicity, marketing, trade, and promotion of CHFA and its various programs without compensation to the Award winner.



I have read and understand the use of entrants' and winner's entries and privacy consent and release



denver

1981 Blake Street
Denver, CO 80202

303.297.chfa (2432)
800.877.chfa (2432)

PO Box 60
Denver, CO 80201

800.659.2656 tdd
www.chfainfo.com

western slope

348 Main Street
Grand Junction, CO 81501

970.241.2341
800.877.8450

August 30, 2022

Megan Moore
Pueblo Food Project
One City Hall Place
Pueblo, CO 81003

Dear Megan Moore,

On behalf of Colorado Housing and Finance Authority, it is my pleasure to inform you that Pueblo Food Project has been chosen to receive a Direct Effect Award in the amount of \$20,000.

CHFA has approved this investment to support the following items as outlined in your Direct Effect Application: *to supply the pantry and redistribute products directly to clients and entrepreneurs.*

As part of your Direct Effect Award, CHFA requests that you please submit a report of 300 words or less to directeffect@chfainfo.com by September 1, 2023 with details describing the progress made toward the goals, objectives, and success metrics defined in your Direct Effect Application. The success metrics that your organization outlined were:

- 1) Amount of product purchased from local vendors. These funds will stay in the community.*
- 2) Number of vendors experience increased revenue from purchases and, possibly, extended loyalty from food recipients.*
- 3) Number of people/households positively impacted by receiving food.*
- 4) Number of people engaged in food education by attending classes and thereby improving their own and family's health.*
- 5) Consistency of food distributions measured in frequency and regular scheduling.*

Should unexpected challenges or questions regarding the use of funds arise during the course of the year, please reach out to directeffect@chfainfo.com to discuss. Submission of the report and progress made towards success metrics, will be used by CHFA to inform future Direct Effect Award opportunities. We welcome building an open and trusted partnership with you and look forward to helping your organization succeed in its future endeavors.

Please acknowledge receipt of this letter by signing and returning to ksoroko@chfainfo.com at your earliest convenience. To process your Direct Effect Award payment, please submit an invoice for the Award amount and a copy of your W-9 to ksoroko@chfainfo.com. CHFA payment will be mailed following receipt of this signed agreement, invoice, and W-9.

Sincerely,

Kristen Soroko
Event and Public Relations Coordinator
CHFA

Acknowledged by

Name:

Title:

Signature:

Date:



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A GRANT IN THE AMOUNT OF \$400,000 FROM THE COLORADO HEALTH FOUNDATION FOR THE PUEBLO FOOD PROJECT, AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT, ESTABLISHING PROJECT NO. CI2216, AND BUDGETING AND APPROPRIATING \$400,000 TO PROJECT NO. CI2216

SUMMARY:

Attached is an Ordinance approving and accepting a grant in the amount of \$400,000.00 from the Colorado Health Foundation to provide funds to continue work and for the transition of the Pueblo Food Project from a municipal program to a nonprofit corporation. This Ordinance budgets and appropriates the grant funds to Project No. CI2216 and authorizes the Mayor to sign the Grant Agreement.

PREVIOUS COUNCIL ACTION:

City Council previously approved Ordinance No. 9631 on December 23rd, 2019 approving the initial grant from Colorado Health Foundation in the amount of \$85,000 budgeting and appropriating the funds to Project No. CO2008. City Council previously approved Ordinance No. 9793 on October 13, 2020, approving a second Colorado Health Foundation award of \$200,000, establishing Project No. CI2014, and budgeting and appropriating the initial grant funds to Project No. CI2014. City Council approved Ordinance No. 14519 on December 14, 2020, approving a Colorado Health Foundation donation for \$10,000 and budgeting and appropriating the grant funds to Project No. CO1902. City Council also approved Ordinance No. 10100 on January 10, 2020 approving another Colorado Health Foundation grant for \$13,600 and budgeting and appropriating the grant funds to Project No. CI2014.

BACKGROUND:

The Pueblo Food Project was created by the first Colorado Health Foundation award in 2019 to implement equitable food solutions for Pueblo County. Pueblo was one of several counties in Colorado awarded to create food councils. After the initial grant of \$85,000, Pueblo Food Project applied and was awarded \$200,000 to continue work. This \$400,000 grant becomes the third round of funding awarded from Colorado Health Foundation to the Pueblo Food Project to continue work and to transition to a nonprofit

corporation.

FINANCIAL IMPLICATIONS:

There are no matching funds required for this grant. Colorado Health Foundation will deliver the first piece of funding in the amount of \$216,000 after the passage of this ordinance and \$184,000 in 2023 for the second year of the grant term.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the proposed Ordinance is not approved, the Pueblo Food Project will not receive the grant funds.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 09-26-22 PFP CHF Grant 400K

ORDINANCE NO. 10299

AN ORDINANCE APPROVING AND ACCEPTING A GRANT IN THE AMOUNT OF \$400,000 FROM THE COLORADO HEALTH FOUNDATION FOR THE PUEBLO FOOD PROJECT, AUTHORIZING THE MAYOR TO SIGN THE GRANT AGREEMENT, ESTABLISHING PROJECT NO. CI2216, AND BUDGETING AND APPROPRIATING \$400,000 TO PROJECT NO. CI2216

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Grant Agreement for Pueblo Food Project purposes dated ("Agreement") between the City of Pueblo, a Municipal Corporation, and the Colorado Health Foundation, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement on behalf of the City of Pueblo, a Colorado Municipal Corporation, and the City Clerk is authorized to affix the seal of the City thereto and attest the same.

SECTION 3.

Project No. CI2216 is hereby created.

SECTION 4.

Funds in the amount of \$400,000.00 shall be accepted pursuant to the Agreement and budgeted and appropriated to Project No. CI2216.

SECTION 5.

The officers and staff of the City are hereby authorized to perform any and all acts consistent with this Ordinance and the attached Agreement to implement the transactions described therein.

SECTION 6.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

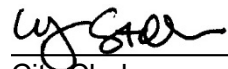
☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk



GENERAL, GRANTS TERMS, CONDITIONS, AND UNDERSTANDINGS

Title of Project:

Pueblo Food Project
Grant ID# 23942

Purpose of Project:

Dedicate resources to build organizational effectiveness, provide general operating support, contract with external learning providers, develop communities of best practice and expand collaborations for sustainability.

Grantee Organization:

City of Pueblo - Pueblo Food Project
1 City Hall Place
Pueblo, CO 81003

Checks to be Made Payable to:

City of Pueblo
1 City Hall Place
Pueblo, CO 81003

Tax Identification Number: 84-6000615

Amount of Grant Awarded:

\$400,000 over a 24-month period

Period for Which Support is Granted:

From November 01, 2022 *Through* October 31, 2024

Contingencies, if any:

Special Provisions, if any:

Key Grantee Activities and Target Milestones:**Year 1**

- Access available capacity building supports as Pueblo Food Project plans for transition out of City of Pueblo into a fiscally sponsored project or 501c3 organization.
- Deepen work with these levers of system change: shifting mental models, building relationships and connections, and changing power dynamics in order to improve food security in Pueblo.
- Continue utilizing a racial equity lens to engage community members most impacted by food insecurity and building their capacity to influence and impact changes in the food system.
- Access technical assistance provided by CHF, participate in any evaluation activities, and utilize grant budget for travel to any CHF grantee convenings.

Year 2

- Access available capacity building supports as Pueblo Food Project plans for transition out of City of Pueblo into a fiscally sponsored project or 501c3 organization.
 - Deepen work with these levers of system change: shifting mental models, building relationships and connections, and changing power dynamics in order to improve food security in Pueblo.
 - Continue utilizing a racial equity lens to engage community members most impacted by food insecurity and building their capacity to influence and impact changes in the food system.
 - Access technical assistance provided by CHF, participate in any evaluation activities, and utilize grant budget for travel to any CHF grantee convenings.
-

Intended Measurable Reach to be Reported on the Anticipated Number Served, if any:

Payment and Requirement Schedule

Requirement Due Date	Requirement	Payment Amount	Approximate Payment Schedule
October 24, 2022	Executed Agreement	\$216,000	October 27, 2022
November 01, 2023	Progress Report	\$184,000	December 07, 2023
November 30, 2024	Final Report		

Payments are contingent upon receipt and approval of the associated requirements.

The Foundation uses an online system to receive reports and other requirements. Please visit www.coloradohealth.org for more information

*Project Contact (please correct the information below if necessary) Megan Moore Coalition Lead City of Pueblo - Pueblo Food Project 1 City Hall Place Pueblo, CO 81003	**Grantee Organization Primary Signatory (please correct the information below if necessary) Nick Gradisar Mayor - City of Pueblo City of Pueblo - Pueblo Food Project 1 City Hall Place Pueblo, CO 81003
--	--

*The project contact is the individual directly responsible for developing the proposed activity, its implementation, and day-to-day direct supervision of the project. The email associated with the project contact will be added to the Foundation’s email distribution list upon grant approval. To opt out of the email distribution list please notify the Foundation by emailing grants@coloradohealth.org.

**The organization primary signatory is the CEO/Executive Director of the grantee organization.

The Colorado Health Foundation is awarding this Grant to the above named organization (“Grantee”) and Grantee agrees to, the following:

1. Tax Exempt Status, Grantee represents that:

- a. To provide current and appropriate documentation if organization is a government supported agency, such as school, museum, library or government agency or department.
- b. To provide The Colorado Health Foundation with immediate written notification of any changes in the organization’s tax-exempt status.

2. Expenditure of Funds

This Agreement (together with any income earned upon investment of Grant funds) is made for the purpose outlined herein and may not be expended for any other purpose without The Colorado Health Foundation’s prior written approval. If the Grant is intended to support a specific project or for a specific period, any portion of the Grant unexpended at the completion of the project or the end of the period specified above on Page 1 (the “Grant Period”) shall be returned immediately to The Colorado Health Foundation. With prior written approval from The Colorado Health Foundation the Grant Period may be extended in order to reach the anticipated outcomes. Requests should be submitted using the form and instructions found at www.ColoradoHealth.org in the “For Grantees” section.

3. Prohibited Use of Funds

Grantee will not permit any Grant funds or income derived from such funds to be used for “political expenditures” as defined in Section 4955 of the Code, including but not limited to participation or intervention in a political campaign for a public office.

This grant is not in any way earmarked to support or carry on any lobbying or voter registration drive. Grantee intends to expend at least the amount of this grant on project non-lobbying and non-voter registration activities in Grantee’s current fiscal year.

Grantee represents that it is knowledgeable about Executive Order 13224 and the USA Patriot Act of 2001 and Grantee will not permit any Grant funds or income derived from such funds to be expended or re-granted so as to benefit any person or organization with ties to terrorists.

4. Anti-Discrimination Expectations

Grantee will not willfully discriminate against a particular class of individuals and will abide by all applicable local, state, and federal anti-discrimination laws in hiring, employment practices and when providing services.

5. No Assignment or Delegation

Grantee may not assign or otherwise transfer its rights or delegate any of its obligations under this Agreement without the prior written approval of The Colorado Health Foundation.

6. Records and Reports

Grantee must keep a record of all receipts and expenditures relating to this Agreement and to provide The Colorado Health Foundation with a written report summarizing the project promptly following the end of the Grant Period. The Colorado Health Foundation may also require interim reports. Grantee reports should describe progress achieving the Grant Purposes (including progress toward measurable results and Key Grantee Activities and Target Milestones outlined above on Page 1) and include a detailed accounting of the uses or expenditure of all Grant funds. Grantee also agrees to provide any other information reasonably requested by The Colorado Health Foundation. If Grantee obtains any audited financial statements covering any part of the period of this Agreement, copies of such statements shall be provided to The Colorado Health Foundation promptly after receipt. Grantee must keep the financial records with respect to the Grant and this Agreement, along with copies of any reports submitted to The Colorado Health Foundation, for at least four years following the year in which all Grant funds are fully expended.

7. Required Notification

Grantee must provide The Colorado Health Foundation with immediate written notification of: (1) its inability to expend the Grant funds for the Grant Purposes; or (2) any expenditure of Grant funds for any purpose other than the Grant Purposes; and, (3) any other breach by Grantee of this Agreement.

8. Reasonable Access for Evaluation and Oversight

The Colorado Health Foundation incorporates evaluation into its charitable grant-making so that it and the Grantee can understand the impact of the Grant and how to improve the impact of the charitable grant-making moving forward, and for the benefit of other Grantees and for the State of Colorado. As a condition to the receipt of this Grant, Grantee agrees to comply with and to participate in any requests from The Colorado Health Foundation to conduct an evaluation of the effectiveness of this grant (the "Evaluation") either individually with the Grantee or with multiple grantees as part of a broader strategy of The Colorado Health Foundation, including but not limited to follow-up reporting and/or additional activities above and beyond those listed in the Payment and Requirements section of this Agreement.

Grantee will permit The Colorado Health Foundation and its representatives, at its request, to have reasonable access during regular business hours to its files, records, accounts, personnel and clients, or other beneficiaries for the purpose of making such financial audits, verifications, or program evaluations as The Colorado Health

Foundation deems necessary or appropriate concerning the Grant and to discuss Grantee's programs, procedures and operations with Grantee's personnel.

9. Research Involving Human Subjects:

If the Grant is to be used in whole or in part for research involving human subjects, Grantee hereby certifies that Grantee, applying the ethical standards and the criteria for approval of grants set forth in its Internal Review Boards and professional oaths, has determined that the human subjects involved in this Grant will not experience risk over and above that involved in the normal process of care and are likely to benefit from the proposed research program.

10. Publicity:

The Colorado Health Foundation encourages Grantee to publicize information concerning the Grant in the Grantee's newsletters, annual reports, press releases, website, social media and other relevant media. If the Grantee has received these funds for "General Operating Support," The Colorado Health Foundation expects to be acknowledged as a sponsor for major events by the inclusion of The Colorado Health Foundation's logo in the event promotional materials and print collateral. For more information and resources regarding the publicity of your grant, please visit www.coloradohealth.org/communicating-about-your-grant.

Without further notice to or consent from Grantee, The Colorado Health Foundation may include information regarding this Agreement and/or Grant, the amount and purpose of the Grant and photographs, logo or trademark, and other published/printed information or materials (provided by Grantee) and its activities, on The Colorado Health Foundation's communications channels, such as blog posts, newsletters, press releases, website and social media.

11. Colorado Charitable Solicitations Act

Grantee represents that it is aware of and in compliance with the Colorado Charitable Solicitations Act governing fundraising in Colorado.

12. Right to Modify or Revoke

The Colorado Health Foundation reserves the right to discontinue, modify or withhold any payments to be made under this Agreement or to require a total or partial refund of any Grant funds if, in The Colorado Health Foundation's sole judgment, such action is necessary or prudent: (1) because the Grantee has not fully complied with the terms and conditions of this Agreement; (2) to protect the purpose and objectives of this Agreement or any other charitable interest of The Colorado Health Foundation; or (3) to comply with the requirements of any law or regulation applicable to Grantee, The Colorado Health Foundation, or this Grant.

13. Termination

The Colorado Health Foundation's obligations under this Agreement shall automatically terminate in the event of the insolvency, receivership, bankruptcy filing, or dissolution of Grantee.

In addition to its right of revocation under Paragraph 12 above, The Colorado Health Foundation may terminate this Agreement at any time by giving Grantee at least 30 days of written notice. Upon termination of this agreement for any reason, all payments by The Colorado Health Foundation to Grantee shall cease at such time as may be determined by The Colorado Health Foundation.

Termination or revocation of this Agreement by The Colorado Health Foundation will not terminate Grantee's obligations under this Agreement with respect to Grant funds expended or otherwise not returned to The Colorado Health Foundation. Grantee's obligations under Paragraphs 6, 8, 10 and 16 shall also survive termination of this Agreement.

14. Special Conditions and Reporting

Grantee will submit reports to The Colorado Health Foundation according to the reporting schedule set forth on page one of this Agreement.

The Colorado Health Foundation requires grantees to share any public opinion research conducted with foundation funds. Public opinion research includes both qualitative and quantitative methods to learn about the thoughts, perceptions, or beliefs of the general public, including but not limited to focus groups, ethnography, online surveys, and telephone polling. Grantees should plan to share the results of this research, including findings and reports, with the foundation. The Colorado Health Foundation will not share the research without permission from the grantee.

15. Amendment

This Agreement may be amended, supplemented or extended only by written communication signed by The Colorado Health Foundation.

16. No Partnership Agency or Third Party Beneficiaries

Nothing contained in this Agreement shall create or be deemed to create a partnership or agency between The Colorado Health Foundation and Grantee and nothing contained in this Agreement shall be deemed to give rise to any rights or benefits to third parties not a party to this Agreement.

17. Intellectual Property

(a) Grantee represents and warrants that it owns or has the right to use all intellectual property that will be employed by Grantee or its agents in the performance of this Agreement, including without limitation, Grantee's obligations under subsection (c) below.

(b) All works and matters created or discovered through the performance of this Agreement, including but not limited to, implementation methodologies, best



practices guides and training curricula (the "Work"), are owned by the Grantee provided, however, that the Work may be used by Grantee only in furtherance of charitable purposes (i.e., activities recognized by the IRS as charitable and not resulting in "unrelated business taxable income" as defined in Section 512 of the Code), unless otherwise agreed in writing by The Colorado Health Foundation.

(c) Grantee hereby grants to The Colorado Health Foundation a nonexclusive, irrevocable, perpetual, worldwide, fully transferable, royalty-free license to (i) the Work, to make, use, sell, license to others, reproduce, create derivative works of, publish, republish, distribute, perform and display the Work in any current or future form and for any purpose in furtherance of charitable purposes, and (ii) any other intellectual property incorporated into or used in connection with the Work to the extent reasonably necessary to enable The Colorado Health Foundation to use and practice the licensed Work. The license herein granted to The Colorado Health Foundation shall vest without any further action on the part of Grantee. Without the prior written consent of The Colorado Health Foundation, Grantee will not enter into any agreement with a third party that would restrict Grantee's ability to perform its obligations under this subsection (c).

18. Release

Nothing contained herein, including the required reporting and review procedures, shall be construed as a warranty, representation, or approval by The Colorado Health Foundation that the services rendered by Grantee are adequately or properly rendered on either an individual or program-wide basis. Grantee shall have sole responsibility for all damages, costs, fines, attorneys' fees, or liabilities of any kind or nature arising from any claims, demands or suits resulting from the Grantee's performance or failure to perform under this Agreement.

19. Controlling Document

The terms and conditions of this Agreement shall be the controlling document between The Colorado Health Foundation and Grantee. All verbal communication, notes, minutes or other documentation of The Colorado Health Foundation shall be deemed merged into this Agreement. In making this Grant, The Colorado Health Foundation has relied on the information and representations submitted to The Colorado Health Foundation by Grantee and Grantee represents that all such information and representations are true and complete.

20. Future Funding

Grantee acknowledges that, except as expressly provided in this Agreement, The Colorado Health Foundation has no obligation to Grantee with respect to any additional or future funding.

21. Counterparts; Electronic Signature

This Agreement may be signed in multiple counterparts, which may be signed by the parties separately, but together shall constitute a single agreement. The counterparts of this Agreement may be executed and delivered by facsimile, email, other means of electronic transmission, or other electronic signature and shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement.

[Signature Page Follows]



Erin Brown
Vice President, Community Investment and Impact
The Colorado Health Foundation

Date

The undersigned certify that they are duly authorized officers of Grantee and, as such, are authorized to accept this contract on behalf of Grantee, to obligate the Grantee to observe all of the terms and conditions placed on this Agreement, and in connection with this Agreement to make, execute, and deliver on behalf of the Grantee all agreements, representations, receipts, reports, and other instruments of every kind.

ACCEPTED AND AGREED TO:

Mayor of City of Pueblo (typed/printed name)

Mayor (signature)

Date



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Chief of Police

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A GRANT AGREEMENT AND APPLICABLE CONDITIONS PERTAINING THERETO WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR THE "A STEP TOWARDS REDUCING TRAFFIC FATALITIES" GRANT, IN THE AMOUNT OF \$75,000, FROM OCTOBER 1ST, 2022 THROUGH SEPTEMBER 30TH, 2023, ESTABLISHING PROJECT NUMBER PS2209, BUDGETING AND APPROPRIATING FUNDS INTO PROJECT PS2209, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

The Colorado Department of Transportation (CDOT) has informed the Pueblo Police Department that funds are available for "A Step Towards Reducing Traffic Fatalities" grant. The term of this grant covers the period from October 1st, 2022 through September 30th, 2023.

PREVIOUS COUNCIL ACTION:

Previous grants of this nature have routinely been approved each year.

BACKGROUND:

This grant, if approved, will allow the Pueblo Police Department to increase its efforts in speed enforcement. We anticipate that a continued enforcement presence will be needed to have a long-lasting impact on those who fail to abide by posted speed limits. We have responded to many serious injury or fatal accidents where speed is a factor and CDOT funding will allow the dedication of full-time officers to address these issues.

FINANCIAL IMPLICATIONS:

This grant will require staff time for project management and reporting. This grant also pays 100% of eligible expenses and requires no grant match. Costs associated with this grant will be paid for through the Public Safety Grant fund.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

There is no stakeholder process required for this grant.

ALTERNATIVES:

Decline the CDOT Grant offer.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. PPD award letter - CDOT grant
2. Subaward Agreement
3. Amendment

ORDINANCE NO. 10300

AN ORDINANCE APPROVING AND ACCEPTING A GRANT AGREEMENT AND APPLICABLE CONDITIONS PERTAINING THERETO WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR THE "A STEP TOWARDS REDUCING TRAFFIC FATALITIES" GRANT, IN THE AMOUNT OF \$75,000, FROM OCTOBER 1ST, 2022 THROUGH SEPTEMBER 30TH, 2023, ESTABLISHING PROJECT NUMBER PS2209, BUDGETING AND APPROPRIATING FUNDS INTO PROJECT PS2209, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, the City Council of Pueblo has the authority on behalf of the City of Pueblo, including its Police Department, to accept funding from the State of Colorado for public and municipal purposes; and

WHEREAS, the Colorado Department of Transportation has tendered a Grant Agreement and award (the "Agreement") for the 2022-2023 "A Step Towards Reducing Traffic Fatalities" Speed Enforcement funding in an initial amount of \$75,000 upon conditions recited therein or incorporated therein by reference;

WHEREAS, the State has made additional awards of funds in the past under previous grant agreements and the Police Department anticipates the award of additional funds in the future pursuant to this agreement if the same are made available by the State; and

WHEREAS, acceptance of the funding for the purposes for which it has been made is in the best interest of the City and will benefit the health, welfare, and safety of the citizens of the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Grant Agreement between the City of Pueblo, a Municipal Corporation, and the State of Colorado Department of Transportation for the 2022-2023 "A Step Towards Reducing Traffic Fatalities" grant, a true copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved and accepted in accordance with its terms and conditions.

SECTION 2.

The Mayor is hereby authorized to execute the Grant Agreement in the name of and on behalf of the City, and the City Clerk shall affix the Seal of the City to the Grant Agreement and attest the same.

SECTION 3.

The Police Department is empowered to apply for and accept additional grant awards pursuant to the Grant Agreement as those funds are made available by the State.

SECTION 4.

Project Number PS2209 is hereby established in the Public Safety Grants Fund. All current and future funds accepted under this ordinance shall be budgeted and appropriated into Project Number PS2209 by the Finance Department. Said funds shall only be expended and used for this Project.

SECTION 5.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance to implement the policies and procedures described herein.

SECTION 6.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

- ☒ Approved on October 15, 2022 .
- ☐ Disapproved on _____ based on the following objections:

Hilda Leavins
Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

Lyssa
City Clerk



COLORADO
Department of Transportation

Office of Transportation
Safety & Risk Management
2829 W. Howard Place
Denver, CO 80204-2305

April 20, 2022

Pueblo Police Department
Attn: Sgt. Sincerbox
200 S. Main
Pueblo, CO 81003

Re: Application for Federal Fiscal Year 2023
"A Step Towards Reducing Traffic Fatalities" in the amount of \$75,000

Dear Pueblo Police Department:

The Colorado Department of Transportation (CDOT), Office of Transportation Safety (OTS), Highway Safety Office (HSO) would like to thank you for your dedication and interest in improving traffic safety in your community.

Based on your 2nd year application, we are pleased to inform you that your application is tentatively approved for the amount referenced above. This amount may be modified or reduced from the amount you requested in the application. Final authorization of the award amount is contingent upon the National Highway Traffic Safety Administration's approval of the 2023 Colorado Highway Safety Plan, and submittal and acceptance of modified applications and/or budgets, modified action plans and/or activities and ability to perform the activities at the approved dollar amount shown above.

This letter does not constitute a contract or a notice to proceed. This letter does not authorize any reimbursable activity or expenditures until an action plan is negotiated and developed and a contract or purchase order is issued. The awarded amount is also dependent on funds being appropriated at the federal level and becoming available to CDOT.

Please contact me at 303-757-9383, or email me at jimmy.bath@state.co.us, to discuss modifications and special conditions that may be associated with your contract or purchase order. Thank you for your commitment toward traffic safety.

Sincerely,

Jim Bath
Law Enforcement Coordinator & Program Manager
Highway Safety Office



STATE OF COLORADO SUBAWARD AGREEMENT

COVER PAGE

State Agency Department of Transportation	Agreement Number/PO Number 22-HTS-ZL-00005/491002707
Subrecipient CITY OF PUEBLO – PUEBLO POLICE DEPARTMENT	Agreement Performance Beginning Date The later of the Effective Date or October 01, 2021
Subaward Agreement Amount Current Agreement Encumbered Total \$75,000.00	Initial Agreement Expiration Date September 30, 2022
	Fund Expenditure End Date September 30, 2022
	Agreement Authority Authority to enter into this Agreement exists in CRS §§24-42-101, 24-42-103, 43-1-104, 43-1-106, 43-1-110, 43-5-401, appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC Chapter 4.
Agreement Purpose NHTSA Grant funds awarded to agencies, organizations, and tribal governments within the State of Colorado that provide programs, projects, services, and strategies that are intended to reduce the number of deaths and serious injuries resulting from traffic crashes on Colorado roads.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: 1. Exhibit A – Statement of Work and Budget. 2. Exhibit B – Sample Option Letter. 3. Exhibit C – Federal Provisions. 4. Exhibit D – Additional Program Requirements. In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: 1. Exhibit C – Federal Provisions, and Exhibit D – Additional Program Requirements. 2. Colorado Special Provisions in §17 of the main body of this Agreement. 3. The provisions of the other sections of the main body of this Agreement. 4. Exhibit A – Statement of Work and Budget. 5. Executed Option Letters (if any).	
Principal Representatives For the State: Robin Rocke Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 Robin.Rocke@state.co.us For Subrecipient: Sgt Michael Sincerbox CITY OF PUEBLO PUEBLO POLICE DEPARTMENT 200 S MAIN STREET PUEBLO, CO 81003 msincerbox@pueblo.us	

SIGNATURE PAGE**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

SUBRECIPIENT CITY OF PUEBLO PUEBLO POLICE DEPARTMENT DocuSigned by: <i>Sgt. Michael Sincerbox</i> E1626BD19260460... Sgt. Michael Sincerbox By: Print Name of Authorized Individual Date: <u>8/25/2021</u>	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: Stephen P. Harelson, P.E., Chief Engineer Date: _____
2nd State or Subrecipient Signature if needed _____ _____ By: Print Name of Authorized Individual Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General By: Assistant Attorney General Date: _____
In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD _____ By: Department of Transportation Effective Date: _____	

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1. PARTIES

This Agreement is entered into by and between Subrecipient named on the Cover Page for this Agreement (the “Subrecipient”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Subrecipient and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred before the Effective Date, except as described in **\$0**, or after the Fund Expenditure End Date.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or more, or one year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for Breach of Agreement by Subrecipient, which shall be governed by §0.

i. Method and Content

The State shall notify Subrecipient of such termination in accordance with §Error! Reference source not found.. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Subrecipient shall be subject to the rights and obligations set forth in §0.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Subrecipient an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Subrecipient for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Subrecipient which are directly attributable to the uncompleted portion of Subrecipient's obligations, provided that the sum of any and all reimbursement shall not exceed the Subaward Maximum Amount payable to Subrecipient hereunder.

F. Subrecipient's Termination Under Federal Requirements

Subrecipient may request termination of this Agreement by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Agreement is terminated in this manner, then Subrecipient shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this subaward agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Subrecipient is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit A.
- E. **"Business Day"** means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- G. **"Deliverable"** means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Subrecipient's Work that is intended to be delivered by Subrecipient.

- H. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- I. **“End of Term Extension”** means the time period defined in §0.
- J. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- K. **“Extension Term”** means the time period defined in §0.
- L. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program.
- M. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. National Highway Traffic Safety Administration (NHTSA) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- N. **“Goods”** means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.
- O. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- P. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- Q. **“Initial Term”** means the time period defined in §0.
- R. **“Matching Funds”** (Local Funds, or Local Match) means the funds provided by Subrecipient as a match required to receive the Grant Funds and includes in-kind contribution.
- S. **“NHTSA”** means National Highway Traffic Safety Administration.
- T. **“Party”** means the State or Subrecipient, and “Parties” means both the State and Subrecipient.
- U. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- V. **“Recipient”** means the State agency shown on the Signature and Cover Pages of this Agreement, for the purposes of this Federal Award.
- W. **“Services”** means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- X. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- Y. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- Z. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- AA. **“State Records”** means any and all State data, information, and records, regardless of physical form.
- BB. **“Subaward Maximum Amount”** means an amount equal to the total of Grant Funds for this Agreement.
- CC. **“Subcontractor”** means any third party engaged by Subrecipient to aid in performance of the Work. “Subcontractor” also includes sub-recipients of Grant Funds.
- DD. **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- EE. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- FF. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- GG. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined elsewhere in this Agreement or in an Exhibit shall be construed and interpreted as defined in that section.

4. STATEMENT OF WORK AND BUDGET

Subrecipient shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Subrecipient for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO SUBRECIPIENT

A. Subaward Maximum Amount.

Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Subrecipient any amount under this Agreement that exceeds the Subaward Maximum Amount shown on the Cover Page of this Agreement as “Federal Funds Maximum Amount”.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. Any advance payment allowed under this Agreement, shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement and its Exhibits. Eligibility and submission for advance payment is subject to State approval and must include approved documentation in the form and manner set forth and approved by the State.
- d. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
- e. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Subrecipient shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days' interest to be paid and the interest rate.

iii. Payment Disputes

If Subrecipient disputes any calculation, determination or amount of any payment, Subrecipient shall notify the State in writing of its dispute within 30 days following the earlier to occur of Subrecipient's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Subrecipient and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Subrecipient beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Subrecipient shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §0.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Increase or Decrease

The State, at its discretion, shall have the option to increase or decrease the maximum amount payable hereunder, by increasing or decreasing the quantity of goods/services described in Exhibit A at the same rates and under the same terms specified in this Agreement. In order to exercise this option, the State shall provide written notice to Grantee in a form substantially equivalent to Exhibit B prior to the end of the current Agreement term. Delivery of Goods and performance of Services shall continue at the same rates and terms as described in the Agreement.

D. Matching Funds

Subrecipient shall provide Matching Funds as provided in Exhibit A. Subrecipient shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subrecipient and paid into Subrecipient's treasury or bank account. Subrecipient represents to the State that the amount designated "Subrecipient's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies.

E. Reimbursement of Subrecipient Costs

- i. The State shall reimburse Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of §5, this Agreement and Exhibit A. However, any costs incurred by Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Subrecipient for costs or expenses incurred or performance by the Subrecipient prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Subrecipient. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement.
- ii. The State shall reimburse Subrecipient's allowable costs, not exceeding the Subaward Maximum Amount shown on the Cover Page of this Agreement and on Exhibit A for all allowable costs described in this Agreement and shown in Exhibit A. Except as provided in §5.E., Subrecipient may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Subrecipient provides notice to the State of the change, the change does not modify the Subaward Maximum Amount or the Subaward Maximum Amount for any federal fiscal year or State Fiscal Year, and the change does not modify any requirements of the Work.
- iii. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:
 - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
 - b. Equal to the actual net cost to Subrecipient (i.e. the price paid minus any items of value received by Subrecipient that reduce the cost actually incurred).
- iv. Subrecipient's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Subrecipient shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

F. Use of Funds, Budget Adjustments

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. Subrecipient may adjust budgeted expenditure amounts up to 10% between activities of said Budget without approval of the State. Budget adjustments to activities exceeding 10% but less than 24.99% must be submitted in advance of actual cost and receive written State approval, which approval may be transmitted informally by email or such other means that does not rise to the level of an amendment to this Agreement. A budget revision of **Exhibit A** will be issued by the State with any such adjustment. Adjustments in excess of 24.99% for any activity shall be authorized by the State in an amendment to this Agreement which may also require an amendment to **Exhibit A**. Budget adjustments shall not increase the State's total consideration beyond the Subaward Maximum Amount without an amendment to this Agreement.

G. Close-Out

Subrecipient shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement. To complete close-out, Subrecipient shall submit to the State all Deliverables (including documentation) as defined in this Agreement and Subrecipient's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement due to Subrecipient's failure to submit required documentation, then Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to any other Exhibit, for any Agreement having a term longer than three months, Subrecipient shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted

to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement.

C. Performance and Final Status

Subrecipient shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. SUBRECIPIENT RECORDS

A. Maintenance

Subrecipient shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work and the delivery of Services (including, but not limited to, the operation of programs) or Goods hereunder (collectively, the "Subrecipient Records"). Subrecipient shall maintain such records for a period of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively (the "Record Retention Period"). If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Subrecipient in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Subrecipient shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by the State or that governmental entity. Subrecipient shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Subrecipient and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Work.

D. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

Subrecipient shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subrecipient shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Subrecipient shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Subrecipient shall immediately forward any request or demand for State Records to the State's Principal Representative identified on the Cover Page of this Agreement.

B. Other Entity Access and Nondisclosure Agreements

Subrecipient may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Subrecipient shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Subrecipient shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

C. Use, Security, and Retention

Subrecipient shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Subrecipient shall provide the State with access, subject to Subrecipient's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Subrecipient shall return State Records provided to Subrecipient or destroy such State Records and certify to the State that it has done so, as directed by the State. If Subrecipient is prevented by law or regulation from returning or destroying State Confidential Information, Subrecipient warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Subrecipient becomes aware of any Incident, Subrecipient shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Subrecipient can establish that Subrecipient, and its agents, employees, and Subcontractors are not the cause or source of the Incident, Subrecipient shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subrecipient shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Subrecipient shall make all modifications as directed by the State. If Subrecipient cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Subrecipient shall reimburse the State for the reasonable costs thereof. The State may, in its sole discretion and at Subrecipient's sole expense, require Subrecipient to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Subrecipient shall provide the State with the results of such audit and evidence of Subrecipient's planned remediation in response to any negative findings.

E. Data Protection and Handling

Subrecipient shall ensure that all State Records and Work Product in the possession of Subrecipient or any Subcontractors are protected and handled in accordance with the requirements of this Agreement, including the requirements of any Exhibits hereto, at all times. As used in this section, the protections afforded Work Product only apply to Work Product that requires confidential treatment.

F. Safeguarding PII

If Subrecipient or any of its Subcontractors will or may receive PII under this Agreement, Subrecipient shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Subrecipient shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S., and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

D. Subrecipient acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Subrecipient further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Agreement. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Subrecipient employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Subrecipient shall provide a disclosure statement as described in §9.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Agreement. Subrecipient may also be subject to such penalties as are allowed by law.

10. INSURANCE

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

E. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary over any insurance or self-insurance program carried by Subrecipient or the State.

F. Cancellation

All insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient and Subrecipient shall forward such notice to the State in accordance with **§Error! Reference source not found.** within seven days of Subrecipient's receipt of such notice.

G. Subrogation Waiver

All insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

If Subrecipient is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Subrecipient shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Subrecipient shall ensure that the Subcontractor maintain at all times during the terms of this Subrecipient, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

I. Certificates

For each insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement prior to the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement prior to the Effective Date, except that, if Subrecipient's subcontract is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Subrecipient's execution of the subcontract. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Agreement, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §Error! Reference source not found. for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Subrecipient is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §Error! Reference source not found., shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach of Agreement

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §0.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State **(i)** secure that right to use such Work for the State and Subrecipient; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in §Error! Reference source not found. and the dispute resolution process in §Error! Reference source not found. shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Subrecipient for resolution.

B. Resolution of Controversies

If the initial resolution described in §0 fails to resolve the dispute within 10 Business Days, Subrecipient shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S., for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the "Resolution Statutes"), except that if Subrecipient wishes to challenge any decision rendered by the Procurement Official, Subrecipient's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Subrecipient pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES and REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Subrecipient agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Awarding Agency's and State's purposes. All Work Product shall be delivered to the State by Subrecipient upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Subrecipient are the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Subrecipient Property"). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. GENERAL PROVISIONS

A. Assignment

Subrecipient's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subrecipient's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Subrecipient shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subaward would also be considered a Subrecipient, then the subcontract or subaward entered into by

Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in **§16.A.**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Subrecipient. Subrecipient shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Subrecipient may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§16.A.**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

- i. Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.
- ii. Subrecipient, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date and maintain at all times during the term of this Agreement, at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

T. Federal Provisions

Subrecipient shall comply with all applicable requirements of Exhibits C, D, and E at all times during the term of this Agreement.

17. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all agreements except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Subrecipient shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subrecipient nor any agent or employee of Subrecipient shall be deemed to be an agent or employee of the State. Subrecipient shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Subrecipient and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Subrecipient or any of its agents or employees. Subrecipient shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Subrecipient shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Subrecipient shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold Subrecipient harmless; requires the State to agree to binding arbitration; limits Subrecipient's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subrecipient hereby certifies and warrants that, during the term of this Agreement and any extensions, Subrecipient has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Subrecipient is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Subrecipient has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the

performance of Subrecipient's services and Subrecipient shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Subrecipient in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Subrecipient by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Subrecipient, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Subrecipient certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Subrecipient shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Subrecipient that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Subrecipient **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Agreement is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Subrecipient has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Subrecipient participates in the Department program, Subrecipient shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Subrecipient has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Subrecipient fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Subrecipient shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Subrecipient, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Subrecipient **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S., prior to the Effective Date of this Agreement.

EXHIBIT A, STATEMENT OF WORK AND BUDGET**Action Plan**

Agency Name	Pueblo Police Department
Project Title	A Step Towards Reducing Traffic Fatalities
WBS Element	22NHTSA402.0204/DUNS NO.: 556467256

Description

This Action Plan is for development and execution of Speed Enforcement in the City of Pueblo. The grantee shall provide the Work through a grant at the prices and rates specified in this Action Plan. The budget will be within 10% in year 2 and 3 as it was planned in year 1. The planned activities noted below will be similar in years 2 and 3.

Grantees Responsibilities

The grantee will provide the following types of services under this Contract:

The grantee will implement activities to decrease the number of speed related fatality accidents in the City of Pueblo by:

1. Conduct targeted speed enforcement in the locations with frequent fatal/injury accidents.
2. The Pueblo PD will develop written deployment plans for targeted speed enforcement at frequent fatal/injury accident locations as determined by review of current accident data.
3. The Pueblo PD will conduct speed enforcement at designated locations, dates, and times as defined in the deployment plan.
4. Conduct semi-annual traffic safety seminars in each of the four local high schools in an effort to target high-risk teen drivers.
5. Pueblo PD will decrease the incidence of speed in the ongoing CDOT construction zones on I-25 to provide worker safety.
6. Evaluation indicators for grant year one will entail the number of enforcement hours, the number of traffic citations issued, number of traffic citations, the number of violations cited, the number and type of media communications.

Budget (Section 1 of 3)

Budget Summary

Personnel Services Totals:	\$0.00	Operating Expenses Totals:	\$0.00
Hourly Employee Totals:	\$75,000.00	Contractual Services Totals:	\$0.00
Fringe Benefit Costs Totals:	\$0.00	Travel Expenses Totals:	\$0.00
Capital Equipment Totals:	\$0.00		

Subtotal Before Indirect Costs: \$75,000.00

Indirect Rate:

Indirect Cost Totals: \$0.00

Budget Total: \$75,000.00

Name of Position		Salary Type	Monthly Salary Amount		Number of Months	Total
Name of Position	Hourly Employee Rate Type	Pay Rate	Time Hours per Month	Total Pay per Month (Time Rate * Time Hours per Month)	Number of Months	Total
Officer	Overtime Rate	\$50.00	125.00	\$6,250.00	12.00	\$75,000.00
Description		Total Monthly Fringe Costs		Number of Months		Total

Budget (Section 2 of 3)

Description	Operating Expense Type	Monthly Cost/Cost per Unit		Number of Months/Units	Total
Description	Monthly Miles	Number of Months		Cost per Mile	Total
Contractor	Planned Hours per Month	Number of Months		Time Rate per Hour	Total

Budget (Section 3 of 3)

Description	Number of Persons	Travel Cost Per Person		Total
Description	Number of Units	Cost Per Unit		Total
Description	Indirect Rate	Subtotal Before Indirect Costs		Total

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Transportation	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Subrecipient Insert Subrecipient's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract
Subaward Agreement Amount Federal Funds Maximum Amount (%) \$0.00 Local Funds Local Match Amount (%) \$0.00 Agreement Total \$0.00	Option Agreement Number Insert CMS number or Other Contract Number of this Option Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year Current Agreement Expiration Date Month, Day, Year

1. OPTIONS:

A. Option to extend for an Extension Term or End of Term Extension.

2. REQUIRED PROVISIONS:

A. **For use with Option 1(A):** In accordance with Section(s) 2.B/2.C of the Original Agreement referenced above, the State hereby exercises its option for an additional term/end of term extension, beginning Insert start date and ending on the current agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

B. **For use with Options 1(A):** The Subaward Agreement Amount table on the Agreement's Cover Page is hereby deleted and replaced with the Current Subaward Agreement Amount table shown above.

3. OPTION EFFECTIVE DATE:

A. The effective date of this Option Letter is upon approval of the State Controller or ____, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: _____ Stephen P. Harelson, P.E., Chief Engineer Date: _____	In accordance with §24-30-202, C.R.S., this Option Letter is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Option Letter Effective Date: _____
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EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS

- 1.1. The Contract to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract, or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Federal Provisions shall control.

2. DEFINITIONS

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.1.1. Awards may be in the form of:
- 2.1.1.1.1. Grants;
- 2.1.1.1.2. Contracts;
- 2.1.1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.4. Loans;
- 2.1.1.1.5. Loan Guarantees;
- 2.1.1.1.6. Subsidies;
- 2.1.1.1.7. Insurance;
- 2.1.1.1.8. Food commodities;
- 2.1.1.1.9. Direct appropriations;
- 2.1.1.1.10. Assessed and voluntary contributions; and
- 2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 2.1.1.2. Award **does not** include:
- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.2.3. Any award classified for security purposes; or
- 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Contract” means the Agreement or Subaward Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Contract or Subaward Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes Subrecipients and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

- 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 2.1.5.2. A foreign public entity;
- 2.1.5.3. A domestic or foreign non-profit organization;
- 2.1.5.4. A domestic or foreign for-profit organization; and
- 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Sub award to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subrecipient. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the sub recipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the sub recipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

- 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.

5. TOTAL COMPENSATION

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2. In the preceding fiscal year, Contractor received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit

are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS

- 8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Sub award was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;
 - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:
 - 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Sub recipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.
- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."
- 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subawards of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

13. CERTIFICATIONS

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed, or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT D, ADDITIONAL PROGRAM REQUIREMENTS

Certifications and Assurances

It is hereby understood that this Application and the attachments hereto, when approved and signed by all concerned parties, as indicated shall constitute an agreement by and between the applicant organization to perform in accordance with the terms of this Application and attachments, taken as a whole. This agreement is based on CDOT procedures and Federal guidelines found in 2 CFR 1201, 2 CFR Chapter I, Chapter II, XII, Part 200 in order to standardize and simplify federal grants. The signature below of an authorized representative of the applicant agency certifies and ensures that all the following conditions will be met.

- 1) Reports – The Contractor shall submit quarterly reports, a final report at the end of the project, and special reports, if any, as outlined in the Project Agreement. Please read Part 5, Reporting Requirements, following this section.
- 2) Copyrights, Publications, and Patents – Where activities supported by this project produce original copyright material, the Contractor may copyright such, but CDOT reserves nonexclusive and irrevocable license to reproduce, publish, and use such materials and to authorize others to do so. The Contractor may publish, at its own expense, the results of project activities without prior review by CDOT, provided that any publications (written, visual or sound) contain acknowledgment of the support provided by the National Highway Traffic Safety Administration (NHTSA) and CDOT. Any discovery or invention derived from work performed under this project shall be referred to CDOT, who will determine through NHTSA whether patent protections will be sought, how any rights will be administered, and other action required to protect the public interest.
- 3) Termination – This project agreement may be terminated or fund payments discontinued or reduced by CDOT at any time upon written notice to the Contractor due to non-availability of funds, failure of the Contractor to accomplish any of the terms herein, or from any change in the scope or timing of the project.
- 4) Fiscal Records – Contractor will maintain complete and detailed accounting records of all costs incurred on this project, including documentation of all purchases of supplies, equipment, and services; travel expenses; payrolls; and time records of any person employed part-time on this project. Federal, State or CDOT auditors shall have access to any records of the Contractor. These records shall be retained for three years after the final audit is completed or longer, if necessary, until all questions are resolved.
- 5) Funding – The Contractor will utilize funds provided to supplement and not to supplant state and local funds otherwise available for these purposes. Funds are to be expended only for purposes and activities approved in the project agreement. Reimbursement will be made periodically by CDOT based on approved requests for reimbursement. If matching funds are required, the Contractor will expend them from nonfederal sources, which must be spent no later than 30 days following the completion of the project.
- 6) Cost Principles and Grant Management – The eligibility of costs incurred, and the management of this project shall be determined in accordance with 2 CFR Chapter I Chapter II Part 200 and for state and local agencies and educational institutions, and 2 CFR, Part 230 for nonprofit entities.
- 7) Obligation Funds – Federal funds may not be obligated prior to the effective date or subsequent to the termination date of the project period. Requests for reimbursement outstanding at the termination date of the project must be made within 30 days or those funds may not be paid.
- 8) Changes – The Contractor must obtain prior written approval from CDOT for major project changes, including: changes of substance in project objectives, evaluation, activities, the project manager, key personnel, project budget or transfer of funds from one category in the budget to another. The period of performance of the project, however, cannot be changed.
- 9) Program Income – CDOT safety programs encourage Contractors to earn income to help defray program costs, but there are federal regulations that must be followed. Program income is defined as gross income received by the State and/or Contractor directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Income earned by the Contractor with respect to the conduct of the project (sale of publications, registration fees, service charges, donations for child safety seats, etc.) must be accounted and income applied to project purposes, used to reduce project costs, or be used to meet cost agency

matching requirements. The Contractor is responsible for reporting all program income according to federal and state requirements.

- 10) Purchases – Purchase of equipment or services must comply with state or local regulations. After the end of the project period, equipment should continue to be utilized for traffic safety purposes and cannot be disposed of without written approval of CDOT. The Contractor shall make and maintain an inventory of equipment to include descriptions, serial numbers, locations, costs or other identifying information, and submit a copy to CDOT.
- 11) Third Party Participants – No contracts or agreements may be entered into by the Contractor related to this project which are not incorporated into the project agreement and approved in advance by CDOT. The Contractor will retain ultimate control and responsibility for the project. CDOT shall be provided with a copy of all contracts and agreements entered into by Contractors. Any contract or agreement must allow for the greatest competition practicable and evidence of such competition or justification for a negotiated contract or agreement shall be provided to CDOT.
- 12) Participation by Disadvantaged Business Enterprises – The contractor agrees to take all necessary and reasonable steps in accordance with Title 49, CFR, Subtitle A, Part 26 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any subcontracts financed in whole or in part with federal funds.
- 13) Non-Discrimination – In the performance of this agreement the Contractor, by its signature below, certifies and assures that it shall comply with all Federal statutes and implementing regulations relating to nondiscrimination. (These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin (and 49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) and the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq.; PL 101-336), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27); (d) the Age Discrimination Act of 1975, as amended (42U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970(P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse of alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; The Civil Rights Restoration Act of 1987, which provides that any portion of a state or local entity receiving federal funds will obligate all programs or activities of that entity to comply with these civil rights laws; and, (k) the requirements of any other nondiscrimination statute(s) which may apply to the application. The Contractor shall not discriminate on the basis of race, color, national origin, sex, religion, age, creed, Vietnam Era and Disabled Veterans status or sensory, mental or physical handicap in the provision of any terms and conditions of employment or the provision of service or benefits otherwise afforded and will take the affirmative action necessary to accomplish the objects of the above referenced laws.
- 14) Political Activities – In accordance with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) no funds, materials, equipment, or services provided in this project agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or to pay any person to influence or attempt to influence an officer or employee of congress, or an employee of a member of congress, an officer or employee of congress in connection with the awarding of any federal loan or the entering in of any cooperative agreements.
- 15) Single Audit –All Non-Federal entities that expend \$750,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, 2 CFR 200 Chapter I, Chapter II - Sub Part F, the OMB Circular Compliance Supplement and Government Auditing Standards. A single audit is intended to provide a cost-effective audit for non-Federal entities in that one audit is conducted in lieu of multiple audits of individual programs. Nonfederal entities include States, Local Governments, and Non-

Profit Organizations. The term non-profit organization includes non-profit institutions of higher education and hospitals.

- 16) Safety Belt Policy – No funds, materials, property, or services will be provided to any political subdivision that does not have a current and actively enforced policy requiring the use of seat belts.
- 17) Drug Free Workplace – In accordance with the Anti-Drug Act of 1988 (41 USC 702-707) and Drug-Free Workplace (42 USC 12644), CDOT has the responsibility to ensure that unlawful manufacture, distribution, dispensing, possession or use of a controlled substance by any employees, grantees, and/or sub-grantee of the Contractor and/or any such activity is prohibited in the Contractor's workplace.
- 18) Colorado Standard Field Sobriety Testing – All law enforcement officers who are performing impaired driving enforcement activities with funding from CDOT must be in compliance with the current Colorado Standards for Field Sobriety Testing Standards.
- 19) Debarment and Suspension - The applicant certifies, by signature below, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- 20) Restriction on State Lobbying - None of the funds under this program shall be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect e.g., "grassroots" lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with state or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.
- 21) Certification Regarding Federal Lobbying - The undersigned certifies, to the best of his or her knowledge and belief, that:
 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 22) Federal Funding Accountability and Transparency Act – The State is required to report for each sub-grant awarded as shown below. Contractor agrees to provide the information below upon request for reporting purposes.
 - Name of the entity receiving the award;
 - Amount of the award;
 - Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;

- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
 - A unique identifier (DUNS);
 - The names and total compensation of the five most highly compensated officers of the entity if-- of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity;
- (i) the entity in the preceding fiscal year received—
- (I) 80 percent or more of its annual gross revenues in Federal awards; and
 - (II) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

- 23) System For Award Management (SAM) and Universal Identifier Requirements – Requires that the contractor be registered in the SAM.Gov prior to submitting an application or plan; and maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency.
- 24) Buy American Act - Citation: Public Law 112-141/MAP-21 requires that states comply with the Buy America Act. The undersigned certifies, to the best of his or her knowledge and belief, that: No federal highway grant funds under 23 U.S.C. Chapter 4 will be used to purchase products, unless they are produced in the United States. This prohibition applies to steel, iron, and all manufactured products, unless the Secretary of Transportation has determined that it is appropriate to waive the Buy America Act requirement. There is a threshold of single purchase costing less than \$5,000 that is exempt from the need for a waiver. The Secretary of Transportation may waive the Buy America Act requirement if: 1) the requirements would be inconsistent with the Public Interest 2) the products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality and 3) use of the products produced in the United States would increase the overall cost of the project by more than 25 percent.

Reporting Frequency: The Office of Transportation Safety HSO requires three types of reports in conjunction with highway safety projects:

- 1. Quarterly reports during the life of a project;
- 2. A final report at the conclusion of a project. This is to include training and consultant reports, if applicable;
- 3. Annual Report Template (to be provided by CDOT)

These reports keep the HSO informed of a project’s progress, explain any difficulties encountered, provide a background of information that can be passed on to others, suggest ways in which CDOT can assist with the project and aid in distribution of funds.

Quarterly Reports: These are to be submitted quarterly and are due within twenty (20) calendar days after the end of the reporting calendar quarter as follows:

First Quarter:	1 October – 31 December	Report due January 20
Second Quarter:	1 January – 31 March	Report due April 20
Third Quarter:	1 April – 30 June	Report due July 20

If there is no activity during the reporting period, submit a report indicating so. Any original or innovative ideas or methods employed in your project should be incorporated into your reports.

Fourth and Final Report: The fourth quarter and final report can be combined. These are to be submitted within 45 days of contract completion, which is no later than November 15. Final reports are to be detailed and must describe whether the project objectives were accomplished, if technical and fiscal problems were encountered, and what improvements in traffic safety have resulted or probably will result. Included in final reports will be copies of publications, training reports and any statistical data generated in project execution. These final reports should discuss the following:

- 1. Accomplishments compared to the original project objectives;
- 2. Were all activities of the project completed as scheduled? Include dates and milestones when studies were completed; equipment acquired, installed and operated;
- 3. Any unanticipated proceedings that affected the project;
- 4. Funding and costs for completion of the project in relationship to original estimates; and
- 5. Third party performance if applicable. A copy of any consultant reports should be included with the final report.

Annual Report Template: An Annual Report template will be provided to the contractor in late October. The contractor is responsible for providing the requested information and submitting back to HSO. The templates are then used to form the basis of the OTS’s HSO Annual Report.

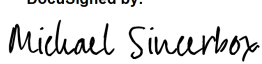
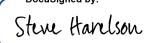
STATE OF COLORADO AMENDMENT (1)

SIGNATURE AND COVER PAGE

State Agency Department of Transportation	Subaward Amendment Number / PO Number 22-HTS-ZL-00005-M0001 / 491002707
Subrecipient CITY OF PUEBLO – PUEBLO POLICE DEPARTMENT	Original Subaward Agreement Number / PO Number 22-HTS-ZL-00005 / 491002707
Amended Subaward Agreement Amount Current Total Encumbered Amount \$150,000.00	Subaward Agreement Performance Beginning Date October 01, 2021
	Amended Agreement Expiration Date September 30, 2023
	Amended Fund Expenditure End Date September 30, 2023

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

SUBRECIPIENT CITY OF PUEBLO DocuSigned by:  E162CDB192C04C0... By: , Michael Sincerbox Date: <u>8/16/2022</u>	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director DocuSigned by:  AB4C0B01642B42E... Stephen Harelson, P.E., Chief Engineer Date: <u>8/16/2022</u>
In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD DocuSigned by:  BDA801C5CEAC478 By: _____ Department of Transportation Effective Date: <u>8/16/2022</u>	

1) PARTIES

This Amendment (the “Amendment”) to the Original Subaward shown on the Signature and Cover Page for this Amendment (the “Subaward”) is entered into by and between the Subrecipient, and the State.

2) TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Subaward shall be construed and interpreted in accordance with the Subaward.

3) EFFECTIVE DATE AND ENFORCEABILITY**A. Amendment Effective Date**

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment

B. Amendment Term

The Parties’ respective performances under this Amendment and the changes to the Subaward contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Subaward.

4) PURPOSE

The purpose for this Amendment is to add funds, extend the agreement, and revise Exhibit A - Statement of Work and Budget as described in Section 5.

5) MODIFICATIONS

The Subaward and all prior amendments thereto, if any, are modified as follows:

A. The Subaward Agreement Amount on the Subaward Agreement’s Cover Page is hereby deleted and replaced with the Amended Subaward Agreement Amount (Current Total Encumbered Amount) shown on the Signature and Cover Page for this Amendment.

B. The Initial Agreement Expiration Date on the Subaward Agreement’s Cover Page is hereby deleted and replaced with the Amended Agreement Expiration Date shown on the Signature and Cover Page for this Amendment.

C. The Fund Expenditure End Date on the Subaward Agreement’s Cover Page is hereby deleted and replaced with the Amended Fund Expenditure End Date shown on the Signature and Cover Page for this Amendment.

D. Exhibit A is hereby deleted and replaced with Exhibit A.1.

E. All references to Exhibit A in the Subaward and any amendments are hereby deleted in its entirety and replaced with Exhibit A.1.

6) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Subaward, and the Subaward and all prior amendments or other modifications to the Subaward, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Subaward, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Subaward or any prior modification to the Subaward, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Subaward to the extent that this Amendment specifically modifies those Special Provisions.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

EXHIBIT A.1, STATEMENT OF WORK AND BUDGET**Action Plan****Pueblo Police Department
A Step Towards Reducing Traffic Fatalities
23NHTSA402.0204/UEI: NJK3BNUDRHJ7****Description**

This Action Plan is for development and execution of Speed Enforcement in the City of Pueblo.

The grantee shall provide the Work through a grant at the prices and rates specified in this Action Plan. The budget will be within 10% in year 2 and 3 as it was planned in year 1. The planned activities noted below will be similar in years 2 and 3. If option to extend agreement is executed.

Grantees Responsibilities

The grantee will provide the following types of services under this Contract:

The grantee will implement activities to decrease the number of speed related fatality accidents in the City of Pueblo by:

1. Conduct targeted speed enforcement in the locations with frequent fatal/injury accidents.
2. The Pueblo PD will develop written deployment plans for targeted speed enforcement at frequent fatal/injury accident locations as determined by review of current accident data.
3. The Pueblo PD will conduct speed enforcement at designated locations, dates, and times as defined in the deployment plan.
4. Conduct semi-annual traffic safety seminars in each of the four local high schools in an effort to target high-risk teen drivers.
5. Evaluation indicators for grant year one will entail the number of enforcement hours, the number of traffic citations issued, number of traffic citations, the number of violations cited, the number and type of media communications.

If applicable, and in accordance with 23 CFR Part 1300 Appendix C, the accepting agency, as a representative of its political subdivision, requests the benefit of the CDOT Highway Safety Office's coordination of paid media, traffic safety marketing, and law enforcement liaison assistance to change driver behavior. The CDOT Highway Safety Office coordinates these activities Statewide to complement the initiatives outlined in your Scope of Work. These efforts include local jurisdictions and will be coordinated statewide.

By signing this contract, the project director signifies their understanding and approves the use of these activities within their jurisdiction.

FY 2022

Budget (Section 1 of 3)

Budget Summary

Personnel Services Totals: \$0.00 Operating Expenses Totals: \$0.00
 Hourly Employee Totals: \$75,000.00 Contractual Services Totals: \$0.00
 Fringe Benefit Costs Totals: \$0.00 Travel Expenses Totals: \$0.00
 Capital Equipment Totals: \$0.00

Subtotal Before Indirect Costs: \$75,000.00

Indirect Rate:

Indirect Cost Totals: \$0.00

Budget Total: \$75,000.00

Name of Position		Salary Type	Monthly Salary Amount		Number of Months	Total
Name of Position	Hourly Employee Rate Type	Pay Rate	Time Hours per Month	Total Pay per Month (Time Rate * Time Hours per Month)	Number of Months	Total
Officer	Overtime Rate	\$50.00	125.00	\$6,250.00	12.00	\$75,000.00
Description	Total Monthly Fringe Costs		Number of Months		Total	

Budget (Section 2 of 3)

Description	Operating Expense Type	Monthly Cost/Cost per Unit	Number of Months/Units	Total
Description	Monthly Miles	Number of Months	Cost per Mile	Total
Contractor	Planned Hours per Month	Number of Months	Time Rate per Hour	Total

Budget (Section 3 of 3)

Description	Number of Persons	Travel Cost Per Person	Total
Description	Number of Units	Cost Per Unit	Total
Description	Indirect Rate	Subtotal Before Indirect Costs	Total

Section 2 of 3 and Section 3 of 3 intentionally left blank.

FY 2023

Budget (Section 1 of 3)

Budget Summary

Personnel Services Totals:	\$0.00	Operating Expenses Totals:	\$0.00
Hourly Employee Totals:	\$75,000.00	Contractual Services Totals:	\$0.00
Fringe Benefit Costs Totals:	\$0.00	Travel Expenses Totals:	\$0.00
Capital Equipment Totals:	\$0.00		

Subtotal Before Indirect Costs: \$75,000.00

Indirect Rate:

Indirect Cost Totals: \$0.00

Budget Total: \$75,000.00

Name of Position		Salary Type		Monthly Salary Amount		Number of Months		Total
Name of Position	Hourly Employee Rate Type	Pay Rate	Time Hours per Month	Total Pay per Month (Time Rate * Time Hours per Month)		Number of Months		Total
Officer	Overtime Rate	\$50.00	125.00	\$6,250.00		12.00		\$75,000.00
Description		Total Monthly Fringe Costs		Number of Months		Total		

Budget (Section 2 of 3)

Description	Operating Expense Type	Monthly Cost/Cost per Unit	Number of Months/Units	Total
Description	Monthly Miles	Number of Months	Cost per Mile	Total
Contractor	Planned Hours per Month	Number of Months	Time Rate per Hour	Total

Budget (Section 3 of 3)

Description	Number of Persons	Travel Cost Per Person	Total
Description	Number of Units	Cost Per Unit	Total
Description	Indirect Rate	Subtotal Before Indirect Costs	Total

Section 2 of 3 and Section 3 of 3 intentionally left blank.



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE APPROVING AMENDMENT NO. 1 TO THE LEASE AND MANAGEMENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND BREGAR GOLF, LLC, RELATING TO THE ELMWOOD GOLF COURSE RESTAURANT, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance would approve Amendment No. 1 to the Elmwood Golf Course Restaurant Management Agreement to allow for restaurant repairs and improvements to be accepted by the City in lieu of rent, subject to terms and conditions.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

On January 1, 2021, Elmwood Golf Course Manager Randal Bregar entered into an agreement between the City of Pueblo and Bregar Golf, LLC for the operation and management of the Elmwood Golf Course Restaurant. The leased premises required extensive work in order to bring up to building and health department codes before opening in the Spring of 2021. Randal Bregar and his team completed these renovations by the end of the summer.

In addition to the required restaurant renovations, the City-owned walk-in cooler was in need of repairs in order to remain functional. Those repairs were completed in early 2022.

On March 21, 2022, Mr. Bregar submitted a request to Parks and Recreation for a 2022 in-kind restaurant rent credit for the amount Bregar Golf, LLC spent on the restaurant renovations and the cost of the walk-in cooler repairs.

FINANCIAL IMPLICATIONS:

The Golf Course Enterprise would not collect 2022 restaurant rent in lieu of equal value to the restaurant renovation and equipment repair that was paid for by Bregar Golf, LLC. The cost for the project is \$13,762.06.

BOARD/COMMISSION RECOMMENDATION:

The Golf Course Enterprise Citizens' Advisory Committee recommends approval of this Ordinance.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Should the Council choose not to approve the request, Golf Enterprise will be required to reimburse Bregar Golf, LLC for the renovation and equipment repair expenses.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Amendment No. 1
2. Elmwood GC Restaurant Lease Forgiveness Request - Bregar Golf, LLC
3. Elmwood GC Restaurant Lease Forgiveness Receipts Spreadsheet

ORDINANCE NO. 10295

AN ORDINANCE APPROVING AMENDMENT NO. 1 TO
THE LEASE AND MANAGEMENT AGREEMENT
BETWEEN THE CITY OF PUEBLO, A MUNICIPAL
CORPORATION, AND BREGAR GOLF, LLC, RELATING
TO THE ELMWOOD GOLF COURSE RESTAURANT, AND
AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, the City of Pueblo and Bregar Golf, LLC entered into the Lease and Management Agreement dated January 1, 2021 ("Lease") under which the City granted Bregar Golf, LLC the exclusive right to occupy, use, and operate the food and beverage operations within the Restaurant and Lounge of the Elmwood Golf Course clubhouse; and

WHEREAS, City and Bregar Golf, LLC desire to amend the terms of said Lease and Management Agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

Amendment No. 1 to the Lease and Management Agreement between the City of Pueblo, a Municipal Corporation, and Bregar Golf, LLC, a Colorado Corporation, for Certain Premises at Elmwood Golf Course, attached hereto and having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute and deliver said Amendment on behalf of the City, and the City Clerk shall affix the Seal of the City thereto and attest the same.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Lease and Management Agreement to implement the transactions, policies and procedures described herein.

SECTION 4.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:

Hilda Leal
Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

Ly Gao
City Clerk

**AMENDMENT NO. 1 TO THE
LEASE AND MANAGEMENT AGREEMENT**

THIS AMENDMENT NO. 1 ("Amendment") to the Lease and Management Agreement is made and entered into this _____ day of _____, 2022 by and between the City of Pueblo, a Municipal Corporation ("City") and Bregar Golf, LLC, a Colorado limited liability corporation ("Manager").

WHEREAS, City and Manager entered into the Lease and Management Agreement dated January 1, 2021 (the "Lease") under which the City granted Manager the exclusive right to occupy, use, and operate the food and beverage operations within the Restaurant and Lounge of the Elmwood Golf Course clubhouse; and

WHEREAS, the Leased Premises and walk-in cooler required repair; and

WHEREAS, Manager repaired the walk-in cooler and made improvements to the Leased Premises, and City is willing to accept said repair and improvements in lieu of rent, subject to the terms and conditions of the Lease hereby modified.

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

1. Manager shall submit invoices and receipts for the repair of the walk-in cooler and all improvements to the Leased Premises, which shall be attached hereto in Exhibit A. Manager shall pay for all costs of repair, purchase, and replacement, including all necessary installation. City shall not be liable for any associated cost. All items purchased and installed by Manager shall be tagged with City identification and shall become and remain the property of the City. Manager shall provide any other documentation requested by City immediately upon request. Failure by Manager to produce the requested documentation shall constitute a material breach for which City may immediately upon notice terminate this Amendment and charge rent for the Waived Months (later defined).
2. Manager shall make any additional repairs or improvements necessitated by the installation of equipment and improvements to the Leased Premises, including repairs to the surrounding walls, flooring, water lines, and electrical connections. All repairs and improvements shall be in keeping with that surrounding portion of the premises, including paint colors and types of flooring, and shall be at the sole cost of the Manager.
3. Manager guarantees and warrants that all work was completed by a certified contractor licensed with the State of Colorado. All work shall be inspected by Pueblo Regional Building, the Pueblo Department of Public Health and Environment, and any other required governmental agencies. Manager shall obtain

warranties for the installed equipment and improvements and shall provide a copy of said warranties to City.

4. Only the improvements to the Leased Premises attached in Exhibit A have received approval from City. All installed equipment and fixtures, and the additions, changes, and improvements made to the Leased Premises, shall become the property of the City upon their installation and completion. Manager shall maintain and repair the equipment and improvements in accordance with the terms of the Lease and all warranties.
5. In consideration for Manager making the improvements and repairs detailed herein, City shall waive \$13,762.06 of rent ("Waived Rent") required under the Lease for the months of October 2022 through January 2023 ("Waived Months"). The difference between the scheduled rent of \$14,000.00 for the Waived Months and the Waived Rent of \$13,762.06 is \$237.94 ("Rent Difference"). The Rent Difference and the scheduled annual increase in rent beginning January 1, 2023 shall remain due as rent in January 2023. Waiver of rent shall not excuse Manager from payment of applicable fees or taxes, nor affect the calculation of rent in future months. Should Manager fail to make improvements and repairs in a timely manner, as determined by City in its sole and absolute discretion, City may upon notice to Manager forego any waiver and charge rent for the Waived Months. Said rent shall be immediately due upon notice without offset or deduction.
6. Should the Lease or this Amendment be terminated by either party or expire prior to completion of the Waived Months, City shall not be liable to Manager for any amounts of waived rent or costs associated with the replacements and improvements made to the Leased Premises.
7. Manager shall indemnify, defend and hold harmless the City and its officers, employees, and agents against any liability for any damages, attorneys fees, and restitution that may be imposed by any court or tribunal in any suit, action or proceeding in law or equity filed by any person or entity based on tort, contract, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, property damage, or loss that may be related to or caused by the installation of equipment or making of improvements by Manager or its contractor to the Leased Premises, including claims of nonpayment or breach of contract by Manager's contractor. All work to the Leased Premises shall be adequately insured by Manager or Manager's contractor.
8. Except as expressly modified by this Amendment, the Lease shall remain in full force and effect. Except as modified by this Amendment, any obligations to be performed under the Lease by either party are not waived nor excused in any manner but shall be performed in accordance with the terms and conditions of the Lease as it existed prior to this Amendment.

IN WITNESS WHEREOF, Manager and City have executed this Amendment as of the date first written above.

ATTEST:

CITY OF PUEBLO,
a Municipal Corporation

City Clerk

By _____
Nicholas A. Gradisar, Mayor

APPROVED AS TO FORM:

City Attorney

BREGAR GOLF, LLC, a Colorado limited
liability corporation

By _____
Randal L. Bregar, President

Exhibit A
Invoices and Receipts

Bregar Golf, LLC
Elmwood Golf Course
3900 Thatcher Ave.
Pueblo, CO 81005

March 21, 2022

Parks and Recreation Office
800 Goodnight Ave.
Pueblo, CO 81005

Attn: Steven Meier

Here are the specific numbers we spoke about for the specific updates and repairs needed for the restaurant at Elmwood. (The Clubhouse @ Elmwood)

The restaurant renovations were a success as our new restaurant purveyors, Only Fresh Concepts, have done a remarkable job of updating the look and fresh feel in the restaurant. Nothing but positive feedback has been heard since the construction was completed.

The second piece is the repair of the basement walk-in cooler, owned by the City of Pueblo, in need to store beverages and food for the restaurant.

The agreement was for Only Fresh Concepts to pay for the updates and repairs and be reimbursed as lease credit until the total is used.

Restaurant Construction - ~~\$9,967.90~~ **\$9,462.06**

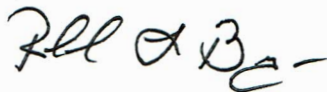
Walk-In Cooler Repair - \$4,300.00

Total - ~~\$14,267.90~~ **\$13,762.06** (See attached receipt spreadsheet - MCS 08.30.22)

I am in possession of all receipts/quotes for your review.

Please provide your approval to proceed as indicated.

Thank you,



Randal Bregar
Director of Golf
Elmwood Golf Course

EW Restaurant Lease Forgiveness Documentation FY2021 - Receipts_06.07.2022_UPDATED 08.30.22

Randal Bregar, Director of Golf and Restaurant Operations
Elmwood Golf Course

Per Lease and Management Agreement for Restaurant Remises at Elmwood Golf Course dated January 1, 2021

Section 7(b)(1) through (4), page 4. CITY TO PROVIDE CERTAIN CAPITAL

(b) The City may in its discretion reimburse Manager for additional capital expenses incurred by Manager for equipment and furniture to be used by Manager at the Leased Premises, provided that:

- (1) Manager obtains written approval from City for the capital expenses prior to incurring any expenses; and
- (2) Manager provides a detailed proposal to the City describing the equipment and furniture to be purchased, the reason the purchase is necessary, and an estimate of costs for the equipment and furniture; and
- (3) The capital expenses are incurred only for restaurant related equipment and furniture delivered to and used solely at the Leased Premises; and
- (4) Receipts for all purchases are provided immediately after the purchases are made.

RESTAURANT RENOVATION

			DATE	PURCHASE		
	VENDOR	RECEIPT #	ITEM DESCRIPTION	PURCHASED	AMT	COMMENTS
1	LOWES	4246608	Key and trash bin	2/13/2021	\$79.30	Replacement key for bar closet, demo trash bins
2	LOWES	22446933	Anchor, trim, studs, frp trim	2/13/2021	\$554.04	Materials for service station and backroom wall repair
3	LOWES	7328493	Drywall blade, trim, frp	2/14/2021	\$84.83	Materials for service station and backroom wall repair
4	LOWES	7933824	Degreaser	2/21/2021	\$2.67	Degreaser for clogged hood vent
5	LOWES	88046767	PVC pipe, drywall, mud	2/22/2021	\$75.52	Pipe for ice machine drain, drywall side station
6	ASHLEY	a529264	Spackling	2/27/2021	\$6.99	Repair wall and trim dings
7	LOWES	88462597	Paint prep, cleaner, mask	2/27/2021	\$197.16	Wall prep sander, cleaner, tape main dining room
8	LOWES	755890	Electric wall plates	2/28/2021	\$27.59	Replacement for hall wall plates
9	SHERWIN	8983-8	Paint, caulk, mask	3/1/2021	\$268.34	Paneling paint
10	LOWES	31730817	Address numbers	3/2/2021	\$57.14	Replace and correct address
11	LOWES	4147734	Fasteners	3/7/2021	\$5.51	Nuts & bolts for LED lights in backroom
12	LOWES	49137518	Extension SP	3/7/2021	\$10.70	
13	LOWES	2687872	Backer, trim, recept	3/13/2021	\$153.11	Wall repair storage room
14	LOWES	2666645	Backer, trim, mdf	3/13/2021	\$221.72	Wall repair storage room
15	SHERWIN	9561-1	Paint, caulk, mask	3/13/2021	\$33.36	Wall painting
16	LOWES		Electrical plates	3/14/2021	\$13.30	Wall plate replacement
17	LOWES	42741299	Wall plate	3/14/2021	\$3.64	Wall plate replacement
18	LOWES	2745522	Backer, trim, mdf	3/14/2021	\$194.98	Wall repair
19	LOWES	2724081	Backer, trim, mdf	3/25/2021	\$324.03	Wall repair
20	LOWES	42698239	Fbtd	3/25/2021	\$115.67	Kitchen and service wall
21	LOWES	41950911	Lighting fixture and bulb	3/28/2021	\$14.27	Repair broken bar light fixture
22	LOWES	17245850	Wall lumber	3/31/2021	\$82.74	West wall frame
23	LOWES	888648502	Wall board, adhesive	4/5/2021	\$245.89	Wall paneling dining room
24	LOWES	2363507	Wall and paint materials	4/13/2021	\$115.23	Paint and wall repair dining room
25	HM DPT	38317	Floor epoxy and tool	2/3/2021	\$210.16	Bar and side station, sealer, finish and applicator
26	HM DPT	62240	Plumbing fixture	2/14/2021	\$36.21	Bar three sink repair
27	HM DPT	52319	Paint supplies	2/16/2021	\$134.59	Floor and wall coverings
28	HM DPT	59040	Wet vac, wall fastener, floor strip	2/17/2021	\$238.73	Repair of cracked and peeling vinyl floor, cleanup
29	HM DPT	47515	Adhesive, degreaser, base	2/18/2021	\$111.48	Cracked water valve, cleaner for hoods, wall base replace
30	HM DPT	55163	Sink strainer replacement	2/18/2021	\$18.07	
31	HM DPT	70102	Floor repair, plumbing	2/21/2021	\$313.23	Repair of cracked & peeling vinyl flooring, plumbing
32	HM DPT	68629	Floor drain pipe and repair	2/22/2021	\$38.84	Leaking and clogged floor drains out of code
33	HM DPT	72058	Wall paint	2/23/2021	\$24.66	Brick wall paint
34	HM DPT	73825	Drywall materials, ice machine drain pipe	2/24/2021	\$91.77	West service wall repair
35	HM DPT	68566	Floor drain fitting, wall sealer	3/3/2021	\$44.59	Leaking and clogged floor drains out of code
36	HM DPT	69188	Wood trim, wall stripping	3/4/2021	\$334.18	Stripping of wall debris and peeling drywall
37	HM DPT	84963	Kitchen connector, cleaning	3/13/2021	\$27.89	Hot wells heavily corroded and leaking
38	HM DPT	88824	Led tape, bit and strainer	3/16/2021	\$93.15	Leaking sink drain, repair, broken light fixture
39	HM DPT	9020	Led tape, light switches	3/16/2021	\$65.99	Light repair and main hallway switch repair
40	HM DPT	27022	Floor epoxy, TV mount	3/25/2021	\$47.83	Floor patch, rehang TV out of code
41	HM DPT	20132	TV hangers	3/31/2021	\$84.47	Rehang TVs that were out of code
42	SHERWIN	7246	Paint	3/00/21	\$171.08	Paint - Receipt says, "BILL TO CO STATE HOSPITAL"
43	SHERWIN	9024-0	Paint	3/2/2021	\$163.87	Paint - Receipt says, "BILL TO CO STATE HOSPITAL"
44	SHERWIN	9337-6	Paint	3/8/2021	\$31.42	Paint - Receipt says, "BILL TO CO STATE HOSPITAL"
45	SHERWIN	0700-4	Paint	4/7/2021	\$394.35	Paint - Receipt says "BILL TO CO STATE HOSPITAL"
46	LOWES	12707203	Electrical switch	1/3/2021	\$167.83	Wiring to replace code violations

EW Restaurant Lease Forgiveness Documentation FY2021 - Receipts_06.07.2022_UPDATED 08.30.22

VENDOR	RECEIPT #	ITEM DESCRIPTION	DATE PURCHASED	PURCHASE AMT	COMMENTS
47 LOWES	5739825	Supplies	2/7/2021	\$108.27	Floor prep, cooler repair, lighting repair, plumbing
48 LOWES	6906459	Service station	2/9/2021	\$24.23	Repair loose service station shelving / broken light
49 LOWES	5891716	Floor stain cleaner	2/9/2021	\$15.39	Bar floor repair holes and chips
50 LOWES	88065642	Wall repair supply	2/11/2021	\$262.83	Panel board and adhesive
51 LOWES	7954427	Plumbing kitchen	2/21/2021	\$41.19	Connectors and fasteners kitchen wall
52 LOWES	6947699	Plumbing kitchen	2/21/2021	\$100.00	Connectors and fasteners kitchen wall
53 LOWES	5926490	Plumbing	2/21/2021	\$260.64	Plumbing supplies to fix service station water service
55 LOWES	5123030	Diamond bits	2/23/2021	\$53.76	Reroute plumbing to ice machine per Regional Building
56 LOWES	6132513	Plumbing lines	2/23/2021	\$34.97	Plumbing line ice machine
57 LOWES	6280153	Plumbing / wall	2/25/2021	\$76.91	Drain pipe, wall adhesive
58 LOWES	6730541	Paint supplies	3/2/2021	\$39.73	
59 LOWES	88906438	Wall covering	3/4/2021	\$674.93	Paneling, lumber, and adhesive
60 LOWES	5988496	Plumbing kitchen	3/5/2021	\$60.23	Connectors and hose for kitchen wall
61 LOWES	5065103	Wall tool	3/6/2021	\$23.65	Caulk gun
62 LOWES	6064918	Wall adhesive	3/6/2021	\$122.66	Panel board glue
63 LOWES	6157570	Gas piping	3/7/2021	\$67.95	Piping & anchors for kitchen gas lines per Regional
64 LOWES	88409594	Wall covering	3/10/2021	\$336.29	Paneling, lumber, fasteners for wall repair
65 LOWES	5600744	Plumbing kitchen	3/12/2021	\$42.93	Replace leaking fitting hose
66 LOWES	6909600	Electrical	3/16/2021	\$245.09	Wire, connectors, and boxes to conceal wiring
67 LOWES	6013041	Paint supplies	3/17/2021	\$103.81	Tape, roller, floor prep, plumbing connectors
68 LOWES	5029926	Plumbing and electrical	3/17/2021	\$109.99	TV hanger, electrical boxes, and plumbing fittings
69 LOWES	88892280	Wall covering	3/27/2021	\$45.11	Panel board and hanging screws
70 LOWES	88883949	Nickle piano hinge	3/27/2021	\$21.96	Hinge to repair breaker box doors
71 LOWES	88883500	Wall paneling	3/27/2021	\$302.65	Panel board, adhesive, fasteners
72 LOWES	5670138	Titan screws	4/5/2021	\$22.36	Wall fasteners
73 LOWES	7049647	Electrical switch	4/21/2021	\$27.46	Wiring and light switch repair main hallway
74 LOWES	5726472	Lighting repair	4/29/2021	\$129.15	Bulbs for broken, upgrade LED
75 LOWES	6687067	Wall hangings	5/10/2021	\$37.98	Wall covering fixture hooks and hangers
76 LOWES	5537015	Plumbing fixture	5/20/2021	\$29.76	Plumbing fittings service station
77 LOWES	7150272	Electrical	5/27/2021	\$175.99	Replace TV hangers, conceal power and cable wires
78 LOWES	12481591	Electrical	7/16/2021	\$78.98	Wire for outlets
79 LOWES	12481591	Electrical	7/16/2021	\$7.98	Wire ties
XX LOWES	3535613	Wall repair	2/28/2021	\$45.11	Edge razor, scraper, drywall
				\$9,462.06	

WALK-IN COOLER REPAIR

XX THUNDER CONSTRUCTION	Walk-In Cooler Repair	\$4,300.00	Replace condenser, electric work, add refrigerant
Receipt is dated 2/28/2022		\$4,300.00	

\$13,762.06



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Greg Pedroza, Director Aviation

SUBJECT: AN ORDINANCE APPROVING AN AGREEMENT BETWEEN PUEBLO CORPORATE COLLEGE, A DIVISION OF PUEBLO COMMUNITY COLLEGE, ("PCC") AND THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, FOR USE OF A PARKING LOT AT THE PUEBLO MEMORIAL AIRPORT, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

An Agreement between Pueblo Corporate College, a division of Pueblo Community College, ("PCC") and the City of Pueblo, allowing PCC to use a parking lot in the Pueblo Memorial Airport Industrial Park, is attached for City Council's consideration.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Pueblo Corporate College provides Commercial Driver's License (CDL) training to its students and needs a parking lot to perform practical training. The City owns a parking lot located southeast of the Pueblo Memorial Airport Terminal, north of Walt Basset Avenue, between Keeler Parkway and Cherokee Lane, within the Pueblo Memorial Airport Industrial Park, Pueblo County, Colorado, (the "City Facilities") which is not always in use and is available for use by PCC.

FINANCIAL IMPLICATIONS:

In consideration for the City allowing PCC use of the City's parking lot, PCC will provide complete CDL training of up to eight (8) City employees at fifty percent (50%) of the regular rate. No other fees or charges will be paid by City. Additionally, all City employees applying for or undergoing training will have priority over other applicants for said training.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, PCC will not be allowed to use the City's parking lot and the City will not receive a discount for training its employees who need CDL training.

RECOMMENDATION:

The Department of Aviation recommends the passage of this Ordinance.

ATTACHMENTS:

1. Pueblo Community College 2022 09 26 LEASE

ORDINANCE NO. 10301

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN PUEBLO CORPORATE COLLEGE, A DIVISION OF PUEBLO COMMUNITY COLLEGE, ("PCC") AND THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, FOR USE OF A PARKING LOT AT THE PUEBLO MEMORIAL AIRPORT, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, Pueblo Corporate College, a division of Pueblo Community College, ("PCC") provides Commercial Driver's License (CDL) training to students; and

WHEREAS, the City owns a parking lot normally used for public parking which is not always in use and may be available for use by PCC; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Agreement for Use of Pueblo Parking Lot ("Agreement") by and between the City of Pueblo, a Municipal Corporation, and Pueblo Corporate College, a division of Pueblo Community College, relating to the use of a City parking lot for the purpose of providing Commercial Driver's License training to PCC students, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute said Agreement on behalf of Pueblo, a Municipal Corporation, and the City Clerk shall affix the Seal of the City thereto and attest the same.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance and the attached Agreement to implement the transactions described therein.

SECTION 4.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

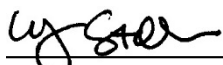
☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk

**AGREEMENT
FOR
USE OF PUEBLO PARKING LOT**

THIS AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2022 (the “Effective Date”) by and between Pueblo Corporate College, a division of Pueblo Community College (“PCC”), with an address of 900 W. Orman Avenue, Pueblo, Colorado 81004, (hereinafter referred to as “Permittee”) and the City of Pueblo, a Municipal Corporation, with an address of 1 City Hall Place, Pueblo, Colorado 81003 (hereinafter referred to as “City”).

WHEREAS, Permittee provides Commercial Driver’s License (“CDL”) training and testing to its students (collectively “Students”) within Pueblo County, Colorado; and

WHEREAS, City owns a parking lot located southeast of the Pueblo Memorial Airport Terminal, north of Walt Basset Avenue, between Keeler Parkway and Cherokee Lane, within the Pueblo Memorial Airport Industrial Park, Pueblo County, Colorado, (the “City Facilities”) which are not always in use and are available for use by Permittee; and

WHEREAS, Permittee desires use of the City Facilities in connection with the CDL training it provides to Students; and

WHEREAS, City is willing, subject to the conditions set forth in this Agreement, to allow Permittee to use the City Facilities, as coordinated by the City, to provide CDL training to its Students.

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

1. Subject to the terms, conditions, and requirements of this Agreement, City will allow Permittee and its Students non-exclusive access to and use of the City Facilities, at times and locations designated by the Director of Aviation, when such facilities are not otherwise scheduled for or in use by City or others. As between Permittee and third parties, Permittee will be given priority for scheduling access to the City Facilities.

2. The term of this Agreement shall commence on the Effective Date and proceed for the term of one year. This Agreement shall automatically renew on a yearly basis, unless a party provides written notice of its intent not to renew at least thirty (30) days prior to the end of the then current term. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. The provisions of sections 3, 16, 17, 19, 21, 22, 23, and 25 shall survive the expiration or termination of this Agreement.

3. It is understood and agreed that City hereby reserves all rights to control and manage City Facilities and to enforce all necessary and proper rules for the management and operation of the same and for its authorized representatives to enter the facilities at any time. City also reserves the right, but not the duty, through its duly appointed representatives, to eject any objectionable persons from the premises and Permittee hereby waives any and all claims for

damages against City and any and all of its agents or employees resulting from the exercise of this authority.

4. Permittee shall not pay City a fee or charge for use of the City Facilities. Instead, Permittee will provide CDL training to City employees at a reduced rate as set forth below.

5. In consideration for City allowing Permittee to use the City Facilities pursuant to this Agreement, each year Permittee shall provide complete CDL training of up to eight (8) City employees at fifty percent (50%) of the regular rate. No other fees or charges will be paid by City. Additionally, all City employees applying for or undergoing Permittee's training will have priority over other applicants for said training, but in no event shall a City employee displace another applicant who has already registered and paid for the training. Should this Agreement be terminated by the Permittee prior to City employees completing their CDL training, Permittee shall issue a pro-rata refund to City for the unfinished training.

6. Permittee shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount, for actual training rendered. Such applications shall be submitted with appropriate documentation showing that such training has been performed. Thereafter, City shall pay Permittee for the amount of the application within forty-five (45) days of the date of billing, provided that sufficient documentation has been furnished. No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, or similar expenses.

7. The CDL training provided by Permittee to City employees shall include at a minimum education sufficient to meet Federal Motor Carrier Safety Administration ("FMCSA") regulations, including but not limited to Entry Level Driver Training ("ELDT") with Theory Training and Behind-The-Wheel ("BTW") Range and Road Training. All CDL training for City employees shall be provided within twelve (12) months from the Effective Date, at the times and locations designated by City and agreed upon by Permittee.

8. Permittee shall use City Facilities in a careful, safe, and proper manner and not permit or maintain any damage, nuisance, or waste in, on, or about City Facilities. Permittee shall monitor its employees and Students and their use of the City Facilities to ensure that they use the same in a careful, safe, and proper manner in compliance with this Agreement. Permittee will be responsible for damages to City Facilities caused by Permittee, its officers, employees, agents, invitees, and students, not to include ordinary wear and tear.

9. Permittee shall maintain the City Facilities in accordance with the requirements and regulations of City. Permittee shall be responsible for all costs, fees, charges, and penalties associated with the discharge or release of any hazardous material (including petroleum products). Permittee shall be responsible for the containment or removal of any contamination or hazardous material (including petroleum products) on, over or under the City Facilities, which is caused by Permittee, its officers, agents, employees, contractors, or Students. The storage and accumulation of fuel, flammables, explosive liquids or solids, waste, debris, or other hazardous materials within or on the City Facilities or adjacent grounds is expressly prohibited without prior written consent from the Director of Aviation.

10. Except for damage caused by Permittee or its students, City shall maintain the City Facilities, to include pavement maintenance, painted markings, and other such activities necessary to maintain said areas. At no time shall the City permit excessive accumulation of snow, dirt, or other debris be piled or stored on public areas while in use by or being supervised by Permittee. Permittee may request snow removal to be done by City personnel at no additional cost when City personnel are available. Permittee is not responsible for snow removal on the City Facilities. Should Permittee make changes to the City Facilities, including painting the pavement for testing purposes or building temporary obstacles, upon termination of this Agreement Permittee shall at its sole cost and expense remove any and all changes to the City Facilities and restore them to their original state or as desired by City. No permanent alteration of City Facilities shall be made by Permittee except with the prior written approval of City.

11. Notwithstanding the foregoing, City will at its own expense restripe the selected lots in the manner designated by Permittee. The City will only be required to repaint or restripe the parking lots when it has sufficient funds budgeted and appropriated for said purpose, and no more than once every two years. City will also explore options to repave the selected parking lots to better facilitate Permittee's use, but any such repaving of the parking lots is subject to sufficient funds being budgeted and appropriated for the purpose.

12. City shall have the right to enter the City Facilities at any time for the purposes of repairing, replacing, and/or maintaining the property. City maintains all rights of entry under law, and its right to enter the City Facilities at any time.

13. Permittee shall at all times have an experienced and qualified training instructor physically present and directly supervising Students when Students are upon City Facilities and when trucks and equipment are being used or demonstrated. It shall be the responsibility of Permittee, and not of City, to ensure Students are provided with all appropriate safety instruction, equipment, and training on the operation and use of trucks and equipment prior to any handling or use of same. Additionally, prior to the first entry upon City Facilities, Permittee shall require all of its employees and Students who are to enter upon City Facilities to sign a Release of Liability Agreement on the form attached hereto as Exhibit "A" (the "Release"). Permittee shall keep a record of all signed Releases during the term of this Agreement and for at least three (3) years thereafter. Permittee shall immediately provide copies of all Releases to City upon request.

14. Under no circumstances will Permittee's employees or non-City Students be permitted to drive City's vehicles, nor act as City personnel or representatives.

15. Permittee, as an entity of the State of Colorado, is entitled to certain immunities under Colorado law, including the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., and is self-insured for \$424,000 per person and \$1,195,000 per occurrence as more fully set forth in Risk Management laws, C.R.S. §§ 24-30-1501, et seq. The parties agree that such insurance shall satisfy all insurance requirements of this Agreement except as otherwise specified herein. Permittee shall furnish to City upon request, in a form satisfactory to City, a copy of said policies or certificates that such insurance has been issued.

16. Permittee agrees to pay promptly when due all taxes, fees, or charges of whatever nature applicable to its conducting of business and to obtain all licenses and permits, whether municipal, state, or federal, required for the usage herein permitted, and further agrees to furnish City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes, fees, and charges, and showing that all required licenses and permits are in effect. The City shall have no fiscal obligations to Permittee, its employees, or Students under this Agreement, except for payments to Permittee pursuant to section 5 hereof.

17. This Agreement is not intended to, nor shall it create, any duty to any Student or Permittee employee, or any other person, firm, or entity with regards to the provision of facilities or equipment by City, nor security, level of safety, or activities undertaken by City's employees or conditions resulting therefrom. No Student, Permittee employee, or other person, firm or entity shall be granted or have any private right of action, claim, or civil liability remedy against the City, or its respective officers, employees, or agents, by virtue of this Agreement. Nothing in this Agreement shall be construed to create any liability, or to waive any of the immunities, limitations on liability or other provisions of the Governmental Immunity Act, §24-10-101 et seq., C.R.S., or to waive any immunities or limitations on liability otherwise available to the City or Permittee, their officers, employees, or agents.

18. This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No modification of this Agreement, and no waiver of any of the Agreement's provisions or conditions, shall be binding unless made by written document signed by the parties. Any delegation or assignment of this Agreement by either party, without the prior written consent of the other party, shall be void. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

19. Permittee acknowledges that the use of the City Facilities presents inherent dangers and that use of trucks and equipment presents inherent risks. Permittee acknowledges that it has inspected City Facilities and finds them suitable for its intended use. The use by Permittee, its Students, and employees of the City Facilities is "AS IS" and "WITH ALL FAULTS" and in its existing condition, whatever that may be. NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IS MADE BY THE CITY CONCERNING THE SAFETY, USABILITY, OR FITNESS FOR ANY PURPOSE OF THE CITY FACILITIES FURNISHED HEREUNDER, AND CITY EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. Permittee agrees that City shall have no obligation to upgrade, repair, resurface, or maintain the City Facilities, except as outlined in this Agreement. City maintains the right to close any portion of the City Facilities for any reason.

20. Except as set forth elsewhere in this section, all notices to be given under this Agreement shall be made in writing, and shall be sufficient if delivered personally, or mailed by First Class United States Mail, postage prepaid, to the other party at the following addresses:

If to Permittee:	Pueblo Community College
	Attn: President
	900 West Orman Avenue
	Pueblo, CO 81004

If to the City: Pueblo Memorial Airport
Attn: Director of Aviation
31201 Bryan Circle
Pueblo, CO 81001

With a Copy to: City of Pueblo
Attn: City Attorney
1 City Hall Place
Pueblo, CO 81003

21. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.

22. This Agreement shall be subject to the City of Pueblo's Municipal Code, including but not limited to, Title III as it relates to the Pueblo Memorial Airport and operations thereon. In its use or occupancy of City Facilities, Permittee shall comply with all applicable state, federal and local non-discrimination laws and regulations.

23. At all times during the term of this Agreement, Permittee shall be deemed an independent contractor and its employees and non-City Students shall not be employees of the City. Permittee shall be responsible in accordance with law for all withholding of taxes, social security, pension, unemployment, workers' compensation, and other employment taxes and costs with respect to its employees and Students. Permittee and any insurance carrier providing insurance coverage for the Permittee's employees shall be deemed to have waived all rights of subrogation against City for injury or loss arising from such employees' entry and presence upon and use of the City Facilities.

24. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together constitute one and the same agreement.

25. Intentionally omitted.

26. Permittee shall reimburse City for the full amount of any employer contribution required to be paid by City to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for City under this Agreement.

27. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, storms, lightning strikes, labor strikes, labor disputes, pandemics, 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.

28. This Agreement shall inure to the benefit of, and be binding upon, the parties, their

respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

29. Financial obligations of City, if any, after the current year in which this Agreement is signed by both parties are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by Pueblo City Council and City executive departments. Nothing herein shall be deemed to create an ongoing financial obligation of City.

30. Nothing in this Agreement is intended to, or 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 Agreement.

31. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this Agreement on behalf of such party and that this Agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

32. 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.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first written above.

Executed the day and year first above written.

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

PUEBLO COMMUNITY COLLEGE

By _____
Nicholas A. Gradisar, Mayor

By PA Erjavec, PhD
Patricia A. Erjavec, President

Attest: _____
City Clerk

Attest: Julie Jimenez
Secretary

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"

Release of Liability Agreement

I. RELEASE OF LIABILITY AGREEMENT: PARTICIPANT MUST READ CAREFULLY BEFORE SIGNING

In consideration for being permitted to use and occupy certain City Facilities in connection with instruction provided by Pueblo Corporate College, a division of Pueblo Community College (PCC), I hereby acknowledge, represent, and agree as follows:

A. I understand that use of said City Facilities and related activities are inherently dangerous and do or may involve risks of death, injury, loss, or damage. I further acknowledge that such risks may include, but not be limited to, bodily injury, personal injury, sickness, disease, death, and property loss or damage. I acknowledge that such risks may arise from a variety of foreseeable and unforeseeable circumstances connected with the use of the City Facilities and related activities, including but not limited to the following risks: heart attack, back injury, skeletal injuries, hernia, muscular injuries, eye injuries, loss of fingers or limbs, and injuries related to use of vehicles, heavy lifting, pulling, pushing and climbing.

_____ (Participant initials here)

B. I hereby expressly assume all such risks of injury, loss, or damage to me arising out of or in any way related to the above-described use of said City Facilities and related activities, whether or not caused by the act, omission, negligence, or other fault of the City of Pueblo, its officers, its employees, or by any other cause.

_____ (Participant initials here)

C. I understand and acknowledge that the City of Pueblo, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this Release of Liability Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., as amended, or otherwise available to the City of Pueblo, its officers, or its employees. I hereby agree that this Release of Liability Agreement extends to all acts of negligence by City, its officers and employees, including negligent rescue operations, and is intended to be as broad and inclusive as permitted by the laws of Colorado.

_____ (Participant initials here)

D. I understand and agree that this Release of Liability Agreement shall be governed by the laws of the State of Colorado, and that jurisdiction and exclusive venue for any suit or cause of action under this Release of Liability Agreement shall lie in the district court of Pueblo County, Colorado and I consent to and submit to the jurisdiction of that Court.

_____ (Participant initials here)

E. This Release of Liability Agreement shall be effective as of the date set forth below (or the date signed if the date has not been completed) and shall be binding upon me, my successors, representatives, heirs, executors, assigns, and transferees.

_____ (Participant initials here)

II. PARTICIPANT SIGNATURE AND DATE:

Trainee/Instructor-Print Name:_____ Date:_____

Trainee/Instructor Signature:_____

Witness:_____



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: September 26, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: James Wagner, Assistant City Attorney

SUBJECT: AN ORDINANCE ELECTING TO CERTIFY ABATEMENT ASSESSMENT ROLL NO. 2022-1 TO THE COUNTY TREASURER AND TO HAVE THE COUNTY TREASURER COLLECT IN THE SAME MANNER AS OTHER TAXES

SUMMARY:

Attached is an Ordinance by which City Council is electing to certify to the County Treasurer certain abatement liens that have remained unpaid for more than six months. All abatement liens certified to the County Treasurer will be collected in the same manner as other taxes.

PREVIOUS COUNCIL ACTION:

On September 14, 2015, City Council approved Ordinance No. 8917, which provides for the assessment of abatement costs. Since that time, Council has routinely every August by resolution directed the appointment of a hearing officer and set a hearing date. In addition, Council every year approves the final abatement assessment roll via Ordinance. On July 22, 2019, Council approved Ordinance No. 9502 which amended the notice of hearing and protest deadlines by expanding each by five days to create more time between the protest filing deadline and hearing date. On August 8, 2022, City Council approved Resolution No. 14963 which set the hearing on protests for September 16, 2022, at 9:00 A.M. and directed the Mayor to appoint a hearings officer.

BACKGROUND:

On or about July 2015, City Council became aware that the City had over \$600,000 in unpaid weed and trash abatement liens. In the past, the City did not generally recover the amount owed for a weed or trash lien unless and until the property affected was sold or transferred. The majority of the outstanding liens are for relatively small amounts and therefore, it is not cost effective to collect the amounts owed through civil litigation or foreclosure.

All of the outstanding liens resulted from costs actually incurred and paid by the City to remove weeds and trash from the properties subject to the liens. All of the liens that the City seeks to certify to the County Treasurer by this Ordinance have been outstanding for more than six months. Most of the liens have been pending since late

2020 and throughout 2021.

Pursuant to Colorado Revised Statute §31-20-105, any municipality, in addition to the means provided by law, if by ordinance it so elects, may cause any or all delinquent charges, assessments, or taxes made or levied to be certified to the treasurer of the county and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be collected. Certifying the weed and trash abatement lien assessments to the County Treasurer is a more efficient method to collect the amounts owed.

FINANCIAL IMPLICATIONS:

The cost of the weed and trash abatement has already been incurred by the City. Certification of the abatement lien assessments to the County Treasurer is anticipated to increase the amount collected by the City for the liens.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Council may choose to deny the Ordinance in which case the City will continue to collect the liens by other means.

RECOMMENDATION:

Approval of this Ordinance.

ATTACHMENTS:

1. Report of Lien Abatement Assessments dated September 18, 2022
2. Ruling on Protests dated September 16, 2022

ORDINANCE NO. 10302

AN ORDINANCE ELECTING TO CERTIFY ABATEMENT ASSESSMENT ROLL NO. 2022-1 TO THE COUNTY TREASURER AND TO HAVE THE COUNTY TREASURER COLLECT IN THE SAME MANNER AS OTHER TAXES

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The City Council of Pueblo, a municipal corporation, pursuant to the provisions of Section 31-20-105 of the Colorado Revised Statutes and Chapter 8 of Title VII of the Pueblo Municipal Code, hereby acknowledges receipt of the Report of Abatement Lien Assessments dated September 16, 2022, attached hereto.

SECTION 2.

A hearing was scheduled at 9:00 A.M. on September 16, 2022, in the City Council Chambers at which time any protests or objections to the lien assessments were heard. Any person interested in or affected by a proposed charge and who filed a written protest with the City Clerk on or before 5:00 P.M. on September 9, 2022, had the ability to present testimony and evidence at the hearing.

SECTION 3.

The City Clerk's Office received four (4) protests before September 9, 2022, at 5:00 P.M. All have been disposed of by either anticipated payment in full, a payment plan, or withdrawal. None of the four protestors appeared for the protest hearing on September 16, 2022 at 9:00 A.M. As a result, the hearing officer either affirmed the protested liens or accepted the City's request to withdraw. If payment is made or the payments plans executed, the liens will not be assessed to the County Treasurer. The hearing officer filed a written report regarding the hearing on September 16, 2022, and the same is attached hereto.

SECTION 4.

The Code Compliance Unit Supervisor is directed to thereafter prepare an Assessment Roll, showing in suitable columns for each piece of land assessed: the property Parcel number, assessed owner, complete mailing address and/or post office box number of the assessed owner, complete and accurate legal description, and the amount to be collected, and deliver the same to the Director of Finance. The Director of Finance is directed to thereafter certify and deliver the Assessment Roll, together with a copy of this Ordinance certified by the City Clerk under seal of Pueblo, a Municipal Corporation, to the County Treasurer, therein showing all payments made thereon, with the date of each payment, together with her warrant for the collection of same. The County Treasure is requested to receive the same, and such Assessment Roll shall be numbered as follows:

ASSESSMENT ROLL NO. 2022-1

SECTION 5.

The County Treasurer is requested to receive payment of all assessments and interest appearing upon said Assessment Roll. In case of default in payment of any assessment when due, the County Treasurer is requested to advertise and sell any of the property concerning which such default is suffered, for the payment of the whole of the unpaid assessments thereon. Said advertisements and sale shall be made at the same time, in the same manner, under all the said conditions and penalties, with the same effect as are provided by general law for sales of real estate in default of payment of taxes.

SECTION 6.

Any person may pay the City for any assessment hereby certified on the Report of Abatement Lien Assessments dated September 16, 2022, with accrued interest and applicable filing fees, up to the date the Report is certified to the County Treasurer. The Report of Abatement Lien Assessments dated September 16, 2022, may be certified to the County Treasurer any time after October 14, 2022. Any such payments shall be made at the City of Pueblo Finance Department. All monies received for the payment of assessments shall be deposited into the General Fund.

SECTION 7.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance to implement the policies and procedures described herein.

SECTION 8.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on September 26, 2022.

Final adoption of Ordinance by City Council on October 11, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 15, 2022.

☐ Disapproved on _____ based on the following objections:

Hilda Leal
Mayor

Action by City Council After Disapproval by the Mayor:

☐ Council did not act to override the Mayor's veto.

☐ Ordinance re-adopted on a vote of _____, on _____

☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

Ly Gao
City Clerk

Report of Lien Abatement Assessments dated September 18, 2022

Parcel #	Name and Mailing Address	Location	Legal Description	Amount
428400007	Don H. and Joy M. Martin 3114 McCormick Avenue Pueblo, Colorado 81001	Vacant Lot	BEG SW COR SE 1/4 TH E 40 FT N 38.3 FT TO PT OF BEG TH N 291.7 FT E 159.6 FT M/L TO W LINE HWY 96 TH S 177.5 FT TH SWLY ALG HWY 96 A DIST OF 196.6 FT M/L TO PT OF BEG IN W 1/2 W 1/2 SE 1/4 28-20- 64 0.91A	\$701.62
428406004	Phillip & Beverly Guillen 1902 Hollywood Drive Pueblo, Colorado 81005	2807 E. 11th Street Pueblo, Colorado 81001	LOT 4 + N 23 FT OF LOT 17 VIGIL SUB ALSO VAC POR OF VIGIL ST	\$241.82
428407003	Monte Cowger 244 12th Street SE Mason City, Iowa 50401-5836	Vacant Lot	LOT 3 LONNA BELLE SUB	\$485.46
428407004	Jerry E. Trujillo 13804 Sagar Drive Broomfield, Colorado 80023-3976	Vacant Lot	LOT 4 LONNA BELLE SUB	\$485.46
429125014	Della M. Manchego 2009 E. 15th Street Pueblo, Colorado 81001	2009 E. 15th Street Pueblo, Colorado 81001	LOTS 27 + 28 BLK 136 EAST PUEBLO HEIGHTS SUB 2ND	\$2,115.16
429135004	Tambra E. Duran 1221 Catalpa Street Pueblo, Colorado 81001	1924 E. 14th Street Pueblo, Colorado 81001	LOTS 11 + 12 BLK 155 EAST PUEBLO HEIGHTS SUB 2ND	\$701.40
429135005	Brandon Sosack and Cassandra Peterson 1926 E. 14th Street Pueblo, Colorado 81001	1926 E. 14th Street Pueblo, Colorado 81001	LOTS 13 + 14 BLK 155 EAST PUEBLO HEIGHTS SUB 2ND	\$1,274.92
429320009	Ryan & Elizabeth F. Mata 708 W. 10th Street Pueblo, Colorado 81003	1715 E. 9th Street Pueblo, Colorado 81001	LOTS 29 + 30 BLK 193 EAST PUEBLO HEIGHTS ADD	\$496.56
429327005	Jose Abedon M. Duran 1520 E. 9th Street Pueblo, Colorado 81001	1520 E. 9th Street Pueblo, Colorado 81001	E 2 FT OF LOT 9 ALL 10 + 11 BLK 201 EAST PUEBLO HEIGHTS ADD	\$831.38
429409007	Pablo P. Ortiz 2002 E. 5th Street Pueblo, Colorado 81001	2107 E. 12th Street Pueblo, Colorado 81001	LOTS 26-27-28 BLK 167 ARLINGTON HEIGHTS	\$812.38
429410004	Mary Ellen & Emmett Lee Towner 1204 Utica Avenue Pueblo, Colorado 81001	1204 Utica Avenue Pueblo, Colorado 81001	LOTS 21 + 22 BLK 168 ARLINGTON HEIGHTS	\$615.18

429431011	CO 2105 E. 8th Street PO Box 191 Aguilar, Colorado 81020-0191	2105 E. 8th Street Pueblo, Colorado 81001	LOTS 23 + 24 BLK 207 ARLINGTON HEIGHTS	\$2,467.46
430307003	Yvonne Gallegos and Eddie Romero 63 Macalester Road Pueblo, Colorado 81001	1114 N. Erie Avenue Pueblo, Colorado 81001	LOTS 7, 8 + W 3 FT OF LOT 6 BLK 90 CONLEYS ADD	\$436.92
430434008	Selsa Gutierrez 221 E. 2nd Street Pueblo, Colorado 81003	1103 E. 8th Street Pueblo, Colorado 81001	W 1/2 LOT 25 ALL 26 + E 5 FT OF 27 BLK 2 DR OWENS HEIGHTS	\$321.92
430439012	Mark Coca PO Box 553 Aguilar, Colorado 81020-0553	709 E. 7th Street Pueblo, Colorado 81001	LOT 13 + 14 BLK 1 PUEBLO BUILDING + IMPROVEMENT COMPANYS ADD	\$417.22
431114007	Jason Laughton 1102 E. 5th Street Pueblo, Colorado 81001	1102 E. 5th Street Pueblo, Colorado 81001	LOTS 13-14 BLK 8 WINTERS ADD	\$793.98
431114010	Davine, Edith & Jennifer Ramirez 1109-1111 E. 4th Street Pueblo, Colorado 81001	1109-1111 E. 4th Street Pueblo, Colorado 81001	LOTS 19-20-21 BLK 8 WINTERS ADD	\$1,263.38
431115004	Tammy Lee Back 1012 E. 5th Street Pueblo, Colorado 81001	1012 E. 5th Street Pueblo, Colorado 81001	W 16 FT 8 IN LOT 6 + E 16 FT 8 IN OF 7 BLK 7 WINTERS ADD	\$850.58
431130020	David I. & Esperanza A. Marmalejo 705 E. 2nd Street Pueblo, Colorado 81001	705 E. 2nd Street Pueblo, Colorado 81001	E 13 FT OF LOT 17 ALL LOT 18 + W 2 FT OF LOT 19. ALSO E 23 FT LOT 19, ALL LOT 20 + W 6 FT OF LOT 21 BLK 6 MATTICE ADD. FORMERLY 04-311-30-011 + 012	\$515.26
431222011	Marcos R. Garcia 1790 W. Mosier Place, Apt. 308 Denver, Colorado 80223	607 E. 2nd Street Pueblo, Colorado 81003	LOTS 17 + 18 BLK 21 MATTICES SUB	\$1460. 40
431232019	New Direction Trust Company, FBO Robert J. Lucero, IRA 1070 W Century Drive	613 E. 1st Street Pueblo, Colorado 81001	LOTS 19 TO 21 BLK 20 MATTICES SUB INC FORMERLY 04-312-32-016	\$1,719.06
432107009	Morgan Patton and Brian Spray 1735 E. 4th Street Pueblo, Colorado 81001	1735 E. 4th Street Pueblo, Colorado 81001	LOTS 37 + 38 BLK 243 EAST PUEBLO HEIGHTS SUB 2ND	\$408.82
432109011	Matthew J. Beaver 1212 E. 4th Street Pueblo, Colorado 81001	1905 E. 4th Street Pueblo, Colorado 81001	LOTS 25 + 26 BLK 245 EAST PUEBLO HEIGHTS SUB 2ND	\$308.10
432121018	August Austin 1129 30th Lane Pueblo, Colorado 81006	2020 E. 3rd Street Pueblo, Colorado 81001	E 75 FT OF N 120 FT OF S 256 FT OF W 150 FT LOT 7 FRANKENBERGS SUB	\$1,044.30

432203021	Finn Trust 4307 W. Venus Way Chandler, Arizona 85226-3730	511 N. Ogden Avenue Pueblo, Colorado 81001	S 45 FT LOTS 19 + 20 BLK 231 EAST PUEBLO HEIGHTS SUB	\$353.78
432214013	Lydia Viola Martinez 3136 San Isabel Avenue Pueblo, Colorado 81008	1419 E. 3rd Street Pueblo, Colorado 81001	LOTS 31 + 32 BLK 162 FLETCHER HILL SUB	\$867.06
432306006	Sandra Paniagua and Tayde Sotelo 352 Kitfield View, Suite C Colorado Springs, Colorado 80916-1609	Vacant Lot	LOTS 13 + 14 BLK 331 WILEY + CHAMBERLINS SUB	\$1,369.23
432306016	Ralph B. Aragon 3820 36th Lane Avondale, Colorado 81022	Vacant Lot	LOTS 27 + 28 BLK 331 WILEY + CHAMBERLINS SUB FORMERLY #04-323-06-012	\$2,109.38
512333028	Joshua A. Cordova 4915 Prospect Drive Pueblo, Colorado 81008	4915 Prospect Drive Pueblo, Colorado 81008	LOT 28 BLK 1 RIDGE GATE FILING NO 4, A SPECIAL AREA PLAN FORMERLY #05-123-12-021 + 022	\$686.12
523318003	George Arthur Wilson Jr. & Karen K. Wilson 2422 Cheyenne Avenue Pueblo, Colorado 81003	2422 Cheyenne Avenue Pueblo, Colorado 81003	LOTS 5-6 + 7 BLK 105 FAIRMOUNT PARK 2ND	\$930.74
524220019	Gail A. Fabrizio 3007 Manzano Street NE Albuquerque, New Mexico 87110-1963	2907 2nd Avenue Pueblo, Colorado 81003	LOTS 8, 9 + 10 BLK 4 CENTRAL PARK	\$1,422.54
524308001	Richard & David R. Blagg 2635 7th Avenue Pueblo, Colorado 81003	2635 7th Avenue Pueblo, Colorado 81003	LOTS 37 + 38 BLK 14 HILLSIDE	\$1,233.62
524417008	Edward Milan Vaught and Edward Vaught 2433 Court Street Pueblo, Colorado 81003	2433 Court Street Pueblo, Colorado 81003	LOTS 20 + 21 BLK 8 GARFIELD PL	\$1,138.50
525311003	Anthony J. Carlino 714 E. 1st Street Pueblo, Colorado 81001	716 W. 13th Street Pueblo, Colorado 81003	LOT 3 BLK 2 CRAIGS ADD	\$748.48
525316003	Jack Christopher Medina 1106 W. 13th Street Pueblo, Colorado 81003	1106 W. 13th Street Pueblo, Colorado 81003	LOT 3 + E 1/2 OF 4 BLK 46 BLAKES ADD	\$721.32
525324006	Thomas E. & Elizabeth Ann Griffith c/o First National Acceptance Company ATTN: Tax Department PO Box 980 East Lansing, Michigan 48826-0980	1124 W. 11th Street Pueblo, Colorado 81001	W 22 FT OF LOT 6 ALL 7 + E 1 FT OF LOT 8 BLK 9 THATCHER + THOMAS ADD	\$2,722.32

525424011	Realmad Holdings & Investments, LLC 13866 Vance Lane Manitowish Waters, Wisconsin 54545-6360	519 W. 11th Street Pueblo, Colorado 81001	E 20 FT OF LOT 10 ALL 11 BLK 36 COUNTY ADD	\$960.28
526250006	Jose A. & Luisa Bolanos 2700 Troy Avenue, Apt. ES25 Pueblo, Colorado 81001	Vacant Lot	LOTS 10 + 11 BLK 14 ADEE CHAMBERLIN + WILEYS 2ND	\$420.90
526322019	Yazmin Ibarrrlucea and John Peebles Macdonald 20740 Nashville Street Chatsworth, California 91311-1522	Vacant Lot	LOTS 11 TO 16 BLK 18 ADEE CHAMBERLIN + WILEYS 1ST FORMERLY #05-263-22-017	\$1,377.98
534429015	JJ Phillips & Sons PO Box 1123 Pueblo, Colorado 81002	Vacant Lot	LOT 4 EXC ELY 10 FT BLK 2 CULIG SUB	\$1,215.08
535418006	Patricia R. Deeter 518 W. Evans Avenue Pueblo, Colorado 81004	518 W. Evans Avenue Pueblo, Colorado 81004	LOT 6 AIKENS SUB OF LOTS 1 TO 5 IN BLK 75 COLORADO COAL + IRON COMPANYS ADDITION NO 1	\$666.42
536316033	Rae Dawn Carnevale 164 Harvard Avenue Pueblo, Colorado 81004	164 Harvard Avenue Pueblo, Colorado 81004	BEG N COR COM TO LOTS 34-35 TH S 181 FT TO PT 38.7 FT W OF SE COR LOT 35 TH W ALONG ALLEY 38.9 FT TH NLY 133 FT TO PT 4 FT E OF W LINE LOT 34 TH NLY 63.5 FT TO NW COR LOT 34 TH ELY 50 FT TO PT BEG BLK L SOUTH PUEBLO	\$891.60
536319008	Normandy Realty Inc. 2605 Lake Avenue Pueblo, Colorado 81004	503 W. Corona Avenue Pueblo, Colorado 81004	LOTS 7 + 8 BLK 8 DELAVAN PL	\$828.46
1406319004	Aaron K. & Karla J. Suazo 59 Red Creek Springs Road, Apt. 5 Pueblo, Colorado 81005	1110 Bohmen Avenue Pueblo, Colorado 81006	LOTS 5 + 6 BLK 4 LAIBACH	\$666.10
1406325017	Amor Daly 8777 Partridge Street Highlands Ranch, Colorado 80126-5261	1250 Bohmen Avenue Pueblo, Colorado 81006	LOTS 26 + 27 BLK 2 WIEN	\$599.10
1406326014	Arthur R. Medina c/o Max Leek 707 S. 3rd Street Tucumcari, New Mexico 88401-2874	1254 Mahren Avenue Pueblo, Colorado 81006	LOTS 24 TO 27 BLK 3 WIEN	\$678.78
1501115001	Andrew R. Gonzales Sr. 426 Polk Street Pueblo, Colorado 81004	202 Cottonwood Street Pueblo, Colorado 81004	N 70 FT LOT 1 BLK 6 SOUTH PUEBLO HOMESTEAD + BUILDING ASSOCIATION SUB OF V TO Y SOUTH PUEBLO	\$483.96

1501205019	Daniel J. Lynne 215 Jefferson Street Pueblo, Colorado 81004	215 Jefferson Street Pueblo, Colorado 81004	LOT G GRAHAM'S RESUB	\$470.50
1501211009	Felicity Ann Short 318 Quincy Street Pueblo, Colorado 81004	318 Quincy Street Pueblo, Colorado 81004	LOTS 10 + 11 BLK 114 SOUTH PUEBLO	\$1,281.40
1501310018	Nancy Jurgens 1930 N. Grand Avenue Pueblo, Colorado 81003	1041 Pine Street Pueblo, Colorado 81004	LOT 14 + S 2/3 OF LOT 15 BLK 33 BESSEMER	\$675.34
1501311028	Pamela Jo McNulty 1005 Cedar Street Pueblo, Colorado 81004	1005 Cedar Street Pueblo, Colorado 81004	N 17 FT OF LOT 23 + S 33 FT OF LOT 23 + THE S 16 FT OF LOT 24 BLK 34 BESSEMER FORMERLY #15-013-11- 024 + 025	\$499.46
1501312010	Leandro C. & Mary Jo Martinez 1130 E. Orman Avenue Pueblo, Colorado 81004	1130 E. Orman Avenue Pueblo, Colorado 81004	S 10 FT LOT 7 + N 30 FT OF 8 BLK 44 BESSEMER	\$769.36
1501313027	Sandra Krieger 9774 Newcastle Drive Highlands Ranch, Colorado 80130-6812	1111 Pine Street Pueblo, Colorado 81004	LOT 22 BLK 43 BESSEMER	\$766.36
1501313034	NeighborWorks Southern Colorado 1241 E. Routt Avenue Pueblo, Colorado 81004	1141 Pine Street Pueblo, Colorado 81004	ALL LOT 13 + S 35 FT LOT 14 BLK 43 BESSEMER FORMERLY 15-013-13-015 + 016	\$602.20
1501314025	Xavier Duran PO Box 3297 Pueblo, Colorado 81005	1115 Spruce Street Pueblo, Colorado 81004	LOT 22 BLK 42 BESSEMER	\$1,428.92
1501317014	Daniel J. Apodaca 630 E. Pitkin Avenue Pueblo, Colorado 81004	1238 Pine Street Pueblo, Colorado 81004	S 1/2 LOT 10 BLK 52 BESSEMER	\$641.52
1501323019	Abel Quesada 311 E. Cleveland Street Lafayette, Colorado 80026-2342	1107 Crystal Place Pueblo, Colorado 81004	LOT 38 BLK 8 COLLEGE HILL SUB 2ND	\$467.32
1501323020	Tiniesha Rasmussen 716 S. Main Street Pueblo, Colorado 81004	1105 Crystal Place Pueblo, Colorado 81004	LOTS 39-40 + W 8 FT OF 41 BLK 8 COLLEGE HILL SUB 2ND	\$615.62
1501326019	Dagoberto Chavez 1113 Cypress Street Pueblo, Colorado 81004	1113 Cypress Street Pueblo, Colorado 81004	LOT 27 BLK 46 STONE + THATCHER SUB	\$289.66

1501410015	OT Jackson 9629 San Diego Street Spring Valley, California 91977-6044	1031 Box Elder Pueblo, Colorado 81004	BEG AT SW COR OF LOT 15 TH N 90 FT TH E 106 FT TO HWY TH SWLY ALG WLY LINE OF HWY DIST 104.40 FT TO S LINE OF LOT 15 TH W 53 FT BACK TO PT BEG BLK 1 BESSEMER	\$2,180.08
1501413008	Juan Francisco Lopez Suarez 1110 E. Abriendo Avenue Pueblo, Colorado 81004	Vacant Lot	LOTS 16 + 17 BLK 38 CITY HALL PL	\$1,593.30
1501413013	Tony, Terry and Mike, LLC 1137 Elm Street Pueblo, Colorado 81004	1137 Elm Street Pueblo, Colorado 81004	LOT 22 BLK 38 CITY HALL PL	\$1,225.02
1501418034	Walter Mauricio Gomez Luna and Aida Gomez Socorro PO Box 172851 Denver, Colorado 80217-2851	1224 E. Abriendo Avenue Pueblo, Colorado 81004	LOT 12 + N 15 FT 10 IN OF LOT 13 BLK 48 CITY HALL PL	\$685.86
1501419010	Oprah Gail Winfrey and Dr. Heidi Wodiuk 8448 State Highway 78 Beulah, Colorado 81023-9722	1230 Elm Street Pueblo, Colorado 81004	W 95 FT OF S 1/2 OF LOT 15 + W 95 FT OF LOT 16 BLK 47 CITY HALL PL	\$325.38
1501419014	Walter James Gonzales 1401 Jackson Street Pueblo, Colorado 81004	Vacant Lot	BEG NW COR LOT 21 TH E 95 FT TH SW ALONG HIWAY 40.4 FT TH W 80 FT TH N 37 1/2 FT TO PT BEG BLK 47 CITY HALL PL	\$324.36
1501420019	Trayvon Boone 1913 Wildfire Drive Pueblo, Colorado 81008	117-119 E. Northern Avenue Pueblo, Colorado 81006	LOTS 31 + 32 BLK 4 CITY HALL PL 2ND	\$372.16
1502115028	2 Smiths, LLC 715 Berkley Avenue Pueblo, Colorado 81004	715 Berkley Avenue Pueblo, Colorado 81004	THE S 62 FT OF LOTS 23 + 24 + THE S2 OF THE E 7 FT IN WIDTH OF LOT 25 WELSHS'S SUB. ALSO THE S 62 FT OF THAT CERTAIN STRIP OF LAND 34 FT IN WIDTH ADJ SD LOT 23 ON THE E IN WELSH'S SUB. FORMERLY 15-021-15-026 + 027	\$589.86
1502208024	Nafis Cameron 540 S. Prairie Avenue Pueblo, Colorado 81005	540 S. Prairie Avenue Pueblo, Colorado 81005	LOTS 28, 29 + 30 BLK 4 WILCOX + MOORES ADDITION FORMERLY 15022-08-009 AND 010	\$586.36
1502239005	Roger Z. Bernal 720 Euclid Avenue Pueblo, Colorado 81004	720 Euclid Avenue Pueblo, Colorado 81004	N 50 FT LOT 1 BLK 8 HOLDEN PL	\$819.10
1502303012	William E. Lawrence 814 Palmer Avenue Pueblo, Colorado 81004	1137 Beulah Avenue Pueblo, Colorado 81004	LOTS 26-27-28 BLK 8 MAPLETON ADD	\$2,083.40

1502406018	Reeg Building III, LLC 2330 N. Powers Frontage Road Colorado Springs, Colorado 80915-1505	25-27 Small Avenue Pueblo, Colorado 81004	LOTS 18-19 + W 8 FT OF N 75 FT OF 20 + W 13 FT OF S 49 FT OF 20 HAZELHURSTS SUB	\$291.38
1503110018	Barbara L. Garcia 729 Arlen Avenue Pueblo, Colorado 81005	729 Arlen Avenue Pueblo, Colorado 81005	LOT 18 BLK 5 CORKISH-SACKMAN SUB	\$606.40
1504107005	Kevin Solem 519 Cherry Lane Pueblo, Colorado 81005	519 Cherry Lane Pueblo, Colorado 81005	S 65 FT LOT 2 BLK 2 PARKVIEW SUB	\$584.78
1504402020	Walter A. Galassini 22 Wasatch Drive Pueblo, Colorado 81005	22 Wasatch Drive Pueblo, Colorado 81005	LOT 20 BLK 2 WESTWOOD VILLAGE	\$614.58
1510104022	Shauna L. Gilbert, Karen S. Hatch and Saralee Seal 1643 Englewood Drive Pueblo, Colorado 81005	1643 Englewood Drive Pueblo, Colorado 81005	LOT 21 BLK 16 HIGHLAND PARK 1ST	\$1,122.92
1510122022	Greg Davis 6001 S. Yosemite Street, B 204 Greenwood Village, Colorado 80111-5126	1718 Moore Avenue Pueblo, Colorado 81005	LOT 22 BLK 5 CORKISH-SACKMAN-LITTELL NO 2	\$330.30
1510415012	Paul G. Gonzales 6600 Jaguar Drive, Apt. 6-708 Santa Fe, New Mexico 87507-1682	2145 Hellbeck Drive Pueblo, Colorado 81005	LOT 12 HELLBECK ACRES	\$683.02
1511126002	Jason Reuben Hanson 1616 Sprague Avenue Pueblo, Colorado 81004	1616 Sprague Avenue Pueblo, Colorado 81004	W 1/2 OF LOTS 12 TO 14 BLK 1 PROSPECT PL	\$835.00
1511135010	Concepcion L. Rojas and Mario Rojas Mares 1707 Van Buren Street Pueblo, Colorado 81004	1707 Van Buren Street Pueblo, Colorado 81004	LOTS 31 + 32 BLK 2 OVERLAND ADD	\$648.64
1511142019	Rose Lynn Palm 6510 S. Academy Boulevard, Suite A317 Colorado Springs, Colorado 80906-8691	1713 Jones Avenue Pueblo, Colorado 81004	E 40 FT LOTS 21 TO 25 VERNON PL	\$759.50
1511314022	Kenneth P. Valdez 3930 Sheffield Lane Pueblo, Colorado 81005	Vacant Lot	LOTS 83 TO 84 ORMANDALE RESUB + W2 OF VACATED ALLEY ADJACENT FORMERLY #15-113-14- 012	\$598.18
1512104002	Steven P. & Julie A. Eisold 309 W. 19th Street Pueblo, Colorado 81003	1310-1312 E. Evans Avenue Pueblo, Colorado 81004	LOT 2 + STRIP 6 IN BY 37 FT IN NW COR LOT 3 BLK 2 STEELWORKS AMENDED	\$760.44

1512104023	Jess L. Baca 1315 E. Abriendo Avenue Pueblo, Colorado 81004	1317 E. Abriendo Avenue Pueblo, Colorado 81004	LOTS 17+ 18 BLK 2 STEELWORKS AMENDED EXC POR BY #1062352 FORMERLY 15-121-04-013 + -022	\$324.48
1512214003	Norman Dover 914 Palmer Avenue Pueblo, Colorado 81004	1608 Wabash Avenue Pueblo, Colorado 81004	S 1/2 LOT 4 ALL 5 BLK 14 LAKE AVE ADD	\$1,170.90
1512215009	Realmad Holdings & Investments, LLC 13866 Vance Lane Manitowish Waters, Wisconsin 54545-6360	1634 Stone Avenue Pueblo, Colorado 81004	S 6 FT LOT 17 ALL 18 + N 22 FT OF 19 BLK 15 LAKE AVE ADD	\$360.56
1512221006	Leanisio Cano 1621 N. Monument Avenue Pueblo, Colorado 81001	1628 Pine Street Pueblo, Colorado 81004	LOTS 13 + 14 BLK 3 SUBURBAN LAND + INVESTMENT COMPANYS SUB	\$769.18
1512223029	Lisa Renee & Michelle Nicholas 3524 Brookfield Lane Pueblo, Colorado 81005	1501 E. Routt Avenue Pueblo, Colorado 81004	N 3 FT LOT 45 ALL 46 BLK 81 STEELTON	\$729.44
1512227017	Taylor Medina 1441 Cedar Street Pueblo, Colorado 81004	1441 Cedar Street Pueblo, Colorado 81004	LOT 19 BLK 74 STONE + THATCHER SUB	\$1,505.50
1512228001	Yasna C. Erickson 716 McCulley Avenue Pueblo, Colorado 81004	716 McCulley Avenue Pueblo, Colorado 81004	W 32 FT LOTS 1 TO 3 BLK 73 STONE + THATCHER SUB	\$668.20
1512228007	Robert Washington 28 Bridle Trail Pueblo, Colorado 81005	1410 Cedar Street Pueblo, Colorado 81004	LOT 6 BLK 73 STONE + THATCHER SUB	\$636.02
1512228022	J. Ramon & Antonia Trujillo 1801 Constitution Road Pueblo, Colorado 81001	1427 Pine Street Pueblo, Colorado 81004	LOT 22 BLK 73 STONE + THATCHER SUB	\$1,340.88
1512229012	Michelle Rodriguez 616 Downing Street Denver, Colorado 80218-3496	1428 Pine Street Pueblo, Colorado 81004	LOT 16 BLK 72 IRONDALE	\$1,150.40
1512232019	Global Proposal, LLC P.O. Box 1280 Morrison, Colorado 80465-5280	1331 Spruce Street Pueblo, Colorado 81004	LOT 25 BLK 62 IRONDALE	\$2,043.64
1512313008	John Moran 42 Fabrication Drive, Unit 102 Pueblo West, Colorado 81007	2023 E. Routt Avenue Pueblo, Colorado 81004	S 1/2 LOT 16 ALL 17 BLK 29 LAKE MINNEQUA ADD	\$1,134.44
1513205018	Joshua Bass 2228 E. Routt Avenue Pueblo, Colorado 81004	2228 E. Routt Avenue Pueblo, Colorado 81004	S 1/2 LOT 13 ALL 14 BLK 5 MINNEQUA HEIGHTS	\$581.06

1513226009	Vivian E. Hill and Sandra Bolden 2623 Pine Street Pueblo, Colorado 81004	2623 Pine Street Pueblo, Colorado 81004	LOTS 20-21-22 BLK 26 MINNEQUA HEIGHTS	\$471.42
1514106024	Nancy C. Von Salome c/o David Leroy Gomez 2501 California Street Pueblo, Colorado 81004	Vacant Lot	LOTS 1-2-3 BLK 23 EAST LAKE	\$867.58
1514324004	Weston Trust, Taylor Trust, Tyler South LLC, Sternier LLC; Realtynet Cf Properties LLC, Rickard R D Tr, Parker T B Tr; C/Opiece Of The Farm LLC, Marshall Family LC, Johnson Tr PO Box 1017 Charlotte, North Carolina 28201-1017	2722 S. Prairie Avenue Pueblo, Colorado 81005	LOT 4 BLK 1 EDEN SUB CONTG 1.045A FORMERLY 15- 143-00-002 + 015	\$274.66

PUEBLO CITY HALL, PUEBLO, COLORADO #1 City Hall Place, 3 rd Floor, Pueblo, CO 81003	
IN RE: PUBLIC HEARINGS CONCERNING ASSESSMENT OF COSTS ASSOCIATED WITH ABATEMENTS CONDUCTED ON, AND CORRESPONDING ABATEMENT LIENS AGAISNT PROPERTY PURSUANT TO PUEBLO MUNICIPAL CODE TITLE VII	 ▲ COURT USE ONLY ▲
RULING ON PROTESTS AT THE SEPTEMBER 16, 2022 HEARINGS	

This Matter came before the Hearing Officer on September 16, 2022 at 9:00 a.m. for hearing on the Complaints, Objections and Protests filed by owners or interested parties with respect to abatement costs and the related liens filed against property. The City of Pueblo was represented by assistant city attorney, James Wagner.

1845 E. 5th, Pueblo, CO

This case comes before the Hearing Officer on a protest filed on August 30, 2022 by Frances D. Armijo. Ms. Armijo failed to appear at the hearing. Protest was based upon alleged lack of notice from tenants.

Having failed to appear, no evidence was submitted to support this claim. City states that a settlement agreement was sent to Ms. Armijo and they expect it to be returned shortly.

Therefore, based upon the protestant's failure to appear, the Hearing Officer affirms the lien as recorded.

2519 Pine St., Pueblo, CO

This case comes before the Hearing Officer on a protest filed on September 9, 2022 by Hal Burke. Mr. Burke failed to appear at the hearing. Protest was based upon elimination of lien upon

issuance of Treasurer's Deed.

City withdraws the claim and will provide a written release.

408 Morrison Ave., Pueblo, CO

This case comes before the Hearing Officer on a protest filed on September 9, 2022 by Antonio Martinez. Mr. Martinez failed to appear at the hearing. Protest was based upon alleged lack of ownership at time lien was place and lack of notice to title company.

Having failed to appear, no evidence was submitted to support this claim. City understands that the title company has agreed to cover the lien.

Therefore, based upon the protestant's failure to appear, the Hearing Officer affirms the lien as recorded.

Parcel 1511314021, Pueblo, CO

This case comes before the Hearing Officer on a protest filed on September 9, 2022 by Kimberly A. Ocana. Ms. Ocana failed to appear at the hearing. Protest of the trash lien was based upon prior clean up of trash, protestant did not protest the weed lien.

Having failed to appear, no evidence was submitted to support this claim. City states that a payment plan has been entered into between the parties.

Therefore, based upon the protestant's failure to appear, the Hearing Officer affirms the lien as recorded.

DONE this 16th day of September 2022


Linda McMillan, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September 2022, a true and correct copy of the foregoing document, was placed in the United States mail, sufficient postage pre-paid and addressed to:

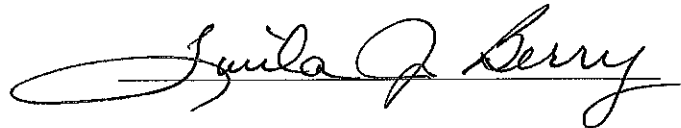
Frances D. Armijo
1845 E. 5th St.
Pueblo, CO 81001

Hal Burke
8 Bear Claw Ct.
Pueblo, CO 81001

Antonio Martinez
408 Morrison Ave.
Pueblo, CO 81005

Kimberly A. Ocana
3930 Sheffield Ln.
Pueblo, CO 81005

James Wagner
Assistant City Attorney
City of Pueblo
#1 City Hall Place, 3rd Floor
Pueblo, CO 81003

A handwritten signature in cursive script, reading "Paula J. Berry", written over a horizontal line.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 11, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Laura Solano, Chief of Staff

SUBJECT: AN ORDINANCE BUDGETING AND APPROPRIATING FUNDS FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND IN THE AMOUNT OF \$15,000 TO COUNCIL CONTINGENCIES TO REIMBURSE PAYMENT TO GOODNIGHT BARN FOUNDATION

SUMMARY:

This Ordinance budgets and appropriates \$15,000 from the unappropriated Fund Balance of the General Fund ("Reserves") to Council Contingencies to reimburse payment to Goodnight Barn Foundation.

PREVIOUS COUNCIL ACTION:

On May 9, 2022, by Resolution No. 14889, City Council approved the expenditure of funds in the amount of \$15,000 to be paid from the Council Contingencies Account in the 2022 General Fund Budget to the Goodnight Barn Foundation to support the Chuck Wagon Rendezvous. This Ordinance increases council contingencies by \$15,000 out of the City's 2022 budgetary reserves to reimburse the payment to the Goodnight Barn Foundation.

BACKGROUND:

The Goodnight Barn Foundation's 2022 Chuck Wagon Rendezvous was held on May 20 and 21, 2022. On Friday, May 20th, the public enjoyed participating in living history (featuring trappers, Kit Carson, Zebulon Pike, Buffalo Soldiers, etc.), seminars on chuck wagons and more. Friday evening included western music around a campfire, food trucks and some western vendors. On Saturday, May 21st participating wagons cooked and served traditional culinary fare at 3:00 p.m. Excess revenues from this event will fund construction of bathrooms at the Goodnight Barn.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$15,000 will be transferred from the 2022 unappropriated fund balance of the General Fund (the City of Pueblo's reserves).

BOARD/COMMISSION RECOMMENDATION:

Not Applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not Applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, the Council Contingencies Account in the 2022 General Fund Budget will not be reimbursed \$15,000.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10303

AN ORDINANCE BUDGETING AND APPROPRIATING FUNDS FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND IN THE AMOUNT OF \$15,000 TO COUNCIL CONTINGENCIES TO REIMBURSE PAYMENT TO GOODNIGHT BARN FOUNDATION

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

Funds in the amount of amount of \$15,000 are hereby authorized to be budgeted and appropriated out of the unappropriated Fund Balance of the General Fund for budget year 2022 to Council Contingencies account.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance to implement the policies and procedures established herein.

SECTION 3.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on June 27, 2022.

Final adoption of Ordinance by City Council on October 11, 2022 .



President of City Council

Action by the Mayor:

- ☒ Approved on October 15, 2022.
- ☐ Disapproved on _____ based on the following objections:



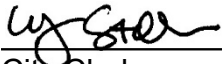
Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST



City Clerk