



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

**MONDAY, OCTOBER 24, 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 Ken Wood, The Avenue Church
- C. PLEDGE OF ALLEGIANCE**
- D. ROLL CALL**
- E. SPECIAL RECOGNITIONS**
- F. PUBLIC FORUM**
- G. COUNCIL MEMBER AND MAYOR COMMENTARY**
- H. REVIEW OF AGENDA**
- 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 October 11, 2022, as distributed.

J1 City Council Minutes for October 11, 2022

K. PUBLIC HEARINGS

K1 PROPOSED 2023 ANNUAL BUDGET

This Public Hearing is held for the purpose of receiving public testimony as it pertains to the 2023 Proposed Annual Budget per the requirements of Section 7-9 of the Charter for the City of Pueblo.

Required Council Action: Open the Hearing, Receive Public Testimony, and Close the Hearing. **Council discussion is not required and there is no Council action at this time.**

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 ratifying an emergency construction contract in the amount of \$96,105.86 with K.R. Swerdfeger Construction, Inc. for emergency sanitary sewer point repair at 701 Court St, Project No. 20-059 (WWAN03) and approving the Purchasing Agent's execution of same
- M2 A Resolution authorizing the transfer of \$500,000 to Project ED0801, lease proceeds Escrow/RMS, previously established in the 1992 – 2026 Sales and Use Tax Capital Improvements Projects Fund
- M3 A Resolution approving and accepting a General Warranty Deed with respect to the future construction of Sun Mountain Boulevard and associated public improvements from James H. Butcher totaling approximately 4.39 acres of land
- M4 A Resolution ratifying PACOG's joint appointment of Brian Gray to the Pueblo Regional Building Commission's Board of Appeals as a general contractor
- M5 A Resolution ratifying PACOG's joint appointment of Clara Trautman to the Community Services Advisory Commission (CSAC)
- M6 A Resolution confirming the appointment by the Mayor of Rebecca Knapp to the Streetscape Advisory Committee

N. ORDINANCES – FIRST PRESENTATION

- N1 An Ordinance amending Section 14-4-76 of the Pueblo Municipal Code relating to sales and use tax and exempting from sales tax all sales of period products, incontinence products and diapers purchased on and after January 1, 2023
- N2 An Ordinance budgeting and appropriating an additional \$391,593 in PACOG FY-2022-2023 consolidated planning grant funds for transportation planning services related to the City of Pueblo and Pueblo Area Council of Governments 2023 delegation agreement for Transportation Planning Services
- N3 An Ordinance approving a delegation agreement between the City of Pueblo, a Municipal Corporation, and the Pueblo Area Council of Governments for 2023 transportation planning services and authorizing the Mayor to execute same
- N4 An Ordinance amending zoning restrictions to rezone a portion of lots 15, 16, 17, and all of 18 to 21, block 2, Delavan Place Subdivision from B-4, Central Business District to R-5, Multiple Residential and Office District
- N5 An Ordinance vacating a portion of Sumner Avenue, Pearl Street and Burdette Avenue generally located at Sumner Avenue and Pearl Street
- N6 An Ordinance approving a hangar lease agreement for 530 Skyway Street at Pueblo Memorial Airport between the City of Pueblo, a Municipal Corporation, and James Spitzer, and authorizing the Mayor to execute same
- N7 An Ordinance creating a new Section 14 of Chapter 1 of Title XV of the Pueblo Municipal Code relating to pedestrian safety and access to sidewalks and public rights of way in the Downtown Business Area of the City
- N8 An Ordinance amending Chapter 4 of Title XI of the Pueblo Municipal Code to allow animal

shelter personnel to administer animal vaccinations

- N9 An Ordinance amending Chapter 3 of Title XI of the Pueblo Municipal Code to allow the City Clerk to administratively approve certain liquor license matters designated by the Liquor Board when allowed by State Law

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 November 14, 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

R. ORDINANCES – FINAL PRESENTATION

- R1 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 - *Introduced October 11, 2022 by Dennis Flores*
- R2 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 - *Introduced October 11, 2022 by Dennis Flores*
- R3 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 - *Introduced October 11, 2022 by Dennis Flores*
- R4 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 - *Introduced October 11, 2022 by Dennis Flores*
- R5 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 - *Introduced October 11, 2022 by Dennis Flores*

- R6 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 - *Introduced October 11, 2022 by Dennis Flores*
- R7 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 - *Introduced October 11, 2022 by Dennis Flores*
- R8 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 - *Introduced October 11, 2022 by Dennis Flores*
- R9 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 - *Introduced October 11, 2022 by Dennis Flores*
- R10 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 - *Introduced October 11, 2022 by Dennis Flores*
- R11 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 - *Introduced October 11, 2022 by Dennis Flores*
- R12 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 - *Introduced October 11, 2022 by Dennis Flores*
- R13 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 - *Introduced October 11, 2022 by Dennis Flores*
- R14 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 - *Introduced October 11, 2022 by Dennis Flores*

S. ADJOURN



**REGULAR CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE
TUESDAY, OCTOBER 11, 2022 - 7:00 PM
MINUTES**

A. CALL TO ORDER

President Graham called the meeting to order at 7:12 p.m.

B. INVOCATION

The Invocation was given by Rob Reyes, Praise Assembly of God.

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

Council Members Present: Dennis Flores, Heather Graham, Regina Maestri, Sarah Martinez, Lori Winner

Council Members Present via Zoom: None

Council Members Absent: Larry Atencio, Vicente Martinez Ortega

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

E. SPECIAL RECOGNITIONS

F. PUBLIC FORUM

- Ted Freeman - Concerns
- Denise Torrez - Racist statue
- Breeanna Rodriguez - Racist Statue
- Elvis Martinez - Trash & more
- Jason Mann - Speeding (Fountain ave)/Homeless 7/11 804 E. 4th ste
- Ledema Renfrow - Need a CODE for trees
- Bryan Rivera - Community skate park enhancements

G. COUNCIL MEMBER AND MAYOR COMMENTARY

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

H. REVIEW OF AGENDA

The agenda was reviewed page by page. Councilor Maestri requested that item Q1 be removed

from the agenda pending a work session.

I. APPROVAL OF AGENDA

Councilor Martinez, seconded by Councilor Maestri, moved to remove item Q1 from the agenda and approve the agenda as amended.

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

J. READING AND APPROVAL OF MINUTES

J1 CITY COUNCIL MINUTES FOR SEPTEMBER 26, 2022

Councilor Flores, seconded by Councilor Winner, moved to dispense with the reading and approve the Minutes of the Regular Meeting dated **September 26, 2022** as distributed.

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

K. COMMUNICATIONS

K1 SUBMISSION OF THE MAYOR'S RECOMMENDED BUDGET FOR THE FISCAL YEAR 2023

Councilor Martinez, seconded by President Graham, moved 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.

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

L. CONSENT AGENDA

City Clerk Marisa Stoller read the Consent Agenda into the record.

M. RESOLUTIONS

M1 A RESOLUTION AWARDED 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

This Resolution was assigned as 15021.

M2 A RESOLUTION AWARDED 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

This Resolution was assigned as 15022.

**M3 A RESOLUTION AUTHORIZING THE CITY OF PUEBLO TO REFUND
SANITARY SEWER FEES OF \$226.40 TO DELMA ALVAREZ**

This Resolution was assigned as 15023.

**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**

This Resolution was assigned as 15024.

**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**

This Resolution was assigned as 15025.

**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 CRAFTO CRACK FILL MACHINE LOCATED AT
THE PUEBLO MEMORIAL AIRPORT**

This Resolution was assigned as 15026.

**M7 A RESOLUTION IN SUPPORT OF THE CITY OF PUEBLO'S APPLICATION
FOR THE FY2023 SAFE ROUTES TO SCHOOL GRANT PROGRAM**

This Resolution was assigned as 15027.

**M8 A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF
MINDY ARMIJO TO THE EL CENTRO DEL QUINTO SOL RECREATION
CENTER BOARD OF DIRECTORS**

This Resolution was assigned as 15028.

**M9 A RESOLUTION APPROVING AND AUTHORIZING CITY OF PUEBLO
EMPLOYEE PARTICIPATION IN THE UNITED WAY OF PUEBLO COUNTY
MIDDLE SCHOOL MENTORING PROGRAM**

This Resolution was assigned as 15029.

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

Councilor Flores, seconded by Councilor Martinez, moved 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.

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

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

Item was removed from the agenda.

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

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

Councilor Maestri, seconded by Councilor Martinez, moved to approve the Resolution.

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

This Resolution was assigned as 15031.

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

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

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

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

This Resolution was assigned as 15032.

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

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

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

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

This Resolution was assigned as 15033.

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

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

Councilor Winner, seconded by Councilor Maestri, moved to approve the Resolution.

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

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

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

PUBLIC HEARING:

- Muhammad Curtis appeared in person to speak in favor of this ordinance

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

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

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

This Ordinance was assigned as 10293.

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

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

PUBLIC HEARING:

- Diane Archuletta appeared in person to speak in favor of this ordinance

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

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

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

This Ordinance was assigned as 10294.

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

A staff report and detailed review of the Ordinance was given by Steven Meier, Director of Parks & Recreation.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10295.

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

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

PUBLIC HEARING:

- Doug Baxter appeared in person to speak in favor of this ordinance

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

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

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

This Ordinance was assigned as 10296.

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

A staff report and detailed review of the Ordinance was given by Megan Moore, Pueblo Food Project Coordinator.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10297.

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

A staff report and detailed review of the Ordinance was given by Megan Moore, Pueblo Food Project Coordinator.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10298.

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

A staff report and detailed review of the Ordinance was given by Megan Moore, Pueblo Food Project Coordinator.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10299.

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

A staff report and detailed review of the Ordinance was given by Chris Noeller, Chief of Police.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10300.

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

A staff report and detailed review of the Ordinance was given by Greg Pedroza, Director of Aviation.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10301.

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

A staff report and detailed review of the Ordinance was given by James Wagner, Assistant City Attorney.

PUBLIC HEARING:

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

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

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

This Ordinance was assigned as 10302.

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

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

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

This Ordinance was assigned as 10303.

S. ADJOURN

Respectfully submitted,



Marisa Stoller
City Clerk



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 24, 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 RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$96,105.86 WITH K.R. SWERDFEGER CONSTRUCTION, INC. FOR EMERGENCY SANITARY SEWER POINT REPAIR AT 701 COURT ST, PROJECT NO. 20-059 (WWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF SAME

SUMMARY:

This Resolution ratifies and approves the award of a construction contract to K.R. Swerdfeger Construction, Inc. for emergency sanitary sewer point repairs at 701 Court St.

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

On April 9, 2022, the homeowner of 701 Court Street notified the Wastewater Department that they had multiple backup and drain issues every week and their bathrooms were out of order. A television crew was sent out to inspect the main and they discovered a long pipe segment with sags and broken pipes. An emergency repair was necessary to repair the sags and broken pipes, so a backup would not occur.

The repair work was performed under the Sanitary Sewer Point Repair multi-year contract under which three contractors were qualified via competitive bid. An estimate was prepared, and Parker Excavating was the low bidder but could not perform the work. The project was awarded to the next low bidder, K.R. Swerdfeger.

Sanitary Sewer Replacement-related

<i>Total:</i>	\$	89%
	85,540.86	

Surface Improvement Related

<i>Total:</i>	\$	11 %
	10,565.00	

<i>Grand Total:</i>	\$	100%
	96,105.86	

FINANCIAL IMPLICATIONS:

Funding for this project came from the sanitary sewer rehabilitation budget funded by the Sewer User Fund. Funding was available and had been budgeted, appropriated, and allocated to Project No. 20-059 (WWAN03).

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

Not approve the Resolution, but this would require a finding that there was not an emergency condition.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 10-24-22 701 Court St Emergency Point Repair Attachment

RESOLUTION NO. 15033

A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$96,105.86 WITH K.R. SWERDFEGER CONSTRUCTION, INC. FOR EMERGENCY SANITARY SEWER POINT REPAIR AT 701 COURT ST, PROJECT NO. 20-059 (WWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF SAME

WHEREAS, an emergency sanitary sewer repair was authorized by the Mayor in accordance with Section 1-10-5 of the Pueblo Municipal Code; and

WHEREAS, the point repair work was awarded to K.R. Swerdfeger Construction, Inc., under the 2021-2023 multi-year point repair contract; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council ratifies and approves the contract for repair of the sanitary sewers at 701 Court St with K.R. Swerdfeger Construction, Inc., Project No. 20-059 (WWAN03) awarded to said bidder in the amount of \$96,105.86 which amount includes all contract change orders.

SECTION 2.

Funds for Project 20-059 (WWAN03) shall be from the Sewer User Fund.

SECTION 3.

The Purchasing Agent was authorized to execute said contract on behalf of Pueblo, A Municipal Corporation, and the City Clerk properly affixed the seal of the City thereto and attested the same.

SECTION 4.

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 effectuate the transactions described therein. Furthermore, all actions previously taken by officers and staff of the City consistent with the contract including any payments authorized under the contract and the contract change order in the amount of \$62,548.86 are hereby ratified.

SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 24, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
DEPUTY CITY CLERK

2021-2023 Emergency Sanitary Sewer Point Repair					701 Court St Estimate		
Date: 4/28/2022					K.R. Swerdfefer Construction, Inc.	FRPHI ECS & Landscape, Inc.	Parker Excavating, Inc.
Project Number: 20-059 (WWAN03)							
Item	Description	Estimated					
1	Remove and Replace 8" PVC Less than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF	99	\$ 14,157.00	\$ 34,848.00	\$ 11,385.00
		>100	LF		\$ -	\$ -	\$ -
2	Remove and Replace 8" PVC More than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
3	Remove and Replace 10" PVC Less than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
4	Remove and Replace 10" PVC More than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
5	Remove and Replace 12" PVC Less than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
6	Remove and Replace 12" PVC More than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
7	Remove and Replace 15" PVC Less than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
8	Remove and Replace 15" PVC More than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
9	Remove and Replace 4" Service Tap Less than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
10	Remove and Replace 4" Service Tap More than 10' Deep	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
11	Asphalt Patch – 4" HMA on 4" Class 6 ABC For 8" and 10" Pipe	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF	110	\$ 7,150.00	\$ 6,820.00	\$ 8,140.00
12	Asphalt Patch – 5" HMA on 6" Class 6 ABC For 8" and 10" Pipe	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
13	Asphalt Patch – 4" HMA on 4" Class 6 ABC For 12" and 15" Pipe	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
14	Asphalt Patch – 5" HMA on 6" Class 6 ABC For 12" and 15" Pipe	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
15	Remove and Replace 7" Reinforced Concrete	1-20	SF		\$ -	\$ -	\$ -
		21-100	SF	80	\$ 1,600.00	\$ 2,800.00	\$ 1,400.00
		>100	SF		\$ -	\$ -	\$ -
16	Remove and Replace 6" Reinforced Concrete	1-20	SF		\$ -	\$ -	\$ -
		21-100	SF		\$ -	\$ -	\$ -
		>100	SF		\$ -	\$ -	\$ -
17	Remove and Replace 4" Concrete	1-20	SF		\$ -	\$ -	\$ -
		21-100	SF		\$ -	\$ -	\$ -
		>100	SF		\$ -	\$ -	\$ -
18	Remove and Replace Standard Curb and Gutter	1-20	LF		\$ -	\$ -	\$ -
		21-100	LF		\$ -	\$ -	\$ -
		>100	LF		\$ -	\$ -	\$ -
19	Install Extra Lean Concrete (FlowFill)	1-20	CY		\$ -	\$ -	\$ -
		21-100	CY	50	\$ 8,250.00	\$ 12,750.00	\$ 8,350.00
		>100	CY		\$ -	\$ -	\$ -
20	Remove Camera/Cleaning Head/Tap Cutter	HR			\$ -	\$ -	\$ -
21	Remove and Replace 48" Diameter Manhole	EA			\$ -	\$ -	\$ -
22	Remove and Replace 60" Diameter Manhole	EA			\$ -	\$ -	\$ -
23	Reinstate Services	EA		3	\$ 900.00	\$ 450.00	\$ 1,164.00
24	Mobilization	LS		1	\$ 1,500.00	\$ 1,750.00	\$ 1,650.00
				Total	\$ 33,557.00	\$ 59,418.00	\$ 32,089.00
With Contingency					\$ 40,268.40	\$ 71,301.60	\$ 38,506.80

CONTRACT CHANGE ORDER
CITY OF PUEBLO DEPARTMENT OF PUBLIC WORKS

Project Number : 20-059 (WWAN03) Change Order No. : ONE Page 1 of 1

Project Name : 2021 - 2023 Emergency Sanitary Sewer Point Repair
701 Court St

Contractor : K.R. SWERDFEGER CONSTRUCTION, INC.
421 E Industrial Blvd, Pueblo West, CO, 81001

You are hereby requested to comply with the following changes from the plans & specifications:

Bid Item No.	Description of Changes	Decrease Contract By	Increase Contract By
1	REMOVE & REPLACE 8" PVC PIPE <10' DEEP (<100LF)	(\$14,157.00)	
2	ASPHALT PATCH - 4" HMA ON 4" CLASS 6 ABC FOR 8" AND 10" PIPE		\$1,300.00
3	REMOVE AND REPLACE 7" REINFORCED CONCRETE(<100SF)	(\$1,600.00)	
4	INSTALL EXTRA LEAN CONCRETE (FLOW FILL)	(\$2,310.00)	
5	REINSTATE SERVICES	(\$600.00)	
7	REMOVE & REPLACE 8" PVC PIPE <10' DEEP (>100LF)		\$15,960.00
8	REMOVE AND REPLACE 7" REINFORCED CONCRETE(>100SF)		\$2,115.00
9	T&M FOR BYPASS PUMPING, POTHOLING, STORMWATER, SLOWED PRODUCTION AND TRAFFIC CO		\$61,840.86
TOTAL (Decrease) / Increase		(\$18,667.00)	\$81,215.86

Net Adjustment This Change Order	\$	62,548.86
Amount of Previous Change Order(s)	\$	0.00
Original Contract Amount	\$	33,557.00
Total Adjusted Contract Amount To Date	\$	96,105.86

Reason For Change: Actual Field Quantities.
Extra work needed to complete the project.

The time provided for completion of the contract is changed by 0 calendar days.
This document shall become an amendment to the contract and all provisions of the contract apply hereto.

Prepared by: _____ Date: _____
Associate Engineer II

Reviewed by: _____ Date: _____
Wastewater Engineering Manager

Accepted by: _____ Date: _____
Contractor's Representative

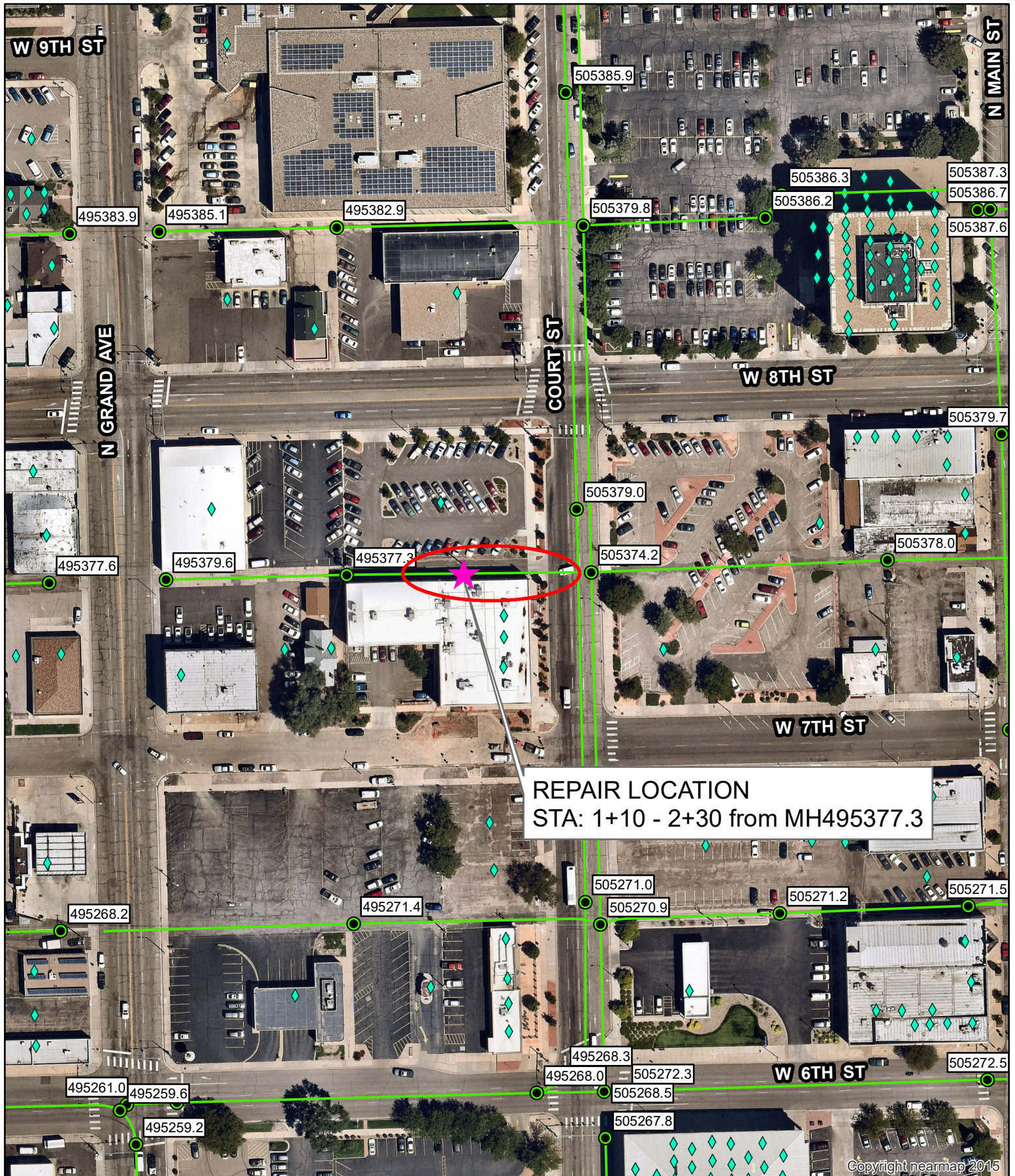
If this Change Order causes an increase from the original contract price, signed approval by the Director constitutes representation that lawful appropriations are sufficient to cover such increase.

Approved by: _____ Date: _____
Interim Director of Wastewater

FORM CO100.1299



20-059 (WWAN03)
2021-2023 Emergency Sanitary Sewer Point Repair
701 Court St





**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 24, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Alexandria A. Romero, Director of Finance

SUBJECT: A RESOLUTION AUTHORIZING THE TRANSFER OF \$500,000 TO PROJECT ED0801, LEASE PROCEEDS ESCROW/RMS, PREVIOUSLY ESTABLISHED IN THE 1992 – 2026 SALES AND USE TAX CAPITAL IMPROVEMENTS PROJECTS FUND

SUMMARY:

This Resolution provides additional funding needed for the payment of expenses related to the building known as the Pope Block Building.

PREVIOUS COUNCIL ACTION:

Resolution 11270, March 24, 2008 authorizing \$2,000,000
Resolution 12696, June 10, 2013 authorizing \$500,000
Resolution 13023, July 28, 2014 authorizing \$500,000
Resolution 13332, November 9, 2015 authorizing \$500,000
Resolution 13483, May 23, 2016 authorizing \$500,000
Resolution 13839, December 11, 2017 authorizing \$620,000
Resolution 13958, May 14, 2018 authorizing \$500,000
Resolution 14077, November 12, 2018 authorizing \$500,000
Resolution 14386, March 23, 2020 authorizing \$500,000
Resolution 14614, May 10, 2021 authorizing \$500,000
Resolution 14817, February 28, 2022 authorizing \$500,000

BACKGROUND:

In 1999, an agreement was entered into between the City and PEDCO Foundation to place all rents and other payments received by the Foundation for the lease of the Pope Block Building (317 N. Main St.) into a separate escrow account, known previously as the "1999 Escrow Account". In 2008, the balance in this escrow account was \$2,000,000. At that time, the Receivable Management Services Corporation agreed to modify its lease arrangements with PEDCO Foundation and lease additional space in the Building in order to employ an additional 250 full-time employees; provided,

however, that the \$2,000,000 balance in the 1999 Escrow Account (the Lease Proceeds Balance) be escrowed with the City's Finance Department and pledged for the payment of Net Foundation Operating Expenses as defined under said lease. This arrangement, as well as other terms and conditions, was approved by the Council on March 24, 2008, by Resolution No. 11270. The term of the agreement was January 1, 2008 through March 1, 2013.

In July of 2012, all of the \$2,000,000 escrowed funds had been spent for the reimbursement to Foundation for their Net Operating Expenses as defined in the agreement. Since that time, Foundation has incurred significant additional expenses related to the Building under the lease agreement between Foundation and RMS. In addition, the lease agreement has been extended by those parties. In January of 2015, ownership of the building was transferred to the City of Pueblo. The lease agreement with RMS (now iQor) is still in place, and the City is still responsible to the payment of the expenses incurred under the lease.

Periodically, additional funds are appropriated as needed to continue paying the expenses of the building. This Resolution will provide funding for operational expenses.

FINANCIAL IMPLICATIONS:

The amount of \$500,000 is available in the 1992 - 2026 Sales and Use Tax Capital Improvement Projects Fund (the economic development half cent tax fund) in the Projects to be Determined account.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

If this Resolution is not approved, the City may be in default of the Lease agreement.

RECOMMENDATION:

City staff recommends approval of this Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15034

A RESOLUTION AUTHORIZING THE TRANSFER OF \$500,000 TO PROJECT ED0801, LEASE PROCEEDS ESCROW/RMS, PREVIOUSLY ESTABLISHED IN THE 1992 – 2026 SALES AND USE TAX CAPITAL IMPROVEMENTS PROJECTS FUND

WHEREAS, the City of Pueblo is a party to a lease agreement which obligates the City to pay certain net expenses incurred at the Pope Block Building (317 N. Main St.); and

WHEREAS, additional funds are periodically provided, as necessary, for the costs incurred under said lease agreement; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The amount of \$500,000 shall be transferred to Project ED0801, Lease Proceeds Escrow/RMS.

SECTION 2.

Said funds shall be made available and transferred from the Projects to be Determined account within the 1992 – 2026 Sales and Use Tax Capital Improvements Project Fund.

SECTION 3.

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

SECTION 4.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 24, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
DEPUTY CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 24, 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 APPROVING AND ACCEPTING A GENERAL WARRANTY DEED WITH RESPECT TO THE FUTURE CONSTRUCTION OF SUN MOUNTAIN BOULEVARD AND ASSOCIATED PUBLIC IMPROVEMENTS FROM JAMES H. BUTCHER TOTALING APPROXIMATELY 4.39 ACRES OF LAND

SUMMARY:

This Resolution will authorize the City of Pueblo to accept a General Warranty Deed for 4.39 acres of land to be conveyed to the City of Pueblo from the current land owner, James H. Butcher.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Mr. Butcher, as the owner of certain real property located in the planned right-of-way for Sun Mountain Boulevard, is conveying a parcel of land to the City of Pueblo for the future construction of the roadway and associated public improvements. The parcel will be required to provide continuous transportation network connectivity along the Sun Mountain Boulevard right-of-way between West 24th Street and West 31st Street.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution

ALTERNATIVES:

If this Resolution does not pass, the City of Pueblo will not accept the deed and ownership of the parcel will not be conveyed to the City of Pueblo.

RECOMMENDATION:

Approval of this Resolution.

ATTACHMENTS:

1. General Warranty Deed - Butcher (221004)

RESOLUTION NO. 15035

A RESOLUTION APPROVING AND ACCEPTING A GENERAL WARRANTY DEED WITH RESPECT TO THE FUTURE CONSTRUCTION OF SUN MOUNTAIN BOULEVARD AND ASSOCIATED PUBLIC IMPROVEMENTS FROM JAMES H. BUTCHER TOTALING APPROXIMATELY 4.39 ACRES OF LAND

WHEREAS, the Pueblo Area Council of Governments (PACOG), under Resolution No. 2021-010 adopted the 2045 Long Range Transportation Plan which identifies a future north-south roadway between West 24th Street and West 31st Street and located generally between Pueblo Boulevard (Colorado State Highway 45) and Wildhorse Creek, currently designated as Sun Mountain Boulevard and formerly known as Spaulding Avenue; and

WHEREAS, the City of Pueblo has received a notice of award for a grant to fund the construction of that segment of Sun Mountain Boulevard; and

WHEREAS, James H. Butcher, as the sole owner of a certain parcel of land located in the proposed alignment of Sun Mountain Boulevard desires to convey ownership of a portion of the property to the City of Pueblo for the future construction of the road segment; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The General Warranty Deed ("Deed") conveying a parcel of land to the City of Pueblo, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved and accepted.

SECTION 2.

The City Clerk is directed to cause said Deed to be recorded in the office of the Pueblo County Clerk and Recorder forthwith.

SECTION 3.

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 4.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 24, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
DEPUTY CITY CLERK

GENERAL WARRANTY DEED

THIS DEED is dated this 4 day of OCTOBER, 2022 and is made between James H. Butcher, the "Grantor," whose legal address is 1 Judy's Dream Lane, Pueblo, CO and the City of Pueblo, Colorado, a Colorado municipal corporation, the "Grantee," whose legal address is 1 City Hall Place, Pueblo, Colorado 81003.

WITNESS, that the Grantors, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm, unto Grantee and Grantee's heirs, successors, and assigns forever, all the real property, together with any improvements thereon, located in the County of Pueblo and State of Colorado, described as follows:

See Attached Exhibits "A" and "B"

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

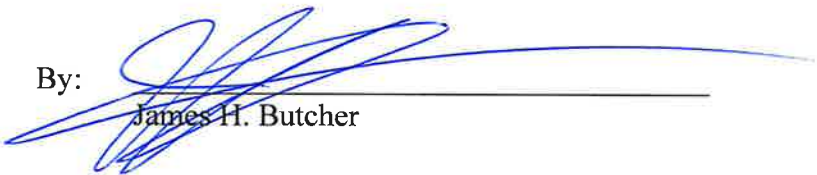
TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto Grantee and its successors and assigns forever. Grantor, for itself and its successor and assigns, does covenant, grant, bargain, and agree to and with Grantee and its successors and assigns, that at the time of the ensembling and delivery of these presents, Grantor is well seized of the premises above conveyed, has good, sure, perfect, absolute, and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances, and restrictions of whatever kind or nature soever.

Grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

GRANTOR:

By:


James H. Butcher

STATE OF COLORADO)

)

ss.

COUNTY OF PUEBLO)

)

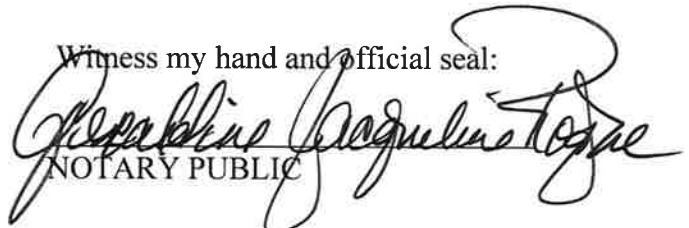
The foregoing instrument was acknowledged before me this 04 day of October, 2022 by James H. Butcher.

My commission expires:

November 20, 2023

(Seal)

Witness my hand and official seal:


NOTARY PUBLIC

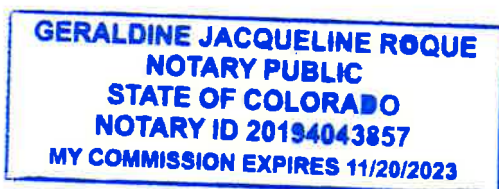


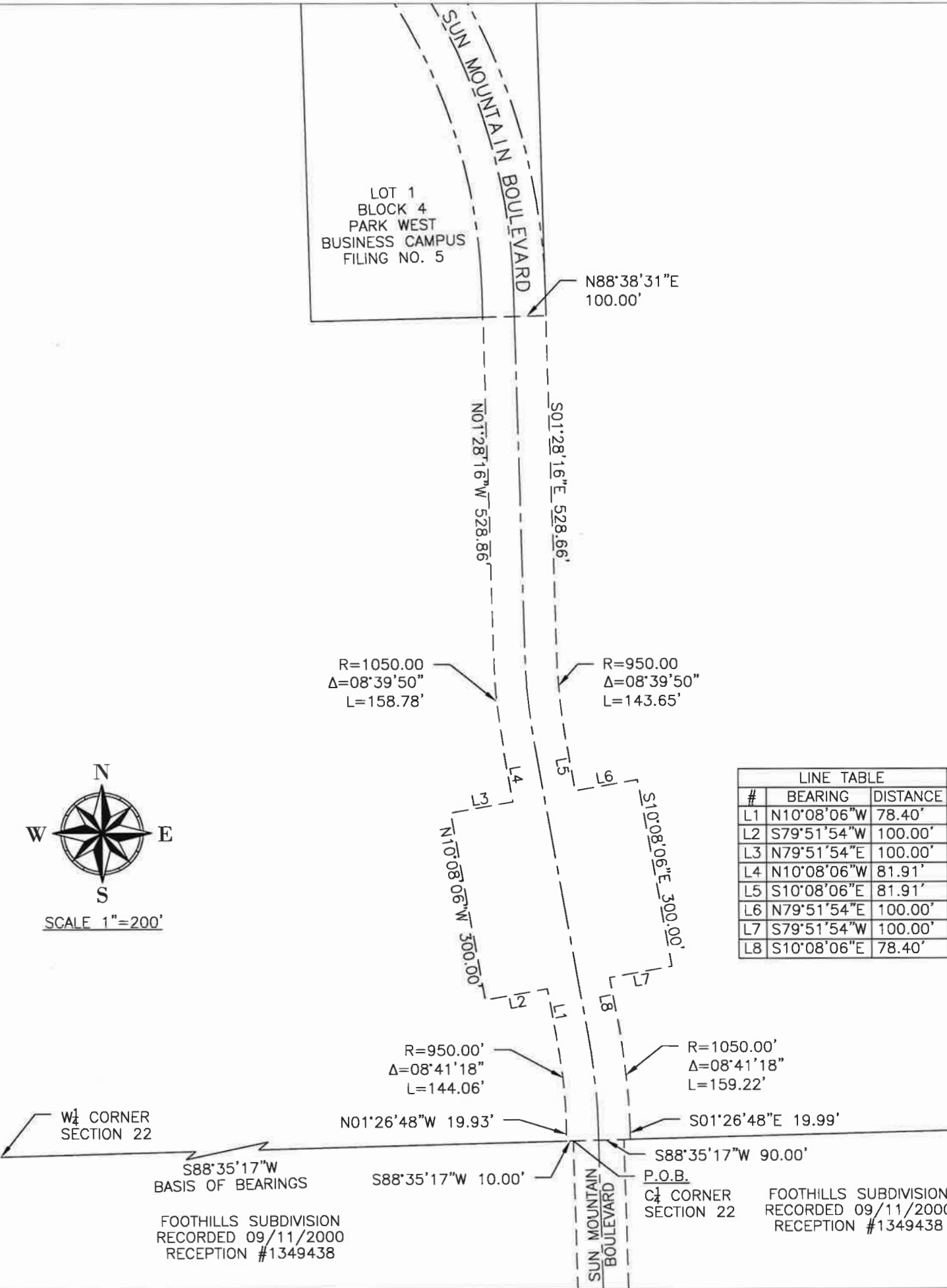
EXHIBIT "A"

An easement located in the N ½ of Section 22, Township 20 South, Range 65 West of the Sixth Principal Meridian, City of Pueblo, County of Pueblo, State of Colorado and more particularly described below:

Beginning at the C ¼ corner of Section 22, Township 20 South, Range 65 West of the Sixth Principal Meridian; thence westerly along the center line of Section 22, S 88°35'17" W, a distance of 10.00'; thence N 01°26'48" W, a distance of 19.93'; thence northerly along a tangent curve to the left, having a radius of 950.00', a delta of 08°41'18", and a length of 144.06'; thence N 10°08'06" W, a distance of 78.40'; thence S79°51'54"W a distance of 100.00'; thence N10°08'06"W a distance of 300.00'; thence N79°51'54"E a distance of 100.00'; thence N10°08'06"W, a distance of 81.91'; thence northerly along a tangent curve to the right, having a radius of 1050.00', a delta of 08°39'50", and a length of 158.78'; thence N01°28'16"W, a distance of 528.86', more or less, to the southeast corner of Lot 1, Block 4, Park West Business Campus, Filing No. 5, as recorded May 8, 2008, at Reception #1768305 in the office of the Pueblo County Clerk and Recorder; thence N 88°38'31" E, along the subdivision boundary of said Park West Business Campus, Filing No. 5, a distance of 100.00'; thence S 01°28'16" E, a distance of 528.66'; thence southerly along a tangent curve to the left, having a radius of 950.00', a delta of 08°39'50", and a length of 143.65'; thence S 10°08'06" E, a distance of 81.91'; thence N 79°51'54" E, a distance of 100.00'; thence S10°08'06"E, a distance of 300.00'; thence S79°51'54"W, a distance of 100.00'; thence S10°08'6"E, a distance of 78.40'; thence southerly along a tangent curve to the right, having a radius of 1050.00', a delta of 08°41'18", and a length of 159.22'; thence S01°26'48"E, a distance of 19.99', more or less, to a point on the said centerline of Section 22; thence S 88°35'17" W, along the said centerline of Section 22, a distance of 90.00', to the said C ¼ corner of Section 22 and the point of beginning.

Containing a calculated area of 4.39 Acres, more or less.

EXHIBIT "B"





Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 24, 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 RATIFYING PACOG'S JOINT APPOINTMENT OF BRIAN GRAY TO THE PUEBLO REGIONAL BUILDING COMMISSION'S BOARD OF APPEALS AS A GENERAL CONTRACTOR

SUMMARY:

This resolution ratifies the joint City-County appointment of a general contractor to the Regional Building Commission's Building Board of Appeals to complete a three-year term expiring July 1, 2024.

PREVIOUS COUNCIL ACTION:

Joint City-County appointments to the Pueblo Regional Building Commission are made on an annual basis selecting individuals to serve three-year terms expiring on July 1st of each year. Resolutions to ratify the joint appointments are passed by each entity.

BACKGROUND:

There is one vacancy on the Building Board of Appeals for a contractor expiring July 1, 2024. The City coordinated the promotion of the vacancies and received an application from Brian Gray.

Following the PACOG meeting on September 22, 2022, the BOCC and City Council members reviewed the application and appointed Brian Gray to the position.

FINANCIAL IMPLICATIONS:

This is a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

None

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

City Council in agreement with the County Commissioners could remove the Resolution from the Agenda, request that the recruitment process be extended in order to receive additional applications for consideration.

RECOMMENDATION:

Approval of the Resolution

ATTACHMENTS:

1. Building BOA - Gray Application

RESOLUTION NO. 15036

A RESOLUTION RATIFYING PACOG'S JOINT
APPOINTMENT OF BRIAN GRAY TO THE PUEBLO
REGIONAL BUILDING COMMISSION'S BOARD OF
APPEALS AS A GENERAL CONTRACTOR

WHEREAS, this Resolution ratifies the joint appointment made following the PACOG meeting on September 22, 2022, by City-County Representatives who were present; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Brian Gray is hereby appointed to the Pueblo Regional Building Commission's Building Board of Appeals to complete a three-year term expiring July 1, 2024 as a general contractor.

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 appointment described therein.

SECTION 3.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 24, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
DEPUTY CITY CLERK

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: BOARDS & COMMISSIONS Application
Date: Monday, August 22, 2022 8:27:14 AM

External email. Please use caution.

BOARDS & COMMISSIONS Application

BOARDS & COMMISSIONS Application for Appointment

(Section Break)

DATE	8/22/2022
------	-----------

BOARD OR COMMISSION	Building Board of Appeals
------------------------	---------------------------

Contact Information

FIRST NAME	Brian
------------	-------

LAST NAME	Gray
-----------	------

HOME ADDRESS	136 s middlecoff dr
--------------	---------------------

CITY	Pueblo west
------	-------------

STATE	CO
-------	----

ZIP	81007
-----	-------

OFFICE ADDRESS	136 s middlecoff dr
----------------	---------------------

CITY	Pueblo west
------	-------------

STATE	CO
-------	----

ZIP	81007
-----	-------

DAYTIME PHONE	7193696521
---------------	------------

E-MAIL ADDRESS	BGRAY682@GMAIL.COM
----------------	--------------------

ARE YOU CURRENTLY EMPLOYED WITH	NO
---------------------------------------	----

THE CITY OF
PUEBLO?

ARE YOU A
RESIDENT OF THE
CITY OF PUEBLO?

NO

OCCUPATION (or if
RETIRED, your
previous occupation)

General contractor

Questionnaire

Please complete the following general information.

1. Please list your
areas of
accomplishments that
you feel could assist
the mission of this
Board or Commission.

I have been a general contractor since 2003 I have Been in construction my whole life I have been on this board before and would like to continue I was voted as the chair before my term had expired

2. Why are you
interested in being
appointed to this Board
or Commission?

I want to be involved in the community where I was born and raised I love this great city and want to be a part of the great things coming in the future

3. What Goals would
you like to see this
Board or Commission
accomplish?

Transparency with the board and contractors in the jurisdiction and an open line of communication

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

I have served on this board before and would like to continue

(Section Break)

Upload résumé,
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 24, 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 RATIFYING PACOG'S JOINT APPOINTMENT OF CLARA TRAUTMAN TO THE COMMUNITY SERVICES ADVISORY COMMISSION (CSAC)

SUMMARY:

This Resolution ratifies the Joint City-County selection made to the Community Services Advisory Commission (CSAC) to complete a four-year term expiring April 30, 2024.

PREVIOUS COUNCIL ACTION:

Joint City-County appointments to the Community Services Advisory Commission are made on an annual basis selecting individuals to serve staggered four-year terms expiring on April 30th of each year. Resolutions to ratify the joint appointments are passed by each entity.

BACKGROUND:

Due to the resignation of Dorothy Butcher, there is one vacancy available on the Community Services Advisory Commission (CSAC) expiring April 30, 2024.

The recruitment process for 2022 was handled by the Pueblo City Staff seeking volunteers to serve on this committee and an application was received from Clara Trautman.

FINANCIAL IMPLICATIONS:

This is a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

None

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

City Council in agreement with the County Commissioners could remove the Resolution from the Agenda, request that the recruitment process be extended in order to receive additional applications for consideration.

RECOMMENDATION:

Approval of the Resolution

ATTACHMENTS:

1. CSAC - Trautman Application

RESOLUTION NO. 15037

A RESOLUTION RATIFYING PACOG'S JOINT
APPOINTMENT OF CLARA TRAUTMAN TO THE
COMMUNITY SERVICES ADVISORY COMMISSION
(CSAC)

WHEREAS, there is one (1) vacancy to be filled on the Community Services Advisory Commission – Joint City-County appointment. This appointment shall complete a four-year term expiring April 30, 2024; and

WHEREAS, this Resolution ratifies the joint appointments made following the PACOG meeting on September 22, 2022, by City-County Representatives who were present; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Clara Trautman is hereby appointed to the Community Services Advisory Commission to complete a four-year term expiring April 30, 2024.

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 appointment described therein.

SECTION 3.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 24, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
DEPUTY CITY CLERK

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: COMMUNITY SERVICES ADVISORY COMMISSION (CSAC)
Date: Monday, July 25, 2022 6:41:03 PM

External email. Please use caution.

COMMUNITY SERVICES ADVISORY COMMISSION (CSAC)

PUEBLO COUNTY and CITY OF PUEBLO PARTNERSHIP COMMUNITY SERVICES ADVISORY COMMISSION (CSAC) Application for Appointment

Contact Information

DATE *Field not completed.*

FIRST NAME Clara

Middle Initial I

LAST NAME Trautman

HOME ADDRESS 3311 Lions Den Ct

CITY Pueblo

STATE CO

ZIP 81005

HOME PHONE 3306922230

WORK PHONE *Field not completed.*

CELL PHONE 3306922230

E-MAIL ADDRESS isabel.trautman@gmail.com

Questionnaire

Please complete the following general information.

I believe that I am qualified to represent the following group(s):

Please select your primary area of interest.

Then numerically rank any secondary areas of interest in order of preference.

ARTS & CULTURE

HEALTH

Primary

Education

Primary

Sports and Recreation

2

Faith Based (clergy, Interfaith Coalition, etc)

2

Youth

3

Disabled

3

Mental Health

4

Early Childhood Development

4

Seniors

5

Economic Development

5

Private Foundations

Please state why you would like to serve on the Pueblo County and City of Pueblo Partnership Community Services Advisory Commission:

I believe in the people to make this City a wonderful place to live.
I love being able to help people and learn from them every day.
I always enjoy the activities at all times of the year.

Please describe your experiences related to the group(s) that you are proposing to represent on the Community Services Advisory Commission.

Five years ago I was part of the Hispanic community in Ohio collaborating initially as an interpreter to later be able to meet the needs of the community and to be able to help on different programs for both adults and children and youth.

We can discover the abilities of each person and better focus on them such as make a dance group, another cooking group, painting, Spanish classes...

Please list your experiences serving on community boards. Include approximate service dates:

In the beginning I been volunteer in the Hispanic community (2010) serving on a nonprofit board increase my skill to learn more about the government, recruiting volunteers, interacting with the community members, also I served like mentor.

Schedule doctor's appointments for pregnant women including

activities for them and follow-up in the postpartum process.

Enrollment of boys and girls in school

Please list all affiliations with community human services agencies, quality of life issues, arts and culture activities, economic development programs, recreational activities, etc. within the Pueblo Community.

At this time I consider myself an active member of the library District Lamb I enjoy my "amigos" and I have to improve my English.
My daughter and me help the most needy by donating clothes, diapers, food, medicine to the center for the poor (El centro de los pobres (immigration & low income)).
I have the Pueblo Youth & family Resource Guide 2021-2022 I would love to be an active member of one of these organizations, as I was before in Ohio, me and my husband arrived in town a month ago, meanwhile I am making myself known.

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

Carry out more activities to socialize children, in this way we can prevent bad habits in them, any activity needs monitoring in order to meet the objectives.

(Section Break)

Upload Resume

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



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 24, 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 REBECCA KNAPP TO THE STREETScape ADVISORY COMMITTEE

SUMMARY:

This Resolution confirms the appointment by the Mayor of a member to serve a three-year term expiring November 1, 2025.

PREVIOUS COUNCIL ACTION:

City Council has made appointments to the Pueblo Streetscape Advisory Committee selecting individuals to serve terms which expire at the end of a particular calendar year. Amended City Charter Section 4-4 (i) now requires that such appointments be made by the Mayor, subject to confirmation by City Council.

BACKGROUND:

Due to term expiration of Rebecca Knapp, there is one appointment available to serve a three-year term expiring November 1, 2025 on the Pueblo Streetscape Advisory Committee. Rebecca was the only applicant and is eligible for reappointment.

FINANCIAL IMPLICATIONS:

This is a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

The Committee recommends approval of this applicant.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Remove from agenda and re-advertise for additional applications.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. Streetscape - Knapp Application

RESOLUTION NO. 15038

A RESOLUTION CONFIRMING THE APPOINTMENT BY
THE MAYOR OF REBECCA KNAPP TO THE
STREETSCAPE ADVISORY COMMITTEE

WHEREAS, Mayor Nicholas A. Gradisar has requested confirmation by the City Council of his reappointment of Rebecca Knapp to the Streetscape Advisory Committee to serve a three-year term expiring November 1, 2024; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Rebecca Knapp is hereby appointed to the Streetscape Advisory Committee to serve a three-year term expiring November 1, 2025.

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 appointment described therein.

SECTION 3.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 24, 2022

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
DEPUTY CITY CLERK

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: BOARDS & COMMISSIONS Application
Date: Friday, September 23, 2022 12:40:17 PM

External email. Please use caution.

BOARDS & COMMISSIONS Application

BOARDS & COMMISSIONS Application for Appointment

(Section Break)

DATE	9/23/2022
BOARD OR COMMISSION	Streetscape Advisory Committee
Contact Information	
FIRST NAME	Rebecca
LAST NAME	Knapp
HOME ADDRESS	114 W Pitkin Ave
CITY	Pueblo
STATE	CO
ZIP	81004
OFFICE ADDRESS	114 W Pitkin Ave
CITY	Pueblo
STATE	CO
ZIP	81004
DAYTIME PHONE	3038680256
E-MAIL ADDRESS	rebecca_knapp@hotmail.com
ARE YOU CURRENTLY EMPLOYED WITH	NO

THE CITY OF
PUEBLO?

ARE YOU A
RESIDENT OF THE
CITY OF PUEBLO?

YES

OCCUPATION (or if
RETIRED, your
previous occupation)

Landscape Architect

Questionnaire

Please complete the following general information.

1. Please list your
areas of
accomplishments that
you feel could assist
the mission of this
Board or Commission.

I am an award winning Landscape Architect and I have been working as an LA in Colorado for over 24 years. I am currently on the Streetscape Committee and I attend each meeting and I contribute.

2. Why are you
interested in being
appointed to this Board
or Commission?

I have enjoyed serving our community on the committee and I wish to continue being involved.

3. What Goals would
you like to see this
Board or Commission
accomplish?

I would like to see the Committee continue to support the City staff and advocate for both them and the community they serve.

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

I volunteer locally with Trees Please and in the past I volunteered with The Park People in Denver, completing their community forester program.

(Section Break)

Upload résumé,
references and/or other
pertinent information

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



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 24, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Bob Jagger, Deputy City Attorney

SUBJECT: AN ORDINANCE AMENDING SECTION 14-4-76 OF THE PUEBLO MUNICIPAL CODE RELATING TO SALES AND USE TAX AND EXEMPTING FROM SALES TAX ALL SALES OF PERIOD PRODUCTS, INCONTINENCE PRODUCTS AND DIAPERS PURCHASED ON AND AFTER JANUARY 1, 2023

SUMMARY:

The proposed Ordinance makes uniform the provisions of the City's Sales and Use Tax Code with the laws of the State of Colorado with respect sales tax exemptions for period products, incontinence products and diapers.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The tax exemption will make the City's tax code uniform with the exemption recently enacted by the State of Colorado with respect to period products, incontinence products and diapers. The public purpose promoted by such exemption includes the following:

(a) With respect to period products, the exemption will increase the affordability of period products and redress the inequitable burden that the imposition of sales tax places on women for whom such products are essential; and

(b) With respect to incontinence products and diapers, the exemption will increase the affordability of incontinence products and diapers and to redress the inequitable burden that the imposition of sales tax places on parents, individuals caring for infants and young children, and other users of incontinence products for whom such products are essential.

FINANCIAL IMPLICATIONS:

The proposed Ordinance is estimated to decrease revenue by \$250,000 each fiscal year, which is approximately .38% of the total City sales tax revenue. The approximate

percentage used to determine the sales tax for period products, incontinence products, and diapers is extrapolated from the financial impact contained in Colorado HB 22-1055.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could choose not to enact the Ordinance, and no City sales tax exemption would exist for period products, incontinence products and diapers.

RECOMMENDATION:

This is a tax policy issue reserved to Council's discretion.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 14-4-76 OF THE PUEBLO MUNICIPAL CODE RELATING TO SALES AND USE TAX AND EXEMPTING FROM SALES TAX ALL SALES OF PERIOD PRODUCTS, INCONTINENCE PRODUCTS AND DIAPERS PURCHASED ON AND AFTER JANUARY 1, 2023

WHEREAS, the State of Colorado has enacted a sales tax exemption exempting from sales tax all sales of period products, incontinence products and diapers purchased on and after January 1, 2023; and

WHEREAS, the creation of such a specific but limited tax exemption would be in the best interest of the City and its citizens; and

WHEREAS, the granting of the sales and use tax exemption set forth in this Ordinance makes uniform the provisions of said Chapter 4 with the laws of the State of Colorado in accordance with the authority granted to City Council pursuant to Section 4 of Ordinance No. 3160, passed and approved by a vote of the people on November 6, 1967; NOW, THEREFORE,

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

SECTION 1.

Section 14-4-76 of the Pueblo Municipal Code, is amended by the addition of a new subsection (24) to read as follows:

Sec. 14-4-76. Items Exempt.

The following classes of tangible personal property are exempt from taxation under this Chapter:

. . .

(24) All sales of period products, incontinence products and diapers purchased on and after January 1, 2023. For the purposes of this exemption, the following words have the following meanings:

- a. "Period products" means consumer products used to manage menstruation; and**
- b. "Incontinence products and diapers" means absorbent cloth or disposable products worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.**

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective thirty days after 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 24, 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 BUDGETING AND APPROPRIATING AN ADDITIONAL \$391,593 IN PACOG FY-2022-2023 CONSOLIDATED PLANNING GRANT FUNDS FOR TRANSPORTATION PLANNING SERVICES RELATED TO THE CITY OF PUEBLO AND PUEBLO AREA COUNCIL OF GOVERNMENTS 2023 DELEGATION AGREEMENT FOR TRANSPORTATION PLANNING SERVICES

SUMMARY:

The proposed Ordinance will budget and appropriated additional Federal Highway Administration Consolidated Planning Grant ("CPG") funds in the amount of \$391,593 into the Urban Transportation Planning Project. The additional funds include \$360,500 in FY2023 CPG funds and \$31,093 of additional carry-over funds from FY2021 that have not been budgeted and appropriated by the City. The funds have been included in the City and PACOG Delegation Agreement budget and the PACOG Urban Planning Work Program budget. The FY2022-23 FHWA CPG Funds in the amount of \$710,187.00 are identified for expenditure in the 2023 Pueblo Area Council of Governments (PACOG) Metropolitan Planning Organization (MPO) budget approved by the PACOG Board on August 25, 2022, Resolution No. 2022-016

PREVIOUS COUNCIL ACTION:

Ordinance No. 10034 approved on November 8, 2021 established the FY2022-2023 Transportation Planning Project, and budgeted and appropriated \$679,094 in FY 2022 Consolidated Planning Grant Funds.

BACKGROUND:

The PACOG Board approved a Consolidated Planning Grant contract amendment for FY2022-2023 with the Colorado Department of Transportation (CDOT) at their October 27, 2022 meeting. The contract provides funds in the amount of \$360,500 along with estimated additional carry over funds from the FY2021 CPG contract in the amount of \$31,093.00 that will be available for eligible reimbursable expenses. The City and PACOG annually enter into a Delegation Agreement that authorizes the City to complete the transportation planning tasks on behalf of PACOG and be reimbursed for

eligible expenses to complete the tasks identified in the FY 2022-2023 Unified Planning Work Program (UPWP) adopted by PACOG Resolution 2022-016 on August 25, 2022. This Ordinance budgets and appropriates an additional \$391,593 into the 2022-2023 Urban Transportation Planning Project. The total two-year contract totals \$1,070,687.00 in funds allocated for the City to complete urban transportation planning services for the FY2022 and FY2023 federal fiscal years in compliance with federal and state requirements for the use of the CPG grant funds.

FINANCIAL IMPLICATIONS:

Additional funds in the amount of \$391,593 will be budgeted and appropriated for the Pueblo Urban Transportation Planning Project which includes \$360,500 in FY2023 FHWA CPG Funds and estimated additional federal and local carry over funds from the previous years totaling an estimated \$31,093. While the Planning staff costs and operating expenses will be reimbursed through the PACOG grant funds, it is estimated that approximately \$1,500 in staff time from the Finance and Legal departments will be expended on the project.

BOARD/COMMISSION RECOMMENDATION:

The FY2022–FY2023 funds are included in the FY2023 PACOG MPO Unified Planning Work Program budget, and the Urban Planning Work Program that have been previously approved by the PACOG Board on August 25, 2022.

STAKEHOLDER PROCESS:

The Consolidated Planning Grant funds, approved by CDOT and the Federal Highway Administration, are identified in the Urban Planning Work Program (UPWP) by task with associated budget amounts. The UPWP is reviewed at public meetings by the PACOG Transportation Advisory Committee and approved by the PACOG Board.

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. CDOT Purchase Order 2023 CPG
2. 2023 UPWP Resolution Approved Aug 26 2022

ORDINANCE NO.

AN ORDINANCE BUDGETING AND APPROPRIATING AN ADDITIONAL \$391,593 IN PACOG FY-2022-2023 CONSOLIDATED PLANNING GRANT FUNDS FOR TRANSPORTATION PLANNING SERVICES RELATED TO THE CITY OF PUEBLO AND PUEBLO AREA COUNCIL OF GOVERNMENTS 2023 DELEGATION AGREEMENT FOR TRANSPORTATION PLANNING SERVICES

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

SECTION 1.

Additional funds in the amount of \$391,593 comprised of \$360,500 in 2023 Consolidated Planning Grant Funds awarded to the Pueblo Area Council of Governments (PACOG), and \$31,093 in adjusted carry over funds from the fiscal year 2021 Consolidated Planning Grant are hereby budgeted and appropriated for the FY2022-2023 Urban Transportation Planning Project.

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 the policies and procedures described 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 _____.

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 (1)
SIGNATURE AND COVER PAGE

State Agency Department of Transportation	Subaward Amendment Number / PO Number 23-HTD-ZL-00042 / 491003073
Subrecipient PUEBLO AREA COUNCIL OF GOVERNMENTS	Original Subaward Agreement Number / PO Number 22-HTD-ZL-00125 / 491002780
Amended Subaward Agreement Amount	Subaward Agreement Performance Beginning Date October 08, 2021
Federal Funds Maximum Amount (82.79%) \$886,422.00	Amended Agreement Expiration Date December 31, 2024
Local Funds Local Match Amount (17.21%) \$184,265.00	Amended Fund Expenditure End Date December 31, 2024
Total for all State Fiscal Years \$1,070,687.00	Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117, 43-1-701, 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149.

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 PUEBLO AREA COUNCIL OF GOVERNMENTS DocuSigned by: <i>Eva Cosyleon</i> 2E1D7F009415456... By: <u>Eva Cosyleon</u> Date: <u>9/30/2022</u>	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: <u>Steve Harelson</u> <u>Stephen Harelson, P.E., Chief Engineer</u> DocuSigned by: <i>Steve Harelson</i> AB4C0B01642B42E... Signature* Date: <u>9/30/2022</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

By: *Robert Jaros*
BDA801C5CFAC478...
Department of Transportation

Effective Date: 9/30/2022

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 extend the original agreement, add funds 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 table on the Subaward Agreement’s Cover Page is hereby deleted and replaced with the Current Subaward Agreement Amount table 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



Pueblo Area Council of Governments

Metropolitan Planning Organization (MPO)

Transportation Planning Region (TPR)

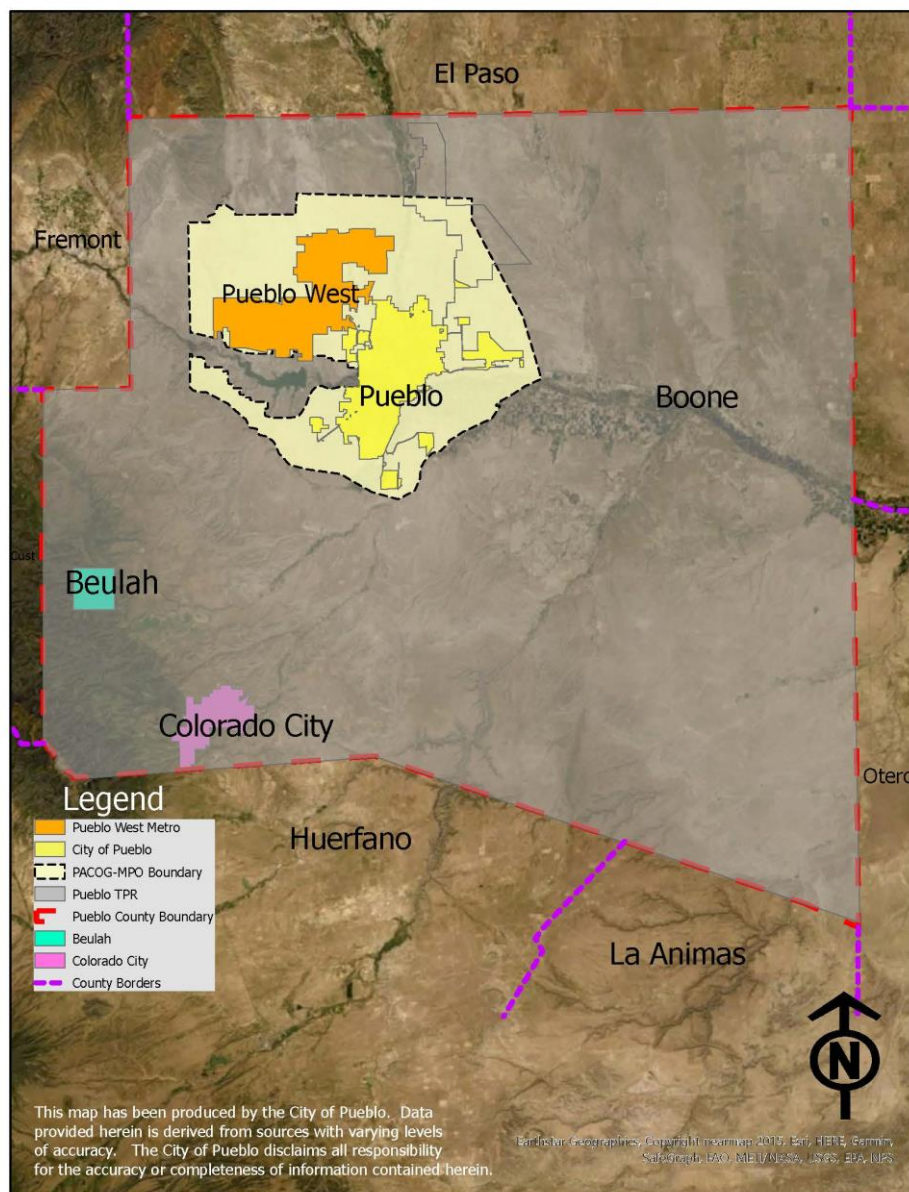
**CPG GRANT
SCOPE OF WORK
FFY 2023**

(OCT. 1, 2022 – SEPT. 30, 2023)

Prepared By:

City of Pueblo Urban Transportation Planning Division

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PACOG PLANNING AREA

INTRODUCTION

The Consolidated Planning Grant (CPG) Scope of Work for FFY-2023 is based on the PACOG FY 2022-2023 Unified Planning Work Program (UPWP) adopted. Amendments to the FY 2022-2023 to reflect the FY 2023 SOW will be adopted August 2023.

Organization, Management & Funding

The general objectives of the FFY 2023-2024 UPWP are to:

1. Assist all participating agencies in achieving applicable comprehensive planning goals and in fulfilling the statutory requirements of FAST-Act and associated planning regulations adopted by the FHWA and FTA.
2. Assist all participating agencies in fulfilling their continuing responsibilities to the community including, but not limited to,
 - a) Using the products of the transportation planning process as a major contribution to other comprehensive planning activities and providing the mechanisms for the continued integration of transportation planning with land use and other comprehensive planning.
 - b) Updating and revising basic transportation planning, regional socioeconomic, environmental, land use, and transportation system operating data using applicable GIS or other technologies for these systems.
 - c) Modifying developed plans and programs as warranted by changes in travel patterns or urban conditions and translating plans into action programs for project implementation.
3. Carry out specific transportation planning functions required for the continued certification of the Pueblo area urban transportation planning process including the biennial development and annual refinement of the UPWP, the annual development of the TIP, and updates to financial forecast to the Long-Range Transportation Plan (LRTP) to the horizon of 2045 as needed.

Financing 2023 Estimated Budget**Pueblo Area Council of Governments (PACOG)****SAM UEI : D57UDNFVRBL5****FHWA Award Date: 8/31/22****CFDA: 20.205**

Funds Source	Federal	Local Match-Cash	Local Match-In-Kind	Total Funds
FY 2022- FY 2023 CPG				
FY 2022 CPG	\$298,458	\$62,042	\$0	\$360,500
Amendment 1 -FY 2023 CPG				
Estimated Carry-over from FY2020-2021 CPG	\$289,506	\$60,181	\$0	\$349,687*
FY 2023 CPG	\$298,458	\$62,042	\$0	\$360,500
Total Revenue for FY 2023	\$886,422	\$184,265		\$1,070,687
<i>*per CDOT August 15, 2022</i>				

WORK ELEMENT 2310 Program Administration & Coordination

Objective - To manage, support, improve, adapt, administer, and coordinate the cooperative, continuous, and comprehensive transportation planning process as required by FAST Act.

2311 - Agreements and Bylaws

Activities:

- Complete and execute planning partner memorandum of understandings, as needed, to implement the transportation planning process.
- Assist in updating bylaws as necessary resulting in changes as approved by the PACOG Board identified in the Reorganization Study conducted in FY 2016/17. Includes possible restructuring the Technical Advisory Commission (TAC) widening membership to include other stakeholders (i.e., Trucking, Rail,).
- Assist in maintaining required materials as necessary. (i.e.. Agendas, Minutes, Financial Records, etc.).

2312 - Unified Planning Work Program

Activities:

- Mid-Year progress report.
- Complete year-end report for FY2023.
- Amend 2023 - 2024 UPWP as needed.
- Review and modify the format of the UPWP as needed.

2313 - Budget and Financial Management

Activities:

- CDOT monthly Metropolitan Transportation Planning reimbursements.
- Prepare MPO Budget for PACOG Board adoption.
- Prepare Sub-Delegation Budget and Appropriation Ordinances for City of Pueblo
- Prepare for and participate in PACOG audit(s) if required under Single Audit Requirements.

2314 - Staff and Professional Development

Activities:

- Actively participate in Statewide training and educational meetings hosted by CDOT/FHWA/FTA and other organizations within the State.
- Make applicable transportation planning training available to staff, committee members, and member agency partners.
- Develop staff training and transition plan for the MPO during the next 2-3-year period.
- Develop, implement, and conduct an orientation program for new committee members.
- Staff Training on Travel Demand Model, TransCAD (OUT/IN STATE). (if needed)
- Staff Training courses conducted by Nation Highway Institute or National Transit Institute (OUT/IN STATE).
- Staff Attendance at Transportation Research Board's Annual Meeting (OUT/IN STATE).
- Staff participation in AMPO's Annual Conference, AMPO's Technical Conference (OUT/IN STATE).
- Staff attendance/participation in Transportation Research Boards working groups. (OUT/IN STATE).

2315 - Public Involvement Activities**Products/Activities:**

- Project specific public involvement.
- Review and update the Public Participation Plan (PPP) as needed.
- Amend Title VI and LEP Policy as needed.
- Issue press releases and advisories related to transportation planning and projects in the region.
- Develop and expand a stakeholder's contact list for notification of planning activities.
- Maintain MPO website.
- Work collaboratively with local, state, and federal officials and agencies to help achieve established transportation goals and objectives.
- Actively participate in meetings and planning sessions of various public and private stakeholder groups that have direct or indirect involvement in transportation planning, land use planning, economic development, community development, infrastructure development.

2316 – Equity and justice 40**Products/Activities:**

- Improve access for non-motorized travel in Underserved Communities
- Improve access and service for public transportation in Underserved Communities
- Plan for safety of all road users through infrastructure improvements and speed management
- Reduce single-occupancy travel
- Offer reduced public transportation fares as appropriate.
- Plan for demand-response service towards communities with higher concentrations of older adults and those with poor access to essential services.
- When developing transit-oriented development, consider equitable and sustainable practices.

2317 – MPO Committee Meetings**Activities:**

- 10-12 PACOG Board meetings annually.
- 10-12 CAC/TAC Committee meetings annually.
- Participate in local committee's (i.e., ADA, PACE, City Electrification Working Group)

2318 – Coordination with Pueblo Transit**Activities:**

- Conduct quarterly meetings with staff from Pueblo Transit to coordinate with MPO activities that will benefit transit operations within the Pueblo region.
- Coordinate with Pueblo Transit on LRTP Vision Plan and GIS mapping
- Assist with grant applications by providing Data and background supporting information.
- Incorporate transit planning as a requirement when selecting project for funding
- Partner with Pueblo Transit to resolve transportation issues effecting Transit within the region

2319- Miscellaneous Administrative Activities

Activities:

- Perform the routine administrative, personnel, contractual and management activities, and tasks necessary to maintain and support a viable long-range transportation planning process.
- Procure, upgrade and/or maintain computer systems, software and equipment required to carry out an efficient and effective transportation planning process.

WORK ELEMENT 2320 – DATA COLLECTION AND MANAGEMENT

Objective – to develop and maintain data necessary for informed decision making relating to the MPO transportation system.

2321 – Traffic Counting and Data Management

Activities:

- Obtain, update, convert, refine, and maintain traffic count data for the Pueblo area. This includes national highway system, state highway system, county, and local roadways.
- Continue traffic counting program to support transportation modeling and impacts on urban or non-urban areas.
- Continue bike/pedestrian counting on trails within PACOG area.

2322-Traffic Crash Monitoring Program

Activities:

- Update and maintain crash databases.
- Analyze traffic and collision data for trends.
- Prepare projections and reports for planning uses.
- Publish Crash Summary Data annually with 5-years historical crash data.

2323-MPO Database Management

Activities:

- Update MPO Databases and GIS layers as information becomes available.
- Prepare and maintain maps, records, booklets, etc. that summarize or depict the PACOG MPO census data.
- Conduct other census related work and activities necessary to support transportation planning.
- Provide current transportation planning materials and maps as requested by citizens and various agencies within the MPO region.
- Establish an Area Wide Pavement Condition Rating System and Collect Base Data for Inventory and Performance Measures.
- Participate in the Statewide Travel Demand Survey when CDOT initiates update.

2324 - Population and Land Use Data Collection**Activities:**

- Update MPO Databases and GIS layers as information becomes available.
- Prepare and maintain maps, records, booklets, etc. that summarize or depict the PACOG MPO census data.
- Conduct other census related work and activities necessary to support transportation planning.

2325 - Traffic Counting Program/Traffic Crash Data and Highway Safety**Activities:**

- Continue count cycle to be included in five-year counts included in the base data for the MS2 software.
- Contract counts outside of City in include in five-year count database
- Develop and distribute 2022 Traffic Flow Maps (On-call Consultant)
- Provide traffic count reports to CDOT in format compatible with the national HPMS Database.
- Continue count pedestrians and bicycles for Pueblo Regional Trail System and the Pueblo West Trail System.
- Download and maintenance of State of Colorado crash data and as time permits, review, verify, and attempt to resolve data discrepancies to improve accuracy.
- Merge crash data into the MS2 crash data software which will allow for the development of summary reports and maps with crash data to assist planning partners in identifying potential safety improvement projects. Obtain, update, convert, refine, and maintain surface roadway systems data for the Pueblo area. This includes national highway system, state highway system, county, and local roadways.
- Obtain, update, convert, refine, and maintain Pueblo Transit systems data for the Pueblo area. This includes updating of route and stop location changes.
- Maintain ArcGIS applications to current versions utilized throughout the PACOG area to insure accessibility of transportation related GIS data.
- Obtain, update, convert, refine, and maintain non-motorized transportation systems data for the Pueblo area. This includes bike routes, regional trail systems, designated mountain bike trails, and future bike and trails planning.
- Update local transportation system data to reflect changes to the future transportation network as modified by local or county government actions.
- Convert graphics from various planning documents, utilizing GIS software, to analyze the consistency between the LRTP and proposed developments.

WORK ELEMENT 2330 – TRANSPORTATION PLANS, PERFORMANCE MEASURES, GREEN HOUSE GAS REDUCTION, ACTIVE TRANSPORTATION, AND SCENARIO PLANNING

Monitor the adopted 2045 PACOG LRTP for compliance and make amendments as necessary.

2331 – Metropolitan Transportation Plan**Activities:**

- 2045 LRTP Implementation
- Ongoing updating and maintenance of a 6-year capital plan of projects for inclusion into the TIP.

- Monitor the approved 2045 LRTP and make amendments where significant changes have been identified.
- Coordinate with CDOT's implementation of GHG Emissions as final rule making is completed and implementation of.
- Review local plans for consistency with the LRTP.

2332 – Implementation of Performance Measures

Activities:

- Develop baseline performance measures consistent with CDOT's measures.
- Coordinate with CDOT's implementation of performance measures as final rule making is completed.
- Amend performance measures as needed to be consistent with state-wide measures.
- Report annually on Goals of the established measures.

2333 – Travel Demand Model

Activities:

- Continue to run project scenarios based on projects identified in the 2045 LRTP.
- Continue to refine the TDM developed in 2015 as new social/economic data becomes available.
- Update local transportation system data to reflect changes to the future transportation network as modified by local or county government actions.
- Supply CDOT with Data from Model runs that contain "Regionally Significantly" projects to be used in Moves III to Report Green House Gas Emissions.
- Update TDM with 2020 census and establish new TAZ if needed.

2334 – Federal Highway Functional Classification Review

- In coordination with CDOT, review the existing Functional Classifications and update as necessary based on the new 2020 census data.

2335 – Transportation Improvement Program

To prepare the Transportation Improvement Program to ensure that all expected funding sources are accurately accounted for and programmed, consistent with policies to ensure adoption by PACOG, CDOT, and FHWA.

Activities:

- Prepare, coordinate, and distribute required administrative modifications and amendments to the adopted TIP following a review of compliance/progress verification, along with submittal of corresponding request for inclusion in the State Transportation Improvement Program (STIP).
- Produce and distribute an annual list of projects obligated the prior FFY within.
- Plan, organize and facilitate the updating of the TIP on an annual basis and apply fiscal constraint to a proposed projects list. Validate or modify the list of programmed projects to be executed in subsequent years of the adopted TIP.
- In conjunction with the amendment and update of the FY2022-2025 Transportation Improvement Program (TIP), MPO Annual Certification of the Planning Process (23 CFR 450.334 & CFR 613.100).

- Implement a project tracking system utilizing TELLUS or similar project/mapping management system for visualization of projects and locations.
- In accordance with state and federal requirements and policies, analyze the potential environmental and environmental justice impacts of proposed projects.

2336 – Transition to a Clean Energy, resilient future

- Facilitate in location of EV Charging locations and equity.
- Begin framework for GHG Mitigation Plan
- Create a Carbon Reduction Plan with CDOT
- Implement GHG mitigation strategies
- Identify barriers to and opportunities for deployment of fueling and charging infrastructure.
- Evaluate opportunities to reduce greenhouse gas emissions by reducing single-occupancy vehicle trips
- Increasing access to public transportation
- Shift to lower emission modes of transportation
- Identify transportation system vulnerabilities to climate change impacts and evaluate potential solutions.

2337 – Complete Streets

- Plan, and coordinate with regional stakeholders to plan and develop safe streets for all users.
- Enable pedestrians, bicyclists, transit riders, micro-mobility users, freight delivery services, and motorists to have a safe, accessible, and comfort to their destination.
- Provide an equitable and safe transportation network for travelers of all ages and abilities.

WORK ELEMENT 2340 SHORT RANGE PLANNING AND PROGRAMS

Objective – These are intended to be planning activities that will completed annually or completed in a specific FFY of the UPWP.

2341 – On-Call Transportation Technical Assistance Consultant

This element is developed as a placeholder for funding for consultant's services to assist with planning activities, which provides flexibility to the MPO to use a portion of additional CPG funds later. General consultant services may be used for Long Range Transportation Plan activities, traffic count program, Travel Demand Modeling, Pavement Condition Rating or Planning studies.

- Aid on plans, reports, and/or studies that require computer simulation/visualization of corridors, projects, systems, or road networks as needed.
- Provide Area-Wide Local Roadway Safety Plan
- Provide traffic model as needed and requested by MPO
 - Run project scenario based on projects identified in the 2045 LRTP and as requested by MPO staff.
 - Refine Travel demand model developed in 2015 as new social/economic data becomes available such as but not limited to 2020 census data.
 - Development of the 2050 regional population forecast
 - Update local transportation system data to reflect change to the future transportation network as modified by local or county government actions.

- Review Functional Classification and update as necessary based on the new 2020 census data.
- Update TAZ with 2020 census data and re-configure traffic model
- Collaborate with CDOT Consultant and MPO to establish baseline and mitigation plan
- Facilitate MPO on ongoing administrative process for establishing, tracking, and verifying mitigation & performance measures.
- Assist MPO and CDOT with Green House Gas Mitigation Plan & Carbon Reduction Plan
- Provide updated GIS data (shape files) to MPO such as:
 - Update PACOG GIS maps as needed:
 - New roadways
 - Proposed roadways
 - New trails/bike routes/bike lanes
 - Create Regional bike plan with updated information
 - Roadway classifications
- Provide Pueblo Transit
 - Route expansion studies and analysis
 - Increased Ridership modeling and analysis
 - NTD data collection for federal reporting.
 - Route consolidation and expansion planning

2342 – Regional, Statewide, and Federal Planning Participation

Activities:

- Regular participation in regional planning activities in cooperation with PACOG member entities.
- Regular attendance at State Transportation Advisory Committee (STAC) meetings.
- Review major annexation plans for transportation impacts.
- Evaluate development impacts which may require amendments to the adopted Long Range Transportation Plan and/or Transportation Improvement Program.
- Review land use issues affecting the transportation system.
- Attendance at Transportation Commission (TC) meetings if necessary to represent the interests of the PACOG MPO/TPR.
- Participation and support the Southwest Chieftain North Front Range Passenger Rail Commission.
- Participation in joint or coordinated planning studies conducted cooperatively by the four Front Range MPOs.
- Regular participation in statewide committees for special studies that may have impacts in the PACOG MPO area, (i.e. Freight, Rail, Intracity transit)
- Work and coordinate with FLMA

2343 – Planning and environmental Linkages

Activities:

- Implement planning and environmental linkages (PEL) as part of the transportation planning and environmental review process.
- Develop partnerships with resource agency staff

- Provide PEL resources and educational training to local jurisdictions.
- Create PEL methodologies for transportation planning in PACOG region.

2344– Special projects and other Transportation Mode Planning

This element is developed as a placeholder for funding of any special projects that may arise within the PACOG region.

RESOLUTION NO. 2022-016

A RESOLUTION ADOPTING THE UNIFIED PLANNING WORK PROGRAM (UPWP) AMENDMENT FOR FEDERAL FISCAL YEARS (FFYS) 2022 AND 2023 FOR THE PUEBLO AREA COUNCIL OF GOVERNMENTS (PACOG) AS THE DESIGNATED METROPOLITAN PLANNING ORGANIZATION (MPO) FOR THE PUEBLO URBAN AREA IN COMPLIANCE WITH 23 USC 134, 49 USC 5303, 23 CFR 450 AND 500, AND 49 CFR 613; AND AUTHORIZING AND DIRECTING THE CITY OF PUEBLO IN ACCORDANCE WITH THE PACOG AND CITY OF PUEBLO DELEGATION AGREEMENT DATED SEPTEMBER 23, 2021 TO ADMINISTER AND IMPLEMENT THIS UPWP IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

WHEREAS, the Pueblo Area Council of Governments (PACOG) is the recognized Metropolitan Planning Organization for the Pueblo area as designated by the Governor of Colorado in accordance with 23 U.S.C. 134(b); and

WHEREAS, PACOG has developed an annual Unified Planning Work Program (UPWP) and budgets for the Federal Fiscal Years 2022 and 2023 in compliance with the requirements of 23 USC 134, 49 USC 5303, 23 CFR 450 and 500, and 49 CFR 613 Act; and

WHEREAS, the FFY 2022-2023 UPWP AMENDMENT was developed through local collaboration with comments and recommendations from the state and federal funding agencies; and

WHEREAS, the UPWP reflects the priorities, scope of work, and level of effort required for all of the agencies responsible for regional transportation planning for FFY 2022-2023.

NOW, THEREFORE, BE IT RESOLVED BY THE PUEBLO AREA COUNCIL OF GOVERNMENTS that:

SECTION 1:

The PACOG Unified Planning Work Program for Fiscal Year 2022-2023 is hereby approved and adopted.

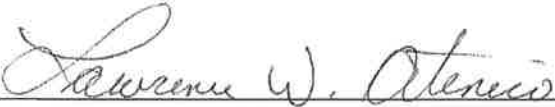
SECTION 2:

The PACOG Board hereby authorizes and directs the City of Pueblo in accordance with the PACOG and City of Pueblo Delegation Agreement dated September 23, 2021, to administer and implement this UPWP in accordance with all applicable federal, state, and local laws and regulations.

SECTION 3:

This resolution shall become effective immediately upon passage and approval.

PASSED AND ADOPTED this 25th day of August, 2022 by
the PACOG.


Chairperson, Pueblo Area Council of Governments

ATTEST:


PACOG Recording Secretary



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 24, 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 DELEGATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE PUEBLO AREA COUNCIL OF GOVERNMENTS FOR 2023 TRANSPORTATION PLANNING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves the annual delegation agreement between Pueblo Area Council of Governments (PACOG) and the City of Pueblo for Transportation Planning Services from January 1, 2023 to December 31, 2023 as specified in the approved FY 2022-23 Unified Planning Work Program (UPWP).

PREVIOUS COUNCIL ACTION:

The City is currently operating under the 2022 delegation agreement between PACOG and the City of Pueblo approved by Ordinance 10035, October 25, 2021

BACKGROUND:

This Ordinance approves the annual delegation agreement for Transportation Planning Services between PACOG and the City of Pueblo. The agreement establishes the responsibilities of the City of Pueblo and PACOG for the implementation of the tasks in the FY 2022-23 UPWP, adopted by PACOG Resolution 2022-016 on August 25, 2022. The agreement also allows for Pueblo County staff to be paid for providing transportation planning services in cooperation with the City

FINANCIAL IMPLICATIONS:

PACOG will reimburse the City up to \$1,070,687 Consolidated Planning Grant Funds, which includes all estimated federal and local carryover funds from previous fiscal years. The City Finance Department will expend staff time to prepare and submit monthly financial reports for reimbursement of City transportation planning expenditures.

BOARD/COMMISSION RECOMMENDATION:

The 2023 Delegation Agreement was approved by the PACOG Board by unanimous consent at their October 27, 2022, meeting. (Signed Agreement will be available prior to second reading)

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

If City Council does not approve this Ordinance, PACOG will look at other options for the operation of the PACOG Metropolitan Planning Organization which is responsible for transportation planning for the Pueblo Urbanized Planning Area and the Pueblo Rural Transportation Planning Region.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. 2023 PACOG - City Delegation Agreement

ORDINANCE NO.

AN ORDINANCE APPROVING A DELEGATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE PUEBLO AREA COUNCIL OF GOVERNMENTS FOR 2023 TRANSPORTATION PLANNING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Agreement for Transportation Planning Services effective January 1, 2023, between the Pueblo Area Council of Governments (PACOG) and the City of Pueblo, a Municipal Corporation, to provide transportation and planning services, 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 and directed 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

AGREEMENT FOR TRANSPORTATION PLANNING AND IMPROVEMENT SERVICES FOR 2023

THIS AGREEMENT (Agreement) is made and entered into effective the 1st day of January 2023, by and between the Pueblo Area Council of Governments, hereinafter referred to as "PACOG", the City of Pueblo, a Municipal Corporation, hereinafter referred to as "CITY".

WITNESSETH THAT:

WHEREAS, PACOG serves as the Metropolitan Planning Organization (MPO) for the Pueblo Urban Area, and the Transportation Planning Region (TPR) for all of Pueblo County,

WHEREAS, PACOG is eligible to receive funds to perform the work tasks for these activities and has entered one or more agreements with the State of Colorado and/or the U.S. Department of Transportation for transportation planning and improvement projects whereby funding may be made available to PACOG under provisions of said agreements, and statutes, laws and regulations referenced in said agreements; and

WHEREAS, CITY has the authority, capacity, and ability to undertake such transportation planning and improvement projects; and

WHEREAS, PACOG desires to contract with CITY to provide services, activities, and project execution required of PACOG under the aforesaid agreements through the City of Pueblo Urban Transportation Planning Division (UTPD), and others.

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

1. WORK TASKS; RESPONSIBILITIES OF CITY

(a) CITY agrees to satisfactorily perform and complete, using its own employees, employees of Pueblo County (herein after referred to as "COUNTY" or such consultants or contractors selected by PACOG in accordance with the regulations and policies of the Colorado Department of Transportation (CDOT) and the Federal Highway Administration (FHWA), the planning 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 amended FY 2022-2023 Unified Planning Work Program adopted by PACOG Resolution 2022-016 on August 25, 2022 incorporated herein by reference, in full compliance with all provisions of this Agreement.

(b) CITY is authorized to have pre-approved staff from COUNTY work mutually with CITY staff, and consultants to complete work for services, activities, and project execution required of PACOG as identified in the Scope of Work included as Appendix A attached hereto and incorporated herein by this reference.

(c) CITY represents that it: (i) has the requisite authority and capacity to perform the services and work contemplated in the FY 2022-2023 UPWP, as approved, and; (ii) that it is a home rule city and political subdivision of the State of Colorado; (iii) that it is fully aware of and understand its duty to perform all functions and services in accordance with the regulatory requirements set forth in 23 CFR Parts 420 and 450 and 49 CFR Part 18 and those identified

in the Memorandum of Agreement (MOA) adopted by PACOG on October 27, 2022, and incorporated herein by reference, in full compliance with all the provisions of this Agreement.

2. RESPONSIBILITIES OF PACOG

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

3. CITY'S COMPENSATION AND METHOD OF PAYMENT

(a) PACOG will pay to CITY, an amount up to that specified in subparagraph (d) of this paragraph as full compensation for all services and work to be performed or undertaken by CITY under this Agreement which is within the FY 2022-2023 UPWP, as approved. Payment of funds to CITY are subject to the following requirements, which shall be conditions precedent to payment: (i) that CITY staff time has been expended for eligible activities or CITY has obligated or expended funds for eligible approved expenditures, (ii) that CITY is not in default of any material provisions of this Agreement nor applicable law or regulation, (iii) that CITY has submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items, (iv) that, if required by the terms or conditions of an applicable financial assistance agreement, CITY has certified with each payment or reimbursement request compliance with the requirements identified in the MOA and that all staff time and obligations or expenditures for which payment is sought were made for and in furtherance of an approved project or work and are an eligible use of assistance under the law and regulations applicable to such assistance, and (v) that PACOG has timely received from CDOT and local agency matches sufficient funds to make the payment or reimbursement hereunder.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable regulations including but not limited to those contained in the MOA and those set forth in 49 CFR Part 18, 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 FY 2022-2023 UPWP, as amended.

(c) Expenses for pre-approved COUNTY staff time and other eligible reimbursable expenses shall be paid to the COUNTY following the submittal and approval of invoices detailing the eligible reimbursement items.

(d) PACOG shall pay to CITY for services covered by the FY 2022-2023 UPWP, as approved a sum not to exceed the amounts identified in the FY 2023 PACOG budget (\$1,070,687.00) and/or rates set forth in those documents as incorporated herein by reference and as may be amended in writing, in full compliance with all the provisions of this Agreement.

(e) In the event PACOG requests or authorizes work beyond or in addition to that set forth in the FY 2022-2023 UPWP, as approved, PACOG shall pay additional compensation to the CITY. The amount of such additional compensation shall be negotiated, but in the event the parties fail to negotiate or are unable to agree regarding compensation, CITY shall be compensated

for staff time and its costs at the rates set forth in paragraph (d), above, and for the work of subcontractors and consultants in an amount equal to the reasonable actual cost to CITY.

4. TERM OF AGREEMENT.

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

5. TERMINATION OF AGREEMENT.

(a) For Cause. This Agreement may be terminated by PACOG for cause, including any nonperformance by CITY, upon thirty (30) days written notice to CITY 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 PACOG's governing body at a regular or special meeting of same whose decision shall be final. The determination of the PACOG as to the cause of termination and the appropriateness thereof shall be final and binding upon both PACOG and the CITY. Cause for termination shall mean any material failure by CITY to comply with any term of this Agreement.

(b) For Convenience. This Agreement may be terminated for convenience in accordance with the provisions of 49 CFR 18.44. This Agreement shall automatically terminate at the end of its term as well as in the event of any suspension, reduction, or non-receipt of the financial assistance or State or Federal grant funds by PACOG.

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

6. ASSIGNABILITY.

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

7. CONFLICT OF INTEREST.

CITY certifies that neither it nor any members of its City Council, 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 thereto, 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. CITY shall avoid all conflicts of interest which are prohibited by applicable federal regulations, if any, including but not limited to those set forth in 49 CFR 18/36(b)(3) as presently promulgated and as same may be revised from time to time in the future.

8. CITY RECORDS.

CITY shall maintain records as to services provided, reimbursable expenses incurred in performing the Work Tasks, and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by the PACOG's auditor and acceptable to COOT and FHWA. CITY agrees to comply with all applicable uniform administrative requirements described or referenced in applicable state or federal regulations, including those set forth in the MOA as a part of this Agreement. PACOG, COOT, the Comptroller General of the United States, the Inspector General of the U.S. Department of Transportation, and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers, electronic media, and records of CITY which relate to this Agreement for the purpose of making an audit or examination. Upon completion of the work and end of the term of this Agreement, the PACOG may require that a copy of all of CITY's financial records relating to this Agreement to be turned over to PACOG.

9. MONITORING ANDEVALUATION.

PACOG shall have the right to monitor and evaluate the progress and performance of CITY to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with CDOT's, FHWA's, FTA's, PACOG's and other applicable monitoring and evaluation criteria and standards. PACOG may quarterly review CITY performance using on-site visits, progress reports required to be submitted by CITY, audit findings, disbursement transactions and contact with CITY as necessary. If requested, the CITY shall furnish to the PACOG periodic but not less frequently than quarterly program and financial reports of its activities in such form and manner as may be requested by the PACOG. CITY shall fully cooperate with PACOG relating to such monitoring and evaluation.

10. CITY FILES AND INFORMATION REPORTS.

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

11. INDEPENDENCE OF CITY.

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

12. LIABILITY: INSURANCE.

As to PACOG, CITY agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including the 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 CITY or by the conditions created thereby; provided, however, that nothing in this paragraph is intended, nor should it be construed, to create or extend any right, claims or benefits or assume any liability for or on

behalf of any third party, or to waive any immunities or limitations otherwise conferred under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et. seq. CITY shall provide and maintain Workers' Compensation insurance coverage or self-insurance on its employees complying with the requirements of State law.

13. SPECIAL REQUIREMENTS APPLICABLE TO IMPROVEMENTS TO PROPERTY.

(a) In addition to all procurement requirements otherwise applicable to CITY pursuant to any other provision of this Agreement or pursuant to any Requirement of law or regulation incorporated in this Agreement by reference, if any portion of the funds provided to CITY under this Agreement are to be used for making improvements to real property, including new construction, rehabilitation, or remodeling, then in such event CITY shall comply with all requirements of this Paragraph 13.

(b) No improvements shall be undertaken to real property with funds (or reimbursement) provided hereunder unless and until: (i) plans and specifications therefore have been prepared by either a registered Professional Engineer in good standing and duly licensed to practice in the State of Colorado or an Architect duly licensed and authorized to conduct a practice of architecture in the State of Colorado; and (ii) all construction contracts for improvements for which payment is sought from PACOG shall have been awarded only after an open, competitive bidding process which allows qualified contractors to reasonably participate.

(c) If this Paragraph 13 is applicable, no disbursement of funds to CITY shall be made by PACOG hereunder unless and until all conditions precedent to payment specified elsewhere in this Agreement have been satisfied and CITY files with PACOG's designated representative a written request for payment signed by an architect, engineer, or an officer of CITY that certifies (i) that the amounts included in the request for payment have not been included in any prior request for payment, and (ii) that the improvements listed therein for which payment is sought have been completed in accordance with the approved plans and specifications therefor.

(d) In every contract for construction of improvements for which payment or reimbursement from PACOG is to be provided under this Agreement, CITY shall include a contract clause or clauses, requiring the contractor, and all of the contractor's subcontracts of all tiers, to comply with the applicable requirements of the Davis-Bacon Act and implementing regulations, and to pay all laborers and mechanics engaged in work upon the improvements at the prevailing wage rates for such work as determined by the U.S. Department of Labor.

14. EQUAL EMPLOYMENT OPPORTUNITY.

In connection with the performance of this Agreement, CITY shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by PACOG and the State of Colorado under 23 U.S.C. 324 and 29 U.S.C. 794 and the provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the U.S. DOT implementing regulations (49 CFR 27,37, and 38) as certified in the FY 2022-2023 UPWP.

15. ENTIRE AGREEMENT; AMENDMENTS.

The provisions set forth in this Agreement, and all documents as incorporated herein by reference, in full compliance with all the provisions of this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provision of this Agreement, shall be binding unless made in writing and executed by the duly authorized officers of CITY and PACOG.

16. SIGNATURES.

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

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

ATTEST:

PUEBLO AREA COUNCIL OF GOVERNMENTS

Secretary

By _____
Chairperson

ATTEST:

CITY OF PUEBLO

City Clerk

By _____
President, Pueblo City Council

APPENDIX A

SCOPE OF WORK

CITY is authorized to pre-approved staff from COUNTY to work mutually with CITY staff, and consultants to complete work for transportation planning services, activities, and project execution required of PACOG for planning services and items of work including all labor and materials encompassed within or reasonably necessary to accomplish the assigned tasks and functions described in the amended FY 2022-2023 Unified Planning Work Program adopted by PACOG Resolution 2022-016 on August 25, 2022.

PROFESSIONAL FEE SCHEDULE

CITY shall compensate the COUNTY for the Scope of Services, approved by CITY, in accordance with paragraph 3.C. above, in the following manner:

1. An hourly fee comprised of the employee's hourly rate and benefits, excluding administrative and overhead charges, for the completion of approved work documented and approved from invoices submitted by COUNTY.
2. Reimbursement of qualifying additional expenses authorized for the satisfactory performance and completion, of the planning services and items of work in accordance with the regulations and policies of the Colorado Department of Transportation (CDOT) and the Federal Highway Administration (FHWA), encompassed within or reasonably necessary to accomplish the tasks and functions described in the FY 2022-2023 UPWP, as adopted by PACOG Resolution 2022-016 on August 25, 2022.
3. The Scope of Work for COUNTY staff that is subject to approval by CITY shall be specifically for eligible transportation planning activities that include work tasks the following tasks identified in the FY 2022-2023 UPWP:
 - i) Initiate discussions with MPO stakeholders regarding the creation of a Pueblo Regional Transportation Authority (RTA) or other dedicated funding sources for transportation.
 - ii) Integrating transit, bicycle and pedestrian planning into all transportation planning efforts.
 - iii) Review proposed major county subdivision proposals, zoning changes, site plans, planned developments and land use issues for impacts to the transportation system and require amendment of the PACOG Long Range Transportation Plan.
 - iv) Assist PACOG members by providing information and other assistance with transportation

- v) Participate in professional training and conferences via teleconferencing, e-mail discussion lists, and webinars.
- vi) Attend FHWA/FTA training programs and other transportation conferences for technical or professional training.
- vii) Meet with FHWA and COOT monthly for MPO updates and discussion
- viii) Assist in providing accurate and current information for the PACOG MPO/TPR website.
- ix) Prepare demographic data as needed for transportation modeling used for special studies and/or project consultants.
- x) Analyze and document current and updated traffic count data for the Pueblo area.
- xi) Analyze and document current and updated collision data for trends and recommended solutions to reduce crash rates.
- xii) Review transit system expansion and route service in planning projects and sub-area studies.
- xiii) Obtain, update, convert, refine, and maintain surface roadway systems data for the Pueblo area. This includes national highway system, state highway system, county and local roadways.
- xiv) Obtain, update, convert, refine, and maintain transit systems data for the Pueblo area. This includes updating of route and stop location changes.
- xv) Utilize the PACOG Travel Demand Model program to run scenarios involving roadway improvements and construction on new transportation routes to evaluate costs and benefits.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 24, 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 AMENDING ZONING RESTRICTIONS TO REZONE A PORTION OF LOTS 15, 16, 17, AND ALL OF 18 TO 21, BLOCK 2, DELAVAN PLACE SUBDIVISION FROM B-4, CENTRAL BUSINESS DISTRICT TO R-5, MULTIPLE RESIDENTIAL AND OFFICE DISTRICT

SUMMARY:

The applicant is requesting to rezone one parcel (.5 acres), located in the Corona Park/Blocks neighborhood just southeast of 4th Street and Chapa Place from B-4, Central Business District to R-5, Mixed-Residential and Office District to facilitate the development of a new apartment complex. The applicant is concurrently requesting to vacate portions of Sumner Avenue, Pearl Street and Burdette Avenue and is also requesting a rearrangement of property boundaries (RPB-22-08).

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The applicant is requesting to rezone the .5-acre property from B-4 to R-5, Mixed Residential District to support the construction of a new apartment complex. The site is located in the Corona Park/Blocks neighborhood just southeast of 4th Street and Chapa Place. The purpose of the R-5 Zone District is "designed to retain and provide areas of high-density multifamily dwelling unit structures with limiting commingling of professional offices and studios." The applicant's intended use is categorized as "Residence, multifamily" and is a Use By Right in the proposed R-5 Zone District. The area is designated as Parks and Open Space Land Use Category since it was recently owned by the Pueblo Conservancy District. This parcel is zoned B-4 and after being rezoned will be combined into a 3.1-acre development site through a rearrangement of property boundaries. The applicant is concurrently applying to vacate Pearl, portions Sumner, and Burdette streets while providing easements for access and utilities to complete the development site. The applicant has provided a conceptual site plan detailing a six story, 97-unit apartment building with a 18,745 square foot footprint with an expansive parking lot surrounding the building. The applicant will be providing 145

parking spaces or 1.45 per unit. The development will require a rearrangement of property boundaries, as well as an approved development agreement with the City of Pueblo before a building permit can be issued. The property is also required to have 50% of the parcel in landscaped open space since the proposed building is more than four stories. If a public park is within ¼ mile of the property, the applicant can pay cash in lieu of an open space dedication for the portion of the open space dedication that is under the 50% requirement. The proposed rezoning is not in full conformance with the Pueblo Regional Comprehensive Plan but is in conformance with the existing pattern of development in the immediate area and the adjacent category most representative of its development potential.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their September 14, 2022 Regular Meeting, voted 5-0 to recommend approval. Commissioners Martinez and Pasternak absent.

STAKEHOLDER PROCESS:

The Planning Department sent out Notice of the Planning and Zoning Commission Public Hearing to all property owners located within 300 feet of the subject property.

A Public Notice poster was placed on the subject property 15 days prior to the Public Hearing.

ALTERNATIVES:

If City Council does not approve this Ordinance the property will not be zoned in accordance with the Pueblo Municipal Code.

Upon request of City Council, the Ordinance could be returned to the Planning and Zoning Commission for consideration of proposed modifications.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Z-22-13 Bluffs Rezoning

ORDINANCE NO.

AN ORDINANCE AMENDING ZONING RESTRICTIONS TO
REZONE A PORTION OF LOTS 15, 16, 17, AND ALL OF 18 TO
21, BLOCK 2, DELAVAN PLACE SUBDIVISION FROM B-4,
CENTRAL BUSINESS DISTRICT TO R-5, MULTIPLE
RESIDENTIAL AND OFFICE DISTRICT

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

SECTION 1.

The zoning restrictions covering the following described property, and in addition half of all adjacent dedicated roadway and alley rights-of-way, together generally identified in the attached Rezone Exhibit, is hereby changed from B-4 Central Business District to R-5, Multiple Residential and Office Zone District:

LOTS 15, 16 AND 17, EXCEPTING THAT PORTION CONVEYED TO THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, A DELAWARE CORPORATION BY DEED RECORDED NOVEMBER 21, 1921 IN BOOK 529 AT PAGE 92, AND LOTS 18 TO 21, INCLUSIVE, BLOCK 2, DELAVAN PLACE, COUNTY OF PUEBLO, STATE OF COLORADO

SECTION 2.

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 3.

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.

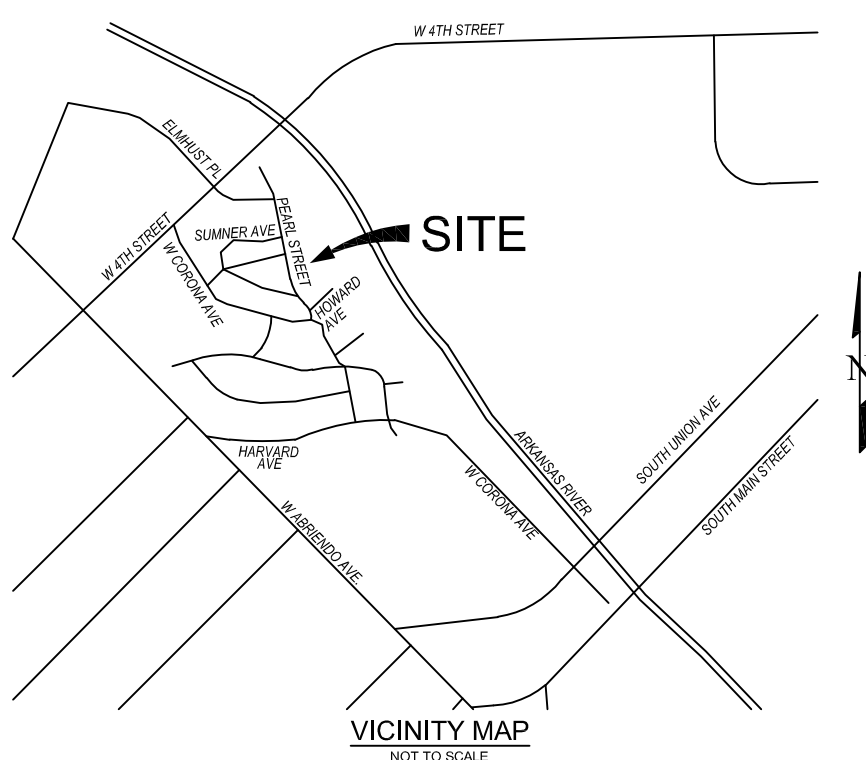
President of City Council

ATTEST

City Clerk

THE BLUFFS REZONE EXHIBIT

A PORTION OF LOTS 15, 16, AND 17, AND ALL OF LOTS 18 THROUGH 21, BLOCK 2, DELAVAN PLACE
BEING A PORTION OF THE WEST 1/2 OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 65 WEST
OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF PUEBLO, PUEBLO COUNTY, COLORADO



LEGAL DESCRIPTION:

LOTS 15, 16 AND 17, EXCEPTING THAT PORTION CONVEYED TO THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, A DELAWARE CORPORATION BY DEED RECORDED NOVEMBER 21, 1921 IN BOOK 529 AT PAGE 92, AND LOTS 18 TO 21, INCLUSIVE, BLOCK 2, DELAVAN PLACE, COUNTY OF PUEBLO, STATE OF COLORADO

LEGEND:

- AREA TO BE REZONED R-5
- *CURRENT OWNER* B-4
- PUEBLO COUNTY ASSESSOR'S PROPERTY INFORMATION AND EXISTING ZONE

NOTICE:
ACCORDING TO COLORADO LAW YOU **MUST** COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

REVISIONS		DATE
NO.	DESCRIPTION	

EDWARD-JAMES SURVEYING, INC.

926 Elton Drive
Colorado Springs, CO 80907
Office: (719) 576-1216
Fax: (719) 576-1206

4732 Eagleridge Circle
Pueblo, CO 81008
Office: (719) 545-6240
Fax: (719) 545-6247



THE BLUFFS REZONE EXHIBIT

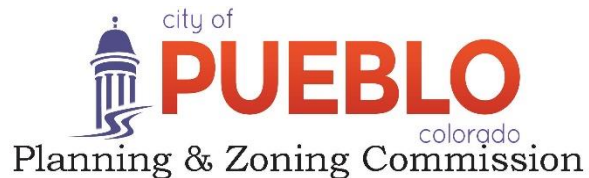
A PORTION OF LOTS 15, 16, & 17, & ALL OF LOTS 18 THROUGH 21, BLOCK 2, DELAVAN PLACE
BEING A PORTION OF THE WEST 1/2 OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 65 WEST
OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF PUEBLO, PUEBLO COUNTY, COLORADO

DRAWN BY	JWT
CHECKED BY	ERF
H-SCALE	1" = 20'
JOB NO.	2299-00
DATE CREATED	6/28/22
DATE ISSUED	XX/XX/XX
SHEET NO	1 OF 1

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, September 14, 2022 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

Join Zoom Meeting online:

<https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGbnlCdHRrUHNFZnpPWG1Ydz09>

Join Zoom Meeting by phone:

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

Online and phone Meeting ID and Password:

Meeting ID: 927 1786 7722

Passcode: 195462

Each case that follows proceeded in a uniform process as directed by Chair Castellucci. Beginning with a staff report presented by the planner assigned, then questions, if any, from the Board to staff members. Next, the applicant is sworn in by Commission Attorney, Daniel Kogovsek, then the applicant states his or her name and address. The Commission questions the applicant and confirms understanding of staff report and conditions for approval. Applicant may add further information, followed by questions, if any, from the Commission. Then the Commission asks if anyone present in the audience wishes to testify in support of the application, followed by those who wish to testify in opposition. All individuals testifying in support or opposition are sworn in by Commission Attorney, Kogovsek. Then the Commission closes the public hearing. Finally, the Commission may motion to recommend approval or denial of the application to City Council.

MEETING CALLED TO ORDER

The meeting was called to order at 3:32 p.m. with Commissioner Castellucci presiding.

Commissioners Present: Mike Castellucci, Patrick Avalos, Cheryl Spinuzzi, Alexandra Aznar, and Lisa Bailey.

Commissioners Absent: Sarah Martinez and Christopher Pasternak

Staff Members Present: Dan Kogovsek, City Attorney; Scott Hobson, Acting Director for Department of Planning and Community Development; Beritt Odom, Principal Planner; Wade

Broadhead, Senior Planner; Melanie Turner, Transportation Engineer; Laura Solano, Chief of Staff; and Joe Martellaro, Associate Engineer II.

APPROVAL OF THE AGENDA: Bailey moved to approve the September 14, 2022, agenda with the following modifications:

Cases Z-22-05, S-22-03, and SAP-22-01, continued to the October 12, 2022, Planning and Zoning Commission Public Hearing. Motion was seconded by Aznar. Motion passed 4-0 (Martinez, Pasternak, and Avalos absent)

PUBLIC MEETING AND ACTION

1. 2023-2027 Proposed Capital Improvement Plan-Chief of Staff, Laura Solano, presented the draft 2023-2027 Proposed Capital Improvement Plan. Ms. Solano will present the final plan in November for Planning and Zoning Commission recommendation to City Council.

PUBLIC HEARING AND ACTION

REGULAR AGENDA

5. **Z-22-13 Rezoning: Bluffs, Parcel 536208002**, a portion of Lots 15, 16, 17 and all of lots 18 to 21, Block 2, Delavan Place Subdivision. Approximately .5 acres being rezoned from Central Business District (B-4) to Multiple Residential and Office District (R-5). Staff report by Wade Broadhead.

Public Hearing:

Applicants, David Copperman and John Wark, were sworn in by City Attorney Kogovsek and testified in support of the application.

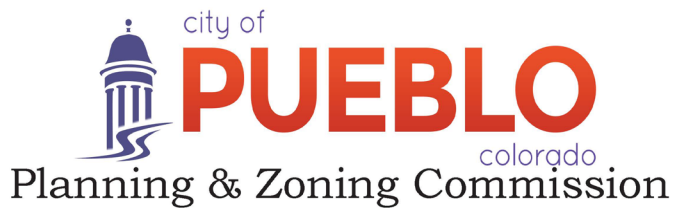
Commission action: Bailey moved to recommend approval to City Council. Second by Spinuzzi.

Motion passed: 5-0 (Martinez and Pasternak absent)

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

Z-22-13

TO: City of Pueblo, Planning and Zoning Commission

FROM: Wade Broadhead, Sr. Planner

THROUGH: Scott Hobson, Acting Director of Planning and Community Development

DATE: September 14, 2022

SUBJECT: Rezone from B-4, Central Business District to R-5, Multiple Residential and Office District

APPLICANT: David Copperman

PROPERTY OWNER: Inhabx

LOCATION: A portion of Lots 15, 16, 17 and all of lots 18 to 21, Block 2, Delavan Place Subdivision

CONCURRENT REQUESTS: #1 V-22-06, Vacation of portions of Pearl, Sumner, and Burdette.
#2 RPB-22-08, Rearrangement of Property Boundaries.

REQUEST:

The applicant is requesting to rezone one parcel (.5 acres), located in the Corona Park/Blocks neighborhood just southeast of 4th Street and Chapa Place, from B-4 Central Business to R-5, Mixed-Residential and Office District to facilitate the development of a new apartment complex.

BACKGROUND AND ANALYSIS:

The applicant is requesting to rezone the .5-acre property from B-4 to R-5 Mixed Residential District to support the conduction of a new apartment complex. The site is located in the Corona Park/Blocks neighborhood just southeast of 4th Street and Chapa Place. The purpose of the R-5 Zone District are “designed to retain and provide areas of high density multifamily dwelling unit structures with limiting commingling of professional offices and studios.” The applicant’s intended use is categorized as “Residence, multifamily” and is a Use By Right in the proposed R-5 Zone District. The area is designated as Parks and Open Space Land Use Category, since it was recently owned by the Pueblo Conservancy District. This parcel is zoned B-4 and after being rezoned will be combined into a 3.1 acres development site through a rearrangement of property boundaries RPB-22-08. The applicant is concurrently applying to vacate Pearl, portions Sumner, and Burdette streets while providing easements for access and utilities to complete the development site.

The applicant has provided a conceptual site plan detailing a six story, 97-unit apartment building with a 18,745 sq ft footprint with an expansive parking lot surrounding the building. The applicant will be providing 145 parking spaces or 1.45 per unit. The development will require a rearrangement of property boundaries, as well as an approved development agreement with the City of Pueblo before a building permit can be issued. The

property is also required to provide 50% of the parcel in landscaped open space since the proposed building is more than four stories. The applicant will need to pay cash in lieu of open space dedication or provide the open space on site. The proposed rezoning is in not in conformance with the Pueblo Regional Comprehensive Plan but is in conformance with the existing pattern of development in the immediate area and the adjacent category most representative of its development potential.

PLANNING AND COMMUNITY DEVELOPMENT COMMENTS

CHARACTER AND COMPATIBILITY:

Site Character:

The subject property is currently unimproved land along the western bluff of the Arkansas River and will be subdivided before development.

Neighborhood Compatibility:

North	B-4 and S-3, river trail, Arkansas river, and vacant restaurant
East	S-3 and river trail, Arkansas river and railroad yards
South	R-5, Single Family Housing
West	R-5 and B-4, Single family housing, mini storage, apartments, church, office buildings

Comprehensive Plan Compliance:

- The project site has been designated by the Pueblo Comprehensive Plan as “Parks and Open Space.” According to the Pueblo Comprehensive Plan, *Parks and Open Space*, are found at varied locations throughout the City and County. This property, as well as others, along the Arkansas River were owned by the Pueblo Conservancy District and sold to a private owner. The Comprehensive Plan Future Land Use Map did not note the change in the status of the property from flood conservancy ownership to private development in the current map. The category adjacent and most similar is Neighborhood Mixed Use which allows supporting land uses to have multifamily dwellings and has a density of typically up to 16 dwelling units an acre but may be higher based on community and neighborhood context. This particular parcel is located a good distance from an arterial street and a portion is unbuildable, regardless of the proposed development it is more appropriately zoned R-5 than B-4. The proposed R-5, Mixed-Residential and Office District is not in conformance with the current future land use category but it is in conformance with the adjacent future land use category Neighborhood Mixed Use of the Pueblo Regional Comprehensive plan.

ABILITY TO COMPLY WITH THE PROPOSED ZONE DISTRICT:

Minimum lot size, width and area:

The proposed .5-acre lot meets the minimum lot area. Based on number of units the minimum lot size is 97,000 square feet and the property contains over 135,000 square feet.

The proposed lot has frontages over 200 feet-foot lot width, which meets the minimum 50-foot lot width minimum.

❑ **Lot coverage:**

- The R-4 Zone District allows a maximum lot coverage of 50-percent.
- The preliminary plan shows lot coverage at less than 13%

❑ **Zone District Performance Standards:**

The R-5 Zone District Performance Standards (Sec. 17-4-4(b)(2) provide the requirements relating to minimizing the impact of the development on the surrounding neighborhood, since the proposed development is planned at 132 units, development must comply with Section 17-4-4(a)(1) & (2) below:

- (1) Three (3) to Five (5) family unit structures shall have one thousand five hundred (1,500) square feet of lot area per dwelling area.
- (2) Six (6) or more family dwelling unit structures shall have a minimum of eight thousand (8,000) of lot area or one thousand (1,000) square feet per dwelling unit, whichever is greater and, other permitted uses shall provide at least five thousand (5,000) square feet of lot area. Residential structures, if one (1) to three (3) habitable stories, shall provide at least twenty percent (20%) in landscaped open space; or if four or more habitable stories, shall provide at least fifty percent of the parcel in landscaped open space. The performance standards in Section 17-4-5 shall apply in the R-5 District.

The applicant needs 97,000 square feet of lot area to conform to the code requirements and presently they have approximately 135,984 square feet for development. The project is required to provide 50% required landscaped area since the proposed building is six stories which is 67,992 square feet. The plan sets shows that they will have 15,959 landscaped areas including patios and rooftop deck.

APPLICATION REQUIREMENT PER §17-6-1 OF THE PUEBLO MUNICIPAL CODE

The applicant's name and address and the name and address of any person, firm or corporation represented by such applicant in the application

- ❑ Comments **The application contains applicant's information.**

The interest of the applicant and the interest of the person, firm or corporation represented by the applicant, be it legal, sales development, operation or other interest.

- ❑ Comments **The property owner has signed the application.**

The nature of the amendment and a legal description of the property that would be affected by the amendment.

- ❑ Comments **A full legal description of the property was provided with the application and is attached to the staff report.**

A general description of the proposed development to the distance which will be affected; such description including subjects of environmental effect, economic effect and traffic effect, if any; and such description carried out in scope and detail to the extent needed to support the requested amendment and as may be required by the Planning and Zoning Commission.

- ❑ Comments **The applicant proposes to implement a new apartment use.**

A tentative site plan showing proposed structures, uses, open spaces, facilities for parking and loading and arrangements for pedestrian and vehicular circulation.

- ☐ Comments **A site plan is attached to the staff report and will be submitted separately for commercial site plan review.**

A statement of the proposed time schedule for beginning and completion of development.

- ☐ Comments **The applicant will begin development in 2023.**

A statement reasonably indicating the applicant's economic responsibility and capability of accomplishing the development for which a zoning amendment is requested.

- ☐ Comments **The applicant has a track record of executing large scale apartment projects in Colorado.**

REFERRAL AGENCIES AND COMMENTS:

- City Public Works-No comment
- City Transportation-No comment
- City Law Department-No comment
- Pueblo Regional Building Department-No comment
- City Fire Department-No comment
- City Wastewater-No comment
- City Stormwater-No comment
- City Parks and Recreation Department-No comment
- Xcel Energy-No comment
- Black Hills Energy-No comment
- CDOT-No comment

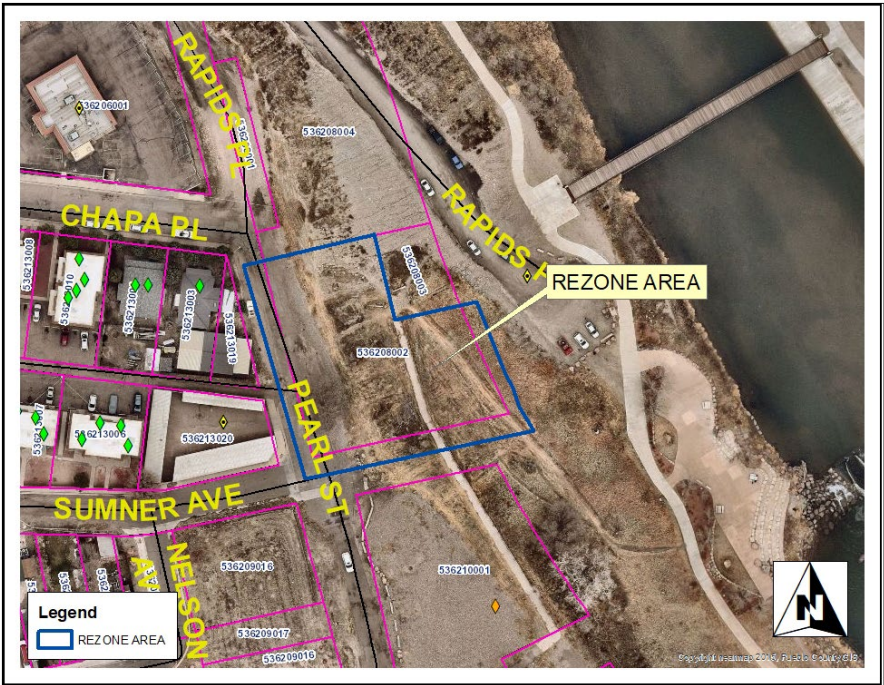
RECOMMENDED ACTION:

Staff recommends the Planning and Zoning Commission make a recommendation to City Council that the zoning map amendment be **APPROVED**:

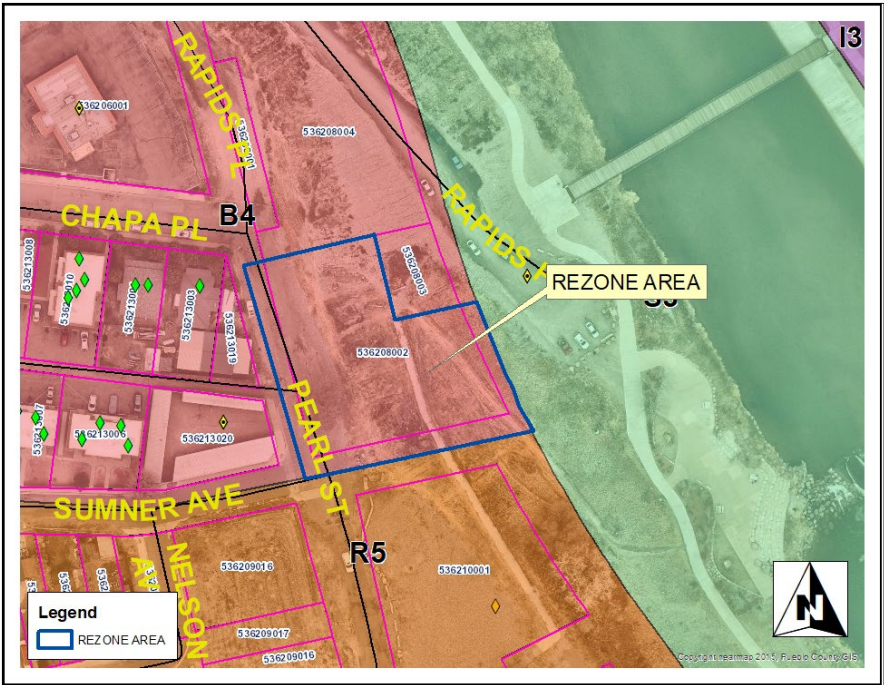
ATTACHMENTS:

- A. **Arial Photograph**
- B. **Zoning Map**
- C. **Comprehensive Plan Map**
- D. **Site Photographs**
- E. **Application**
- F. **Rezoning Exhibit**
- G. **Proposed Site Plan and Elevations**

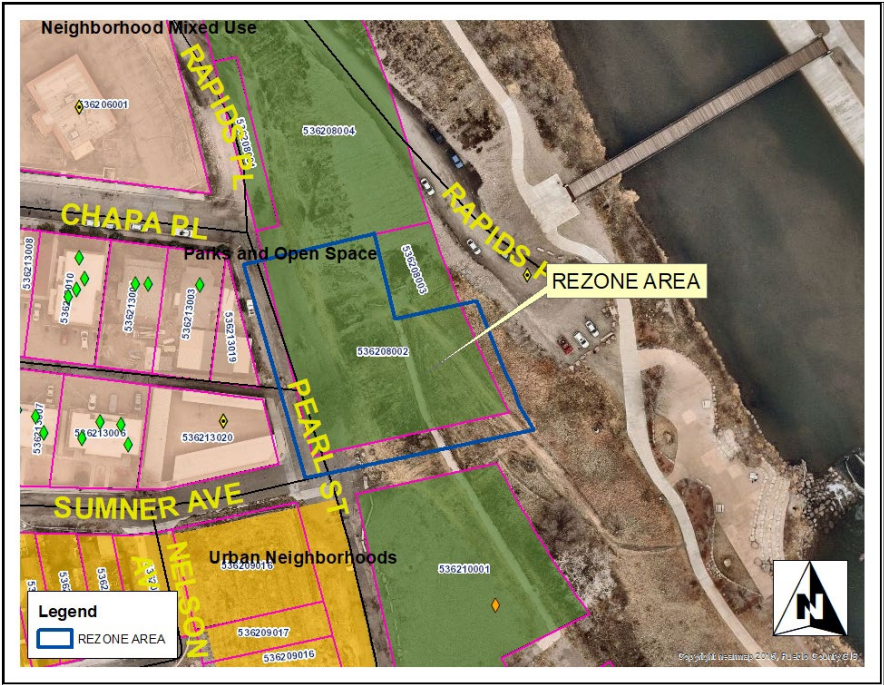
ATTACHMENTS:



A. Aerial Photograph



B. Zoning Map



C. Comprehensive Plan Map



Site overview looking southeast



Site overview photo looking northeast



Edge of site looking east toward the Arkansas River



Planning & Community Development

211 East D Street | Pueblo, Colorado 81003 | Tel 719-553-2259 | Fax 719-553-2359 | TTY 719-553-2611 | www.pueblo.us

Planning & Zoning Application

Please type or print clearly. Illegible applications will not be accepted. Case #: _____

Contact Info	Property Owner		Applicant	
	Name:		Name: David Copperman	
	Company: Bluffs Opportunity Zone Business LLC		Company: Bluffs Opportunity Zone Business LLC	
	Address: PO Box 6771, Denver CO	Zip: 80220	Address: PO Box 6771, Denver CO	Zip: 80220
	Phone: (415) 515.3484		Phone: (415) 515.3484	
	Email: dc@creamos.co		Email: dc@creamos.co	
	Engineer		Surveyor	
	Name: Eric Burtzlaff		Name: Edward Fisher	
	Company: Raptor Civil Engineering, LLC		Company: Edward James Surveying, Inc.	
	Address: 8620 Wolff ct, Suite 105B		Address: 4732 Eagleridge cir, Pueblo	
Zip: 80031		Zip: 81008		
Phone: (720) 774.7736		Phone: (719) 545.6240		
Email: eric@raptor-civil.com		Email: edwardf@ejssurveying.com		
The applicant will be the primary contact unless otherwise noted.				
Property Info	Project Location: 5600 Pearl St			
	(address or general description)			
	Parcel No(s): 536208002			
	Existing Zone: B4		Proposed Zone (if applicable): R5	
Project Scope	PUD Name (if applicable):			
	Project Name: Bluffs			
	☐ Rearrangement of Property Boundaries: # of existing lots: _____ Total acres: _____			
	☐ Overall Development Plan			
	☐ Site Plan Review: Building area: _____ sf ☐ HARP ☐ Development Plan ☐ PUD ☐ Student Housing			
	☐ Special Area Plan			
	☐ Street Name Change: Existing Name: _____ Proposed Name: _____			
	☐ Subdivision: # of lots: _____ Total acres: _____			
	☐ Text Amendment			
	☐ Vacation: ☐ Street ☐ Alley ☐ Easement ☐ Other: _____			
☒ Other: Rezoning				

(Continue Next Page)

5/2020

(Continued from previous page)

Project Information	Provide a brief description of the proposed request: A portion of our site is B4, the remainder is R5 (Parcels 53621001, 53632007, 536209015, 536320001.) We wish to down zone, from commercial to residential, the portion that currently is B4 so that all of our parcel is zoned R5.		
	What is the total acreage included in the project? .525 acres to be rezoned		
	What is the proposed use of the property? 2.1 acres (pre-vacations)		
	☐ Commercial ☒ Multi-family ☐ Residential ☐ Industrial ☐ Other		
	Are there any other pending or recently approved Land Use applications regarding this property? ☒ Yes ☐ No		
	If yes, please list: Rearrangement of property boundaries, and a request to vacate streets.		
Attachments	Attachment Checklist		
	The following list of attachments are required to accompany all applications: ☒ A. CD with DWF and DWG and DWG (Autocad) file of all plans and drawings & a PDF of all documents submitted. ☐ B. Pueblo County Assessor's Property Information print out (www.co.pueblo.co.us) ☒ C. Additional information as required by the P&Z Submittal Requirements Sheet.		
Terms	By signing below, the Property Owner and Applicant are representing that each understands and agrees to the following terms:		
	1. Authorized personnel from the City of Pueblo, are hereby granted the right to enter the subject property for the purposes of reviewing and processing the application, including Certificate of Occupancy Inspections. 2. There are no known hazards or vicious animals present on the subject property. 3. All information contained in this application, is true and accurate to the best of my knowledge. 4. The City of Pueblo is under no obligation to approve the request contained in this application. No promises of approval are conveyed with the acceptance of this application. 5. It is highly recommended that a licensed surveyor complete a property survey before any construction takes place. The property owner is responsible for any construction that takes place within the boundaries of their property. The city may require any construction built outside of the property legal boundaries or within any setbacks (by intent or error), to be removed at the owners' expense.		
Signatures	Property Owner		
	Print Name:	David Copperman	
	Signature:		Date: 7/8/2022
	Applicant, if different from Property Owner		
	Print Name:	David Copperman	
	Signature:		Date: 7/8/2022

Office Use Only	Zoning Compliance (Completed by City Staff)		
	Application checked for completeness by:	Date:	Fee Paid:

A PORTION OF LOTS 15, 16, AND 17, AND ALL OF LOTS 18 THROUGH 21, BLOCK 2, DELAVAN PLACE
BEING A PORTION OF THE WEST 1/2 OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 65 WEST
OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF PUEBLO, PUEBLO COUNTY, COLORADO

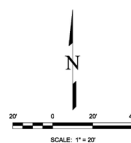


NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.



LEGAL DESCRIPTION

LOTS 15, 16 AND 17, EXCEPTING THAT PORTION CONVEYED TO THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, A DELAWARE CORPORATION BY DEED RECORDED NOVEMBER 21 1921 IN BOOK 529 AT PAGE 92, AND LOTS 18 TO 21, INCLUSIVE, BLOCK 2, DELAVAN PARK, COUNTY OF PUEBLO, STATE OF COLORADO



LEGEND:

 AREA TO BE REZONED R-5*CURRENT OWNER*
B-4[illegible]

**EDWARD-JAMES
SURVEYING, INC.**
926 Elkton Drive
Colorado Springs, CO 80907
Office: (719) 576-1216
4732 Eaglelake Circle
Pueblo, CO 81008
Office: (719) 545-6240



THE BLUFFS REZONE EXHIBIT

THE BLUFFS REZONE EXHIBIT

CREATED BY	JM
------------	----

CHECKED BY _____

H-SCALE	100
LOG NO.	0000

JOB NO.	22994
DATE CREATED	6/28/01
DATE ISSUED	XXXXXX

SHEET NO 1 OF



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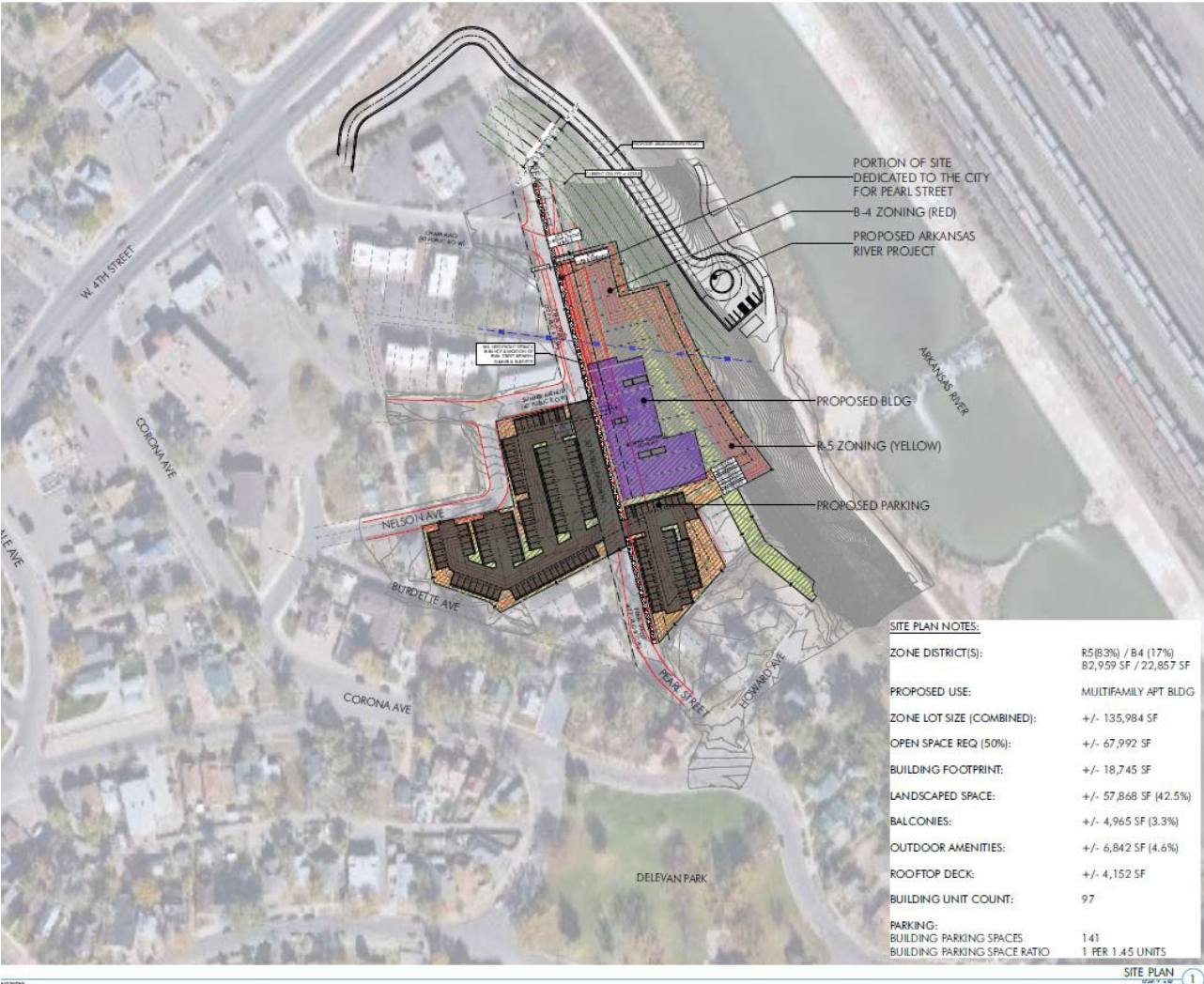
THE BLUFFS
MULTIFAMILY

560 PEARL STREET
PUEBLO, CO 81004

COVER

07/11/22

SRC PRE-APP



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**THE BLUFFS
MULTIFAMILY**

560 PEARL STREET
PUEBLO, CO 81004

PRELIMINARY
ARCHITECTURAL SITE
PLAN

07/11/22

SRC PRE-APP

LANDSCAPE LEGEND

- Ground Covers

- STACK 

560 PEARL STREET
PUERTO RICO 00804

PROJECT MEMBER	DATE
SCHEMATIC DESIGN	5/6/22
00% SD	5/7/22
10% SD	6/16/22
100% SD	6/30/22
100% SD	7/5/22

LANDSCAPE DESIGN

LA.01



535 East Mexico Avenue
Denver, Colorado 80210
Phone: 303.722.9988
www.venturearchitecture.com



325 East Mexico Avenue
Denver, Colorado 80210
Phone: 303.722.9968
www.harknesschocolate.com

560 PEARL STREET
PUEBLO, CO 81004

PRELIMINARY LANDSCAPE
DESIGN CONCEPT

07/11/22

SRC PRE-APP

August 26, 2022

This is to inform you that the City Planning and Zoning Commission will hold a public hearing on a request by **David Copperman** for the approval of the following application:

Rezone (Z-22-13): (Parcel 536208002), a portion of lots 15,16, 17 and all of lots 18-21 lots Block 2, Delavan Place Subdivision: rezoning approximately .5 acres generally located **at the intersection of Pearl and Chapa Streets** from Central Business District (B-4) Zone District to Multiple Residential and Office District (R-5) Zone District.

The Planning and Zoning Commission meeting will be held on September 14, 2022, at 3:30 p.m., by Zoom: Meeting ID:927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799 US (Houston)) or in-person at 1 City Hall Pl (3rd Floor City Council Chambers).

You are welcome to attend this public hearing and express your viewpoint concerning this proposal. To review the plans and staff report for the proposed application, please visit www.pueblo.us/PandZ and click on “Most Recent Agenda” no sooner than the Friday prior to the hearing. **Please contact the planner listed below if you have questions.**

Scott Hobson, Director
Planning & Community Development
Wade Broadhead, Sr. Planner
(719) 553-2280

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Scott Hobson, Director
Planning & Community Development
Wade Broadhead, Sr. Planner
(719) 553-2280

CERTIFICATION

I hereby certify that I did this day cause written notice of the public hearing on the proposed Zoning Map Amendment of the (Parcel 536208002), a portion of lots 15,16, 17 and all of lots 18-21 lots Block 2, Delavan Place Subdivision: rezoning approximately .5 acres generally located at the intersection of Pearl and Chapa Streets to be sent to the attached list of owners of the real property line within three hundred (300) feet of the said property on which the Zoning Map Amendment is proposed by depositing the same properly addressed and postage paid in the post office, as set forth in the Code of Ordinances, Section 17-6-2.

8-26-22

(Date)

PUEBLO PLANNING AND ZONING COMMISSION

By Karen Elgin

I hereby certify that I did this day verify and photograph the posted notice of the public hearing on the Zoning Map Amendment of the (Parcel 536208002), a portion of lots 15,16, 17 and all of lots 18-21 lots Block 2, Delavan Place Subdivision: rezoning approximately .5 acres generally located at the intersection of Pearl and Chapa Streets, upon which action is pending as set forth in the Code of Ordinances, Section 17-6-2.

8-26-22

(Date)

PUEBLO PLANNING AND ZONING COMMISSION

By Karen Elgin

Owner	OwnerStreet	OwnerCity	OwnerState	OwnerZip
NEY ROUN/NEY VAN N	1 CLARENDON CT N	PALM COAST	FL	32137-8353
CHAPA APARTMENTS LLC	1120 CHEROKEE ST	DENVER	CO	80204-3633
553 PEARL ST LLC	1457 MADISON ST APT 1	DENVER	CO	80206
D + RG RR R/W + C/O PROPERT	1700 FARNAM ST FL S	OMAHA	NE	68102-2022
HERRING JAMES A/HERRING K	220 NELSON AVE	PUEBLO	CO	81004-1228
ACOSTA HERALDO A/LUCERO	221 NELSON AVE	PUEBLO	CO	81004-1227
MARTINEZ SARAH L	233 NELSON AVE	PUEBLO	CO	81004-1227
CLEMMER SETH THOMAS/CLEI	234 CHAPA PL	PUEBLO	CO	81004-1215
SKUBAL SHANNON R/SKUBAL	302 E ADAMS AVE	PUEBLO	CO	81004-2126
THORLEY MICHAEL	431 W ORMAN AVE	PUEBLO	CO	81004-1856
MILLER DOUGLAS	522 LINDA VISTA AVE	PUEBLO	CO	81005-1711
HUNTER WAYNE A	607 HEWITT ST	PUEBLO	CO	81005-1524
NEW BEGINNINGS MINISTRIES	631 W CORONA AVE	PUEBLO	CO	81004-1216
CORZINE COLLEEN/CORZINE JI	730 W ORMAN	PUEBLO	CO	81004-1428
JONES TAMMY + METZ DANIE	8156 S WADSWORTH BLVD UNIT I	LITTLETON	CO	80128-9114
ANTONIONI STANLEY	937 CHERRYCREST DR	PUEBLO	CO	81005-5517
INHABX, LLC	PO BOX 1022	PUEBLO	CO	81002-1022
CITY OF PUEBLO A MUNICIPAL	PO BOX 1427	PUEBLO	CO	81002-1427
TURNER VICTORIA/TURNER L I	PO BOX 895	PUEBLO	CO	81002



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 24, 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 VACATING A PORTION OF SUMNER AVENUE, PEARL STREET AND BURDETTE AVENUE GENERALLY LOCATED AT SUMNER AVENUE AND PEARL STREET

SUMMARY:

The applicant is requesting to vacate portions of three streets, Sumner Avenue, Pearl Street and Burdette Avenue.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

As part of a larger parcel assemblage for the purposes of erecting a new six story apartment complex and associated parking facilities, the applicant is proposing to vacate portions of three different streets and dedicate a 10-foot by 170-foot strip for Pearl Street extending north from Burnette Avenue to Sumner Avenue. The resulting land and portions of the vacated rights-of-way will be rearranged with case RPB-22-08 into one lot. The entire width of the eastern 170-feet of Sumner Avenue will be vacated. This section of Sumner dead ends at the steep bluff edge and provides no neighborhood connectivity. This section of vacated Sumner Avenue will be covered by the apartment building foundation. The entire 40-feet of Pearl Street (9,562 sq ft) between Sumner Avenue and Burdette Avenue will be vacated. Pearl Street is being vacated to facilitate construction of a six-story multifamily residential structure adjacent to the existing Pearl Street Roadway. If Pearl Street is not vacated, the R-5 Zone District would require a 25-foot setback from the property line adjacent to Pearl Street. Geographic site constraints provide minimal developable area, a 25-foot setback would render the development unfeasible. The vacation plat reserves a public ingress and egress easement, and public utility easement along the western 30-feet of vacated Pearl Street. The access reservation will allow utilities to remain in place and allow residents of the multifamily structure and the neighborhood to utilize Pearl as a public roadway. This section of Pearl Street will be developed according to the City's private roadway standards, including paved roadway and sidewalks. Finally, an irregular 217-

foot segment (6,992 sq/ ft.) of Burdette Avenue will be vacated; this street dead ends at the edge of the bluff. The western section of Burdette was previously vacated and developed with a single-family residence. The applicant owns all but two parcels adjacent to Burdette Avenue. The portions of Burdette Avenue that are not proposed to be vacated provide rear access to the two parcels held in separate ownership. A 23-foot-wide access easement, providing access from vacated Pearl Street to the rear portion of the parcels, in separate ownership, will be accepted by the City to ensure those parcels have adequate access to public rights-of-way if they were to develop in the future.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at their September 14, 2022, Regular Meeting, voted 5-0 to recommend approval. Commissioners Martinez and Pasternak absent.

STAKEHOLDER PROCESS:

The Planning Department sent out Notice of the Planning and Zoning Commission Public Hearing to all property owners located within 300 feet of the subject property.

A Public Notice poster was placed on the subject property 15 days prior to the Public Hearing.

ALTERNATIVES:

If City Council does not approve this Ordinance, Fir Street and multiple drainage and public utility easements would remain which will impede development of the site.

Upon request of City Council, the Ordinance could be returned to the Planning and Zoning Commission for consideration of proposed modifications.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. V-22-06 Pearl, Sumner, Burdette

ORDINANCE NO.

AN ORDINANCE VACATING A PORTION OF SUMNER AVENUE, PEARL STREET AND BURDETTE AVENUE GENERALLY LOCATED AT SUMNER AVENUE AND PEARL STREET

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

SECTION 1.

The following described street and drainage and public utility easements:

PORTIONS OF RIGHT-OF-WAY'S AS PLATTED IN DELAVAN PLACE, UNDER RECEPTION NUMBER 41969 RECORDS OF PUEBLO COUNTY, STATE OF COLORADO, BEING A PORTION OF THE WEST 1/2 OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 65 WEST OF THE 6TH/ PRINCIPAL MERIDIAN COUNTY OF PUEBLO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BASIS OF BEARINGS: THE CENTERLINE OF NELSON AVENUE BEING MONUMENTED AT THE WESTERLY END BY A CITY OF PUEBLO MONUMENT BOX WITH A 2-1/2" ALUMINUM CAP STAMPED "PLS 31925" AT THE INTERSECTION OF NELSON AVENUE AND SUMNER AVENUE AND AT THE EASTERLY END BY A CITY OF PUEBLO MONUMENT BOX WITH A 2-1/2" ALUMINUM CAP STAMPED "PLS 31925" AT THE PC OF NELSON AVENUE, BEING ASSUMED TO BEAR N77°55'17"E, A DISTANCE OF 239.46 FEET.

RIGHT-OF-WAY VACATION - SUMNER AVENUE:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 21, BLOCK 2, DELAVAN PLACE, AS RECORDED UNDER RECEPTION NUMBER 41969, BEING ON THE NORTHERLY RIGHT-OF-WAY OF SUMNER AVENUE AS PLATTED IN SAID DELAVAN PLACE, SAID POINT BEING THE POINT OF BEGINNING, THENCE ON THE ARC OF A CURVE TO THE LEFT, HAVING A DELTA OF 01°58'49", A RADIUS OF 1,195.96 FEET, A DISTANCE OF 41.43 FEET, WHOSE CHORD BEARS S27°21'34"E, A DISTANCE OF 41.34 FEET TO A POINT ON CURVE, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID SUMNER AVENUE; THENCE S77°14'47"W, ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF SUMNER AVENUE, A DISTANCE OF 178.35 FEET; THENCE N12°45'13"W, A DISTANCE OF 40.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SUMNER AVENUE; THENCE N77°14'47"E, ON SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 167.93 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 6,921 SQUARE FEET OR 0.159 ACRES.

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COMMENCING AT THE NORTHEAST CORNER OF LOT 11, BLOCK 4, DELAVAN PLACE, AS RECORDED UNDER RECEPTION NUMBER 41969, BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF PEARL STREET AS PLATTED IN SAID DELAVAN PLACE, SAID POINT BEING THE POINT OF BEGINNING; THENCE N77°14'47"E, A DISTANCE OF 40.02 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID PEARL STREET; THENCE S14°37'03"E, ON SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 233.72 FEET; THENCE S62°14'02"W, A DISTANCE OF 41.08 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID PEARL STREET; THENCE N14°37'03"W ON SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 244.37 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 9,562 SQUARE FEET OR 0.220 ACRES.

RIGHT-OF-WAY VACATION - BURDETTE AVENUE:

COMMENCING AT THE MOST EASTERLY CORNER OF LOT 6, BLOCK 5, DELAVAN PLACE, AS RECORDED UNDER RECEPTION NUMBER 41969, BEING ON NORTHERLY RIGHT-OF-WAY LINE OF BURDETTE AVENUE, AS PLATTED IN SAID DELAVAN PLACE, SAID POINT BEING THE POINT OF BEGINNING; THENCE S36°53'04"E, ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID BURDETTE AVENUE, A DISTANCE OF 20.26 FEET TO THE CENTERLINE OF SAID BURDETTE AVENUE; THENCE S62°14'02"W, ON SAID CENTERLINE, A DISTANCE OF 57.34 FEET; THENCE S27°45'58"E, A DISTANCE OF 20.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BURDETTE AVENUE, SAID POINT BEING THE NORTHEAST CORNER OF LOT 6, BLOCK 6, SAID DELAVAN PLACE; THENCE S62°14'02"W ON SAID SOUTHERLY RIGHT-OF-WAY LINE, AND THE NORTHERLY BOUNDARY LINE OF SAID LOT 6, A DISTANCE OF 25.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE N27°45'58"W, A DISTANCE OF 20.00 FEET TO THE CENTERLINE OF SAID BURDETTE AVENUE THENCE S62°14'02"W, ON SAID CENTERLINE, A DISTANCE OF 42.27 FEET; THENCE S27°45'58"E, A DISTANCE OF 20.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BURDETTE AVENUE, SAID POINT BEING THE NORTHEAST CORNER OF LOT 4, BLOCK 6, OF SAID DELAVAN PLACE; THENCE S62°14'02"W, ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF BURDETTE AVENUE, A DISTANCE OF 105.46 FEET TO THE NORTHWEST CORNER OF LOT 1, BLOCK 6, OF SAID DELAVAN PLACE; THENCE N14°37'03"W, A DISTANCE OF 41.08 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID BURDETTE AVENUE; THENCE N62°14'02"E, ON SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 217.52 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 6,992 SQUARE FEET OR 0.161 ACRES.

are hereby vacated.

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 the policies and procedures described herein.

SECTION 3.

This Ordinance shall be approved but shall not become effective until the final vacation plat is recorded in the office of the Pueblo County Clerk and Recorder. If the vacation plat is not recorded within one (1) year after of this Ordinance, or within any extended period granted by Ordinance of the City Council, this Ordinance shall automatically be rescinded and repealed thirty (30) days after written notice of such rescission and repeal is given to the applicant. No vested rights shall accrue to the subdivision or be acquired until this Ordinance becomes effective.

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.

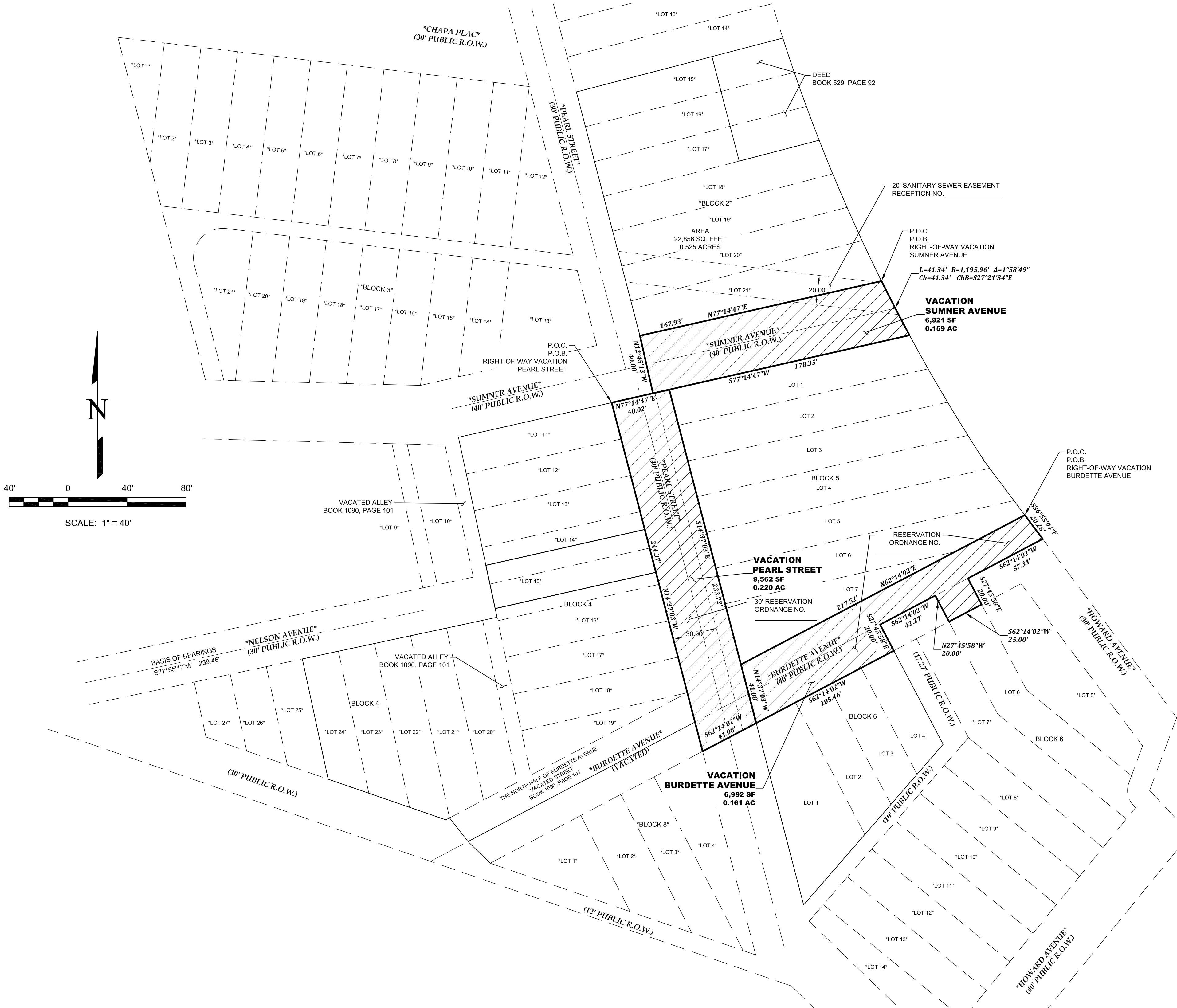
President of City Council

ATTEST

City Clerk

DELAVAN PLACE RIGHT-OF-WAY VACATION PLAT

A PORTION OF SUMNER AVENUE, A PORTION OF PEARL STREET, A PORTION OF BURDETTE AVENUE,
A PORTION OF THE WEST 1/2 OF SECTION 36, TOWNSHIP 20, SOUTH, RANGE 65 WEST OF THE 6TH P.M,
CITY OF PUEBLO, PUEBLO COUNTY, STATE OF COLORADO.



NOTICE:

ACCORDING TO COLORADO LAW YOU **MUST** COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

LEGAL DESCRIPTION:

PORTIONS OF RIGHT-OF-WAY'S AS PLATTED IN DELAVAN PLACE, UNDER RECEPTION NUMBER 41969 RECORDS OF PUEBLO COUNTY, STATE OF COLORADO, BEING A PORTION OF THE WEST 1/2 OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN COUNTY OF PUEBLO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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BASIS OF BEARINGS: THE CENTERLINE OF NELSON AVENUE BEING MONUMENTED AT THE WESTERLY END BY A CITY OF PUEBLO MONUMENT BOX WITH A 2-1/2" ALUMINUM CAP STAMPED "PLS 31925" AT THE INTERSECTION OF NELSON AVENUE AND SUMNER AVENUE AND AT THE EASTERLY END BY A CITY OF PUEBLO MONUMENT BOX WITH A 2-1/2" ALUMINUM CAP STAMPED "PLS 31925" AT THE PC OF NELSON AVENUE, BEING ASSUMED TO BEAR N77°55'17"E, A DISTANCE OF 239.46 FEET.

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CONTAINING A CALCULATED AREA OF 6,992 SQUARE FEET OR 0.161 ACRES.

PURPOSE:

REDEVELOPMENT

RESERVATIONS:

SUMNER AVENUE	NONE
PEARL STREET	A PORTION OF THE RIGHT-OF-WAY TO BE VACATED IS RESERVED AS A PUBLIC INGRESS AND EGRESS EASEMENT, AND PUBLIC UTILITY EASEMENT. SAID PORTION TO BE RESERVED IS THE WESTERN 30 FEET OF VACATED PEARL STREET.
BURDETTE AVENUE	THE RIGHT-OF-WAY TO BE VACATED IS RESERVED AS AN ACCESS EASEMENT TO MAINTAIN THE EXISTING STORM UTILITY LOCATED IN SAID RIGHT-OF-WAY. THE RESERVATION WILL BE TERMINATED UPON REMOVAL OF SAID UTILITY.
BURDETTE AVENUE	THE RIGHT-OF-WAY TO BE VACATED IS RESERVED AS AN ACCESS EASEMENT FOR LOTS 5, 6, AND 7, BLOCK 6, TO ALLOW SAID LOTS ACCESS TO EXISTING PUBLIC RIGHT-OF-WAY.

SURVEYOR'S STATEMENT:

I, EDWARD R. FISHER, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, DO HEREBY STATE THAT THIS VACATION PLAT HAS BEEN PREPARED UNDER MY RESPONSIBLE CHARGE IN AUGUST OF 2021 TO NORMAL STANDARDS OF CARE OF A PROFESSIONAL LAND SURVEYOR PRACTICING IN THE STATE OF COLORADO, AND IS IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE. THIS STATEMENT IS NOT A GUARANTY OR WARRANTY, EITHER EXPRESSED OR IMPLIED.

EDWARD R. FISHER, PROFESSIONAL LAND SURVEYOR
COLORADO P.L.S. NO. 38042
FOR AND ON BEHALF OF EDWARD-JAMES SURVEYING, INC.

ORDINANCE NO: _____

PLAT FILED FOR RECORD: _____

ORDINANCE RECEPTION NO: _____

PLAT RECEPTION NO: _____

NO.	REVISIONS	DESCRIPTION	DATE

EDWARD-JAMES SURVEYING, INC.

926 Elkton Drive
Colorado Springs, CO 80907
Office: (719) 576-1216
Fax: (719) 576-1206

4732 Eagleridge Circle
Pueblo, CO 81008
Office: (719) 545-6240
Fax: (719) 545-6247



**DELAVAN PLACE
RIGHT-OF-WAY VACATION PLAT**

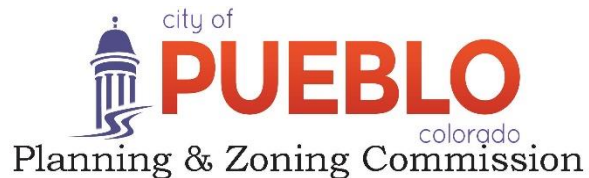
A PORTION OF THE WEST 1/2 OF SECTION 36, T20S, R65W OF THE 6TH P.M,
CITY OF PUEBLO, PUEBLO COUNTY, STATE OF COLORADO.

DRAWN BY	JWT
CHECKED BY	ERF
H-SCALE	1" = 40'
JOB NO.	2299-00
DATE CREATED	6/28/2022
DATE ISSUED	XX/XX/XX
SHEET NO	1 OF 1

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, September 14, 2022 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

Join Zoom Meeting online:

<https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGBnlCdHRrUHNfZnpPWG1Ydz09>

Join Zoom Meeting by phone:

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

Online and phone Meeting ID and Password:

Meeting ID: 927 1786 7722

Passcode: 195462

Each case that follows proceeded in a uniform process as directed by Chair Castellucci. Beginning with a staff report presented by the planner assigned, then questions, if any, from the Board to staff members. Next, the applicant is sworn in by Commission Attorney, Daniel Kogovsek, then the applicant states his or her name and address. The Commission questions the applicant and confirms understanding of staff report and conditions for approval. Applicant may add further information, followed by questions, if any, from the Commission. Then the Commission asks if anyone present in the audience wishes to testify in support of the application, followed by those who wish to testify in opposition. All individuals testifying in support or opposition are sworn in by Commission Attorney, Kogovsek. Then the Commission closes the public hearing. Finally, the Commission may motion to recommend approval or denial of the application to City Council.

MEETING CALLED TO ORDER

The meeting was called to order at 3:32 p.m. with Commissioner Castellucci presiding.

Commissioners Present: Mike Castellucci, Patrick Avalos, Cheryl Spinuzzi, Alexandra Aznar, and Lisa Bailey.

Commissioners Absent: Sarah Martinez and Christopher Pasternak

Staff Members Present: Dan Kogovsek, City Attorney; Scott Hobson, Acting Director for Department of Planning and Community Development; Beritt Odom, Principal Planner; Wade

Broadhead, Senior Planner; Melanie Turner, Transportation Engineer; Laura Solano, Chief of Staff; and Joe Martellaro, Associate Engineer II.

APPROVAL OF THE AGENDA: Bailey moved to approve the September 14, 2022, agenda with the following modifications:

Cases Z-22-05, S-22-03, and SAP-22-01, continued to the October 12, 2022, Planning and Zoning Commission Public Hearing. Motion was seconded by Aznar. Motion passed 4-0 (Martinez, Pasternak, and Avalos absent)

PUBLIC MEETING AND ACTION

1. 2023-2027 Proposed Capital Improvement Plan-Chief of Staff, Laura Solano, presented the draft 2023-2027 Proposed Capital Improvement Plan. Ms. Solano will present the final plan in November for Planning and Zoning Commission recommendation to City Council.

PUBLIC HEARING AND ACTION

REGULAR AGENDA

4. V-22-06 Vacation (street), portions of Pearl Street, Sumner Ave and Burdette Avenue. Full vacation of all of Sumner and easements east of Pearl St. Full vacation of Pearl St. from Sumner to Burdette. Partial vacation of Burdette east of Pearl St. Blocks 2, 3, 5, 6, 8, Devlan Place Subdivision. Staff report by Wade Broadhead

Public Hearing:

- Applicants, David Copperman and John Wark, were sworn in by City Attorney Kogovsek and testified in support of the application.
- Jean Latka was sworn in by City Attorney Kogovsek and testified in support and asked for additional coordination on traffic flow within the neighborhood.
- Seth Clemor was sworn in by City Attorney Kogovsek and testified in opposition.
- Colleen Corzine was sworn in by City Attorney Kogovsek and testified in opposition.
- Paris Latka was sworn in by City Attorney Kogovsek and testified in opposition.
- Laurie Zimmerman was sworn in by City Attorney Kogovsek and testified in opposition.

Commission action: Bailey moved to recommend approval to City Council with staff conditions noted in the staff report. Second by Spinuzzi.

Motion passed: Motion passed 5-0 (Martinez and Pasternak absent)



DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

TO: Beritt Odom, Principal Planner

CC: Michelle Cruz, Administrative Technician
Subdivision File

FROM: Andrew Hayes, Director of Public Workss

SUBJECT: V-22-06 Vacation of a Portion of Pearl St., Burdette Ave., and Sumner Ave.

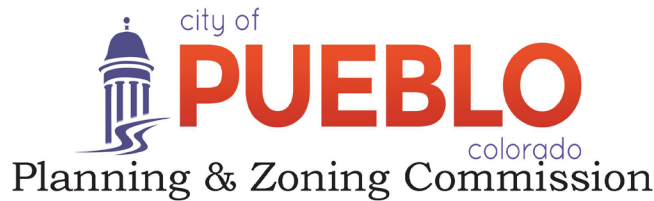
DATE: October 7, 2022

Please place the above referenced submittals on the City Council Agenda.

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

V-22-06

TO: City of Pueblo, Planning and Zoning Commission

FROM: Wade Broadhead, Sr. Planner

THROUGH: Scott Hobson, Acting Director of Planning and Community Development

DATE: September 14, 2022

SUBJECT: Vacation of portion of Sumner Avenue, portion of Pearl Street, a portion of Burdette Avenue

APPLICANT: Bluffs Opportunity Zone and Inhabx

OWNER: Same

LOCATION: Generally located at Sumner Ave and Pearl St.

CONCURRENT REQUESTS: Z-22-13, Rezone from B-4 to R-5
RPB-22-08 Bluffs Rearrangement of Property Boundaries

Request:

Vacation of portion of Sumner Avenue, portion of Pearl Street, and a portion of Burdette Avenue

BACKGROUND AND ANALYSIS:

As part of a larger parcel assemblage for the purposes of erecting a new six story apartment complex and associated parking facilities the applicant is proposing to vacate portions of three different streets and dedicate a 10 ft by 170 ft strip for Pearl St. going north. The resulting land and portions of the vacated rights-of-way will be rearranged with case RPB-22-08 into one lot. The entire width of the eastern 170-feet of Sumner Avenue will be vacated. This section of Sumner dead ends at the steep bluff edge and provides no neighborhood connectivity. This section of vacated Sumner Ave. will be covered by the apartment building foundation.

The entire 40-ft of Pearl Street (9,562 sq ft) between Sumner Ave. and Burdette Ave. will be vacated. Pearl St. is being vacated to facilitate construction of a six-story multifamily residential structure adjacent to the existing Pearl St. Roadway. If Pearl St. is not vacated, the R-5 Zone District would require a 25-ft. setback from the property line adjacent to Pearl Street. Geographic site constraints provide minimal developable area, a 25-ft setback would render the development unfeasible. The vacation plat reserves a public ingress and egress easement, and public utility easement along the western 30-feet of vacated Pearl St. The access reservation will allow utilities to remain in place and allow residents of the multifamily structure and the neighborhood to utilize Pearl as a public roadway. This section of Pearl St. will be developed according to the City's private roadway standards, including paved roadway and sidewalks.

Finally, an irregular 217 ft. segment (6,992 sq/ ft.) of Burdette Ave. will be vacated; this street dead ends at the edge of the bluff. The western section of Burdette was previously vacated and developed with a single-family residence. The applicant owns all but two parcels adjacent to Burdette Avenue. The portions of Burdette Ave. that are not proposed to be vacated provide rear access to the two parcels held in separate ownership. A 23-foot-wide access easement, providing access from vacated Pearl St. to the rear portion of the parcels, in separate ownership, will be accepted by the City to ensure those parcels have adequate access to public rights of way if they were to develop in the future.

Applicable Regulations:

Sec. 12-5-1 through 6 of the Pueblo Municipal Code (PMC) concerning vacations of streets, alleys, etc.

Recommended Action:

The Subdivision Review Committee recommends the Planning and Zoning Commission forward a recommendation that the Easement Vacation be approved with the following conditions. All conditions must be addressed prior to City Council review.

1. Revise vacation plat to clearly show 30' reserved easement on Pearl St. between Sumner Ave. and Burdette.
2. Revise vacation of Sumner Avenue to point of intersection with Pearl Street and amend the legal descriptions accordingly.
3. On the reservations sections of the vacation plat for Sumner Avenue and Burdette Ave. add "public utilities" to the text.
4. Access easement and right of way for Burdette Ave. must be approved by staff prior to City Council review, of the Resolution accepting the easement.
5. Provide deed for additional right of way along the eastern portion of Pearl Street between Chapa Place and Sumner Ave.
6. Provide word document of legal descriptions for all reservations.
7. Provide clarification of Pearl Street cross section and associated public infrastructure before City Council review according to redlined plans from Melanie Turner, Interim Traffic Engineer.

REFERRAL AGENCIES AND COMMENTS:

- City Public Works-Comments included in vacation conditions.
- City Transportation-Comments included in vacation conditions.
- City Law Department-No comment
- Pueblo Regional Building Department-No comment
- City Fire Department-No comment
- City Wastewater-No comment
- City Stormwater-No comment
- City Parks and Recreation Department-No comment
- Xcel Energy-No comment
- Black Hills Energy-No comment
- CDOT-No comment

ATTACHMENTS:

- A. Aerial Map
- B. Zoning Map
- C. Site Photographs
- D. SRC Memo, September 9th, 2022
- E. Vacation Plat
- F. Burdette Legal Description Exhibit "A"

ATTACHMENTS:



A. Aerial Photograph

[illegible]

Proof of posting



Pearl Street vacation area



Sumner Ave vacation area



Area of Burdette Ave vacation



Planning & Community Development

211 East D Street | Pueblo, Colorado 81003 | Tel 719-553-2259 | Fax 719-553-2359 | TTY 719-553-2611 | www.pueblo.us

Planning & Zoning Application

Please type or print clearly. Illegible applications will not be accepted. Case #: _____

Contact Info	Property Owner		Applicant	
	Name:		Name: David Copperman	
	Company: Bluffs Opportunity Zone Business		Company: Bluffs Opportunity Zone Business	
	Address: PO Box 6771, Denver CO	Zip: 80220	Address: PO Box 6771, Denver CO	Zip: 80220
	Phone: (415) 515.3484		Phone: (415) 515.3484	
	Email: dc@oreamos.co		Email: dc@oreamos.co	
	Engineer		Surveyor	
	Name: Eric Burtzlaff		Name: Edward Fisher	
	Company: Raptor Civil Engineering, LLC		Company: Edward James Surveying, Inc.	
	Address: 8620 Wolff ct, Suite 105B		Address: 4732 Eagleridge cir, Pueblo	
Zip: 80031		Zip: 81008		
Phone: (720) 774.7736		Phone: (719) 545.6240		
Email: eric@raptor-civil.com		Email: edwardf@ejssurveying.com		
The applicant will be the primary contact unless otherwise noted.				
Property Info	Project Location: 5600 Pearl St (address or general description)			
	Parcel No(s): 536208002, 53621001, 53632007, 536209015, 536320001			
	Existing Zone: B4, R5		Proposed Zone (if applicable): R5	
	PUD Name (if applicable):			
Project Scope	Project Name: Bluffs			
	☐ Rearrangement of Property Boundaries: # of existing lots: _____ Total acres: _____			
	☐ Overall Development Plan			
	☐ Site Plan Review: Building area: _____ sf ☐ HARP ☐ Development Plan ☐ PUD ☐ Student Housing			
	☐ Special Area Plan			
	☐ Street Name Change: Existing Name: _____ Proposed Name: _____			
	☐ Subdivision: # of lots: _____ Total acres: _____			
	☐ Text Amendment			
	☒ Vacation: ☒ Street ☐ Alley ☒ Easement ☐ Other: _____			
	☐ Other: _____			

(Continue Next Page)

(Continued from previous page)

Project Information	Provide a brief description of the proposed request: A full vacation of all of Sumner and Easements east of Pearl st. Full vacation of Pearl st from Sumner to Burdette. Replace with 30' public easement. A full vacation of Burdette east of Pearl st.		
	What is the total acreage included in the project? 3.15 (post-vacations)		
	What is the proposed use of the property? ☐ Commercial ☒ Multi-family ☐ Residential ☐ Industrial ☐ Other		
	Are there any other pending or recently approved Land Use applications regarding this property? ☒ Yes ☐ No		
	If yes, please list: Rearrangement of boundaries, and Rezoning		
Attachments	Attachment Checklist		
	The following list of attachments are required to accompany all applications: ☒ A. CD with DWF and DWG (Autocad) file of all plans and drawings & a PDF of all documents submitted. ☐ B. Pueblo County Assessor's Property Information print out (www.co.pueblo.co.us) ☒ C. Additional information as required by the P&Z Submittal Requirements Sheet.		
Terms	By signing below, the Property Owner and Applicant are representing that each understands and agrees to the following terms:		
	1. Authorized personnel from the City of Pueblo, are hereby granted the right to enter the subject property for the purposes of reviewing and processing the application, including Certificate of Occupancy Inspections. 2. There are no known hazards or vicious animals present on the subject property. 3. All information contained in this application, is true and accurate to the best of my knowledge. 4. The City of Pueblo is under no obligation to approve the request contained in this application. No promises of approval are conveyed with the acceptance of this application. 5. It is highly recommended that a licensed surveyor complete a property survey before any construction takes place. The property owner is responsible for any construction that takes place within the boundaries of their property. The city may require any construction built outside of the property legal boundaries or within any setbacks (by intent or error), to be removed at the owners' expense.		
Signatures	Property Owner		
	Print Name:	David Copperman	
	Signature:		Date: 7/8/2022
	Applicant, if different from Property Owner		
	Print Name:	David Copperman	
	Signature:		Date: 7/8/2022

Office Use Only	Zoning Compliance (Completed by City Staff)		
	Application checked for completeness by:	Date:	Fee Paid:

Andrew Hayes
Director Public Works
Director
Transportation Department
Steven Meier
Director Parks & Recreation



Scott Hobson
Acting Director Planning &
Community Development
Executive Secretary of
Planning & Zoning
Commission

MEMORANDUM

To: Planning and Zoning Commission

From: Subdivision Review Committee

Date: September 9, 2022

Subject: V-22-06 Vacation of a Portion of Pearl St., Burdette Ave., and Sumner Ave

V-22-06 Vacation of a Portion of Pearl St., Burdette Ave., and Sumner Ave. the Subdivision Review Committee recommends that the Planning and Zoning commission recommend to City Council approval of the vacation request with the following conditions:

1. Revise vacation plat to clearly show 30' reserved easement on Pearl St. between Sumner Ave. and Burdette.
2. Revise vacation of Sumner Avenue to point of intersection with Pearl Street and amend the legal descriptions accordingly.
3. On the reservations sections of the vacation plat for Sumner Avenue and Burdette Ave. add "public utilities" to the text.
4. Access easement and right of way for Burdette Ave. must be approved by staff prior to City Council review, of the Resolution accepting the easement.
5. Provide deed for additional right of way along the eastern portion of Pearl Street between Chapa Place and Sumner Ave.
6. Provide word document of legal descriptions for all reservations.
7. Provide clarification of Pearl Street cross section and associated public infrastructure before City Council review according to redlined plans from Melanie Turner, Interim Traffic Engineer.



EDWARD-JAMES SURVEYING, INC.

August 19, 2022

Job No. 2299-00

Page 1 of 2

EXHIBIT "A"**LEGAL DESCRIPTION:**

A TRACT OF LAND BEING A PORTION OF LOT 7, BLOCK 5, A PORTION OF PEARL STREET AND A PORTION OF BURDETTE AVENUE AS PLATTED IN DELAVAN PLACE, UNDER RECEPTION NUMBER 41969 RECORDS OF PUEBLO COUNTY, STATE OF COLORADO, BEING A PORTION OF THE WEST HALF OF SECTION 36, TOWNSHIP 20 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN COUNTY OF PUEBLO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BASIS OF BEARINGS: THE CENTERLINE OF NELSON AVENUE BEING MONUMENTED AT THE WESTERLY END BY A CITY OF PUEBLO MONUMENT BOX WITH A 2-1/2" ALUMINUM CAP STAMPED "PLS 31925" AT THE INTERSECTION OF NELSON AVENUE AND SUMNER AVENUE AND AT THE EASTERLY END BY A CITY OF PUEBLO MONUMENT BOX WITH A 2-1/2" ALUMINUM CAP STAMPED "PLS 31925" AT THE PC OF NELSON AVENUE, BEING ASSUMED TO BEAR N77°55'17"E, A DISTANCE OF 239.46 FEET.

COMMENCING AT THE SOUTHWEST CORNER OF LOT 7, BLOCK 5, DELAVAN PLACE, AS PLATTED UNDER RECEPTION NUMBER 41969; THENCE N14°37'03"W ON THE WESTERLY BOUNDARY LINE OF SAID LOT 7 A DISTANCE OF 13.81 FEET TO THE POINT OF BEGINNING; THENCE N75°22'57"E A DISTANCE OF 59.12 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID BURDETTE AVENUE; THENCE CONTINUING N75°22'57"E A DISTANCE OF 54.09 FEET; THENCE S27°45'58"E A DISTANCE OF 7.70 FEET; THENCE S62°14'02"W A DISTANCE OF 17.27 FEET; THENCE S27°45'58"E A DISTANCE OF 12.92 FEET; THENCE S75°32'56"W A DISTANCE OF 111.09 FEET; THENCE N14°37'03"W A DISTANCE OF 23.68 FEET; THENCE N75°22'57"E A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

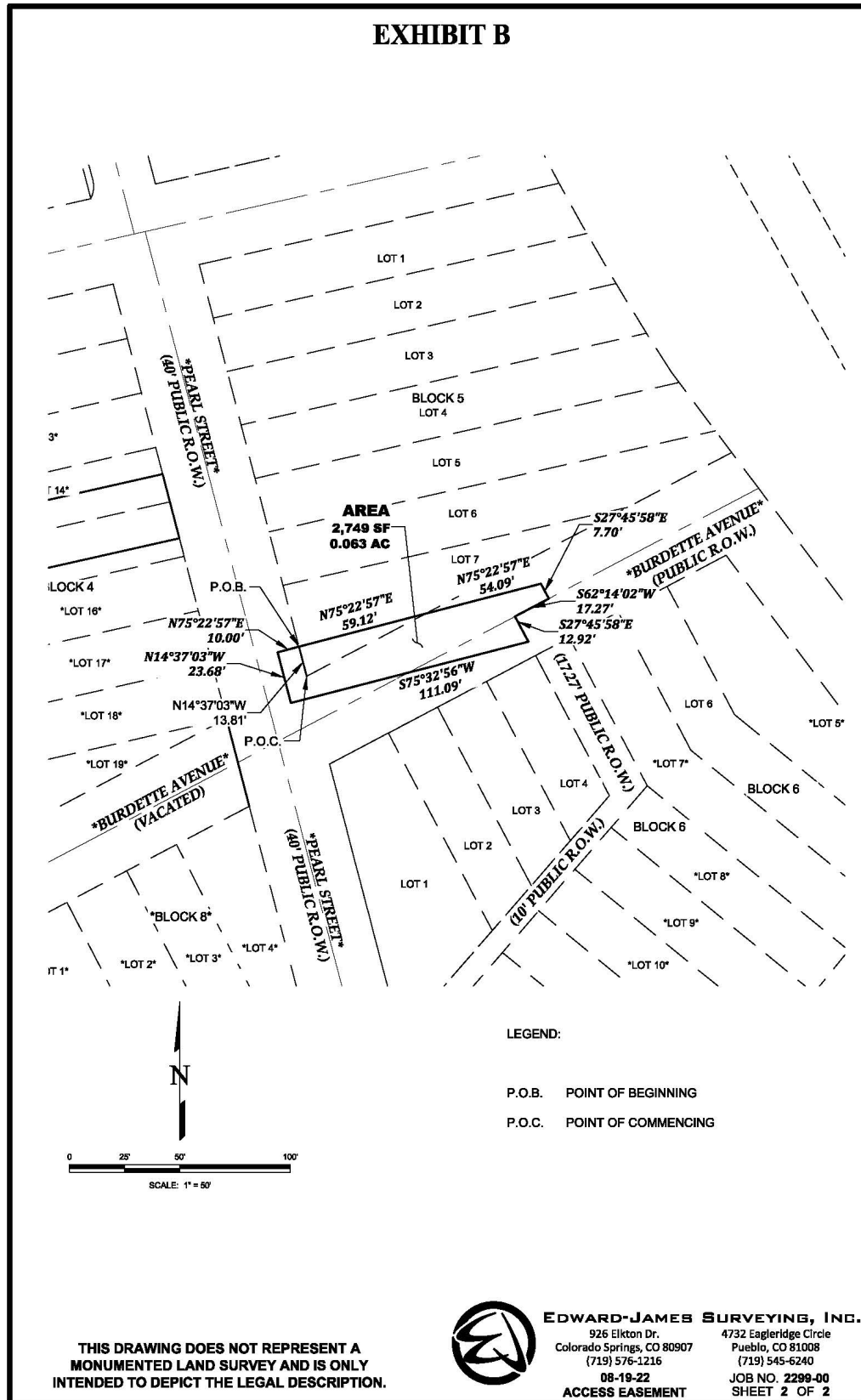
CONTAINING A CALCULATED AREA OF 2,749 SQUARE FEET, OR 0.063 ACRES, MORE OR LESS.

LEGAL DESCRIPTION STATEMENT

I, EDWARD R. FISHER, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION, AND BELIEF IS CORRECT.

DRAFT

EDWARD R. FISHER, PROFESSIONAL LAND SURVEYOR
 COLORADO PLS NO. 38042
 FOR AND ON BEHALF OF EDWARD-JAMES SURVEYING, INC.



August 26, 2022

This is to inform you that the City Planning and Zoning Commission will hold a public hearing on a request by **David Copperman** for the approval of the following application:

Vacation (V-22-06): vacating a portion of Sumner Avenue, portion of Pearl Street, a portion of Burdette Avenue in the Delavan Subdivision

The Planning and Zoning Commission meeting will be held on September 14, 2022, at 3:30 p.m., by Zoom: Meeting ID:927 1786 7722, Passcode: 195462, Telephone: 1 346 248 7799 US (Houston)) or in-person at 1 City Hall Pl (3rd Floor City Council Chambers).

You are welcome to attend this public hearing and express your viewpoint concerning this proposal. To review the plans and staff report for the proposed application, please visit www.pueblo.us/PandZ and click on “Most Recent Agenda” no sooner than the Friday prior to the hearing. **Please contact the planner listed below if you have questions.**

Scott Hobson, Director
Planning & Community Development
Wade Broadhead, Sr. Planner
(719) 553-2280

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Scott Hobson, Director
Planning & Community Development
Wade Broadhead, Sr. Planner
(719) 553-2280

CASE NUMBER V-22-06

CERTIFICATION

I hereby certify that I did this day cause written notice of the public hearing on the Street Vacation: vacating a portion of Sumner Avenue, portion of Pearl Street, a portion of Burdette Avenue in the Delavan Subdivision to be sent to the attached list of owners of the property lying within hundred (300) feet of the said property on which the vacation is proposed by depositing the same properly addressed and postage paid in the post office, as set forth in the Code of Ordinances, Section 17-6-2.

8-26-22

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Karen Elgin

I hereby certify that I did this day verify and photograph the posted notice of the public hearing on the , vacating a portion of Sumner Avenue, portion of Pearl Street, a portion of Burdette Avenue in the Delavan Subdivision upon which action is pending as set forth in the Code of Ordinances, Section 17-6-2.

8-26-22

(Date)

PUEBLO PLANNING & ZONING COMMISSION

By Karen Elgin

Owner	OwnerStreet	OwnerCity	OwnerState	OwnerZip
NEY ROUN/NEY VAN N	1 CLARENDON CT N	PALM COAST	FL	32137-8353
CHAPA APARTMENTS LLC	1120 CHEROKEE ST	DENVER	CO	80204-3633
553 PEARL ST LLC	1457 MADISON ST APT 1	DENVER	CO	80206
D + RG RR R/W + C/O PROPERT	1700 FARNAM ST FL S	OMAHA	NE	68102-2022
HERRING JAMES A/HERRING K	220 NELSON AVE	PUEBLO	CO	81004-1228
ACOSTA HERALDO A/LUCERO	221 NELSON AVE	PUEBLO	CO	81004-1227
MARTINEZ SARAH L	233 NELSON AVE	PUEBLO	CO	81004-1227
CLEMMER SETH THOMAS/CLEI	234 CHAPA PL	PUEBLO	CO	81004-1215
SKUBAL SHANNON R/SKUBAL	302 E ADAMS AVE	PUEBLO	CO	81004-2126
THORLEY MICHAEL	431 W ORMAN AVE	PUEBLO	CO	81004-1856
MILLER DOUGLAS	522 LINDA VISTA AVE	PUEBLO	CO	81005-1711
HUNTER WAYNE A	607 HEWITT ST	PUEBLO	CO	81005-1524
NEW BEGINNINGS MINISTRIES	631 W CORONA AVE	PUEBLO	CO	81004-1216
CORZINE COLLEEN/CORZINE JI	730 W ORMAN	PUEBLO	CO	81004-1428
JONES TAMMY + METZ DANIE	8156 S WADSWORTH BLVD UNIT I	LITTLETON	CO	80128-9114
ANTONIONI STANLEY	937 CHERRYCREST DR	PUEBLO	CO	81005-5517
INHABX, LLC	PO BOX 1022	PUEBLO	CO	81002-1022
CITY OF PUEBLO A MUNICIPAL	PO BOX 1427	PUEBLO	CO	81002-1427
TURNER VICTORIA/TURNER L I	PO BOX 895	PUEBLO	CO	81002



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 24, 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 A HANGAR LEASE AGREEMENT FOR 530 SKYWAY STREET AT PUEBLO MEMORIAL AIRPORT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND JAMES SPITZER, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

Attached is an Ordinance approving and authorizing the Mayor to sign a Hangar Lease Agreement with James Spitzer dba Spitzer Aviation Management.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

The City owns 530 Skyway Street at the Pueblo Memorial Airport, which can be leased out on a month-to-month basis for the repair of aircraft. The building was vacant effective June 1, 2020, and can be leased to James Spitzer, starting November 14, 2022.

FINANCIAL IMPLICATIONS:

The hangar, office space, landside parking lot, and ramp will be leased for \$400.00 per month and two percent (2%) of Lessee's gross revenues derived from all activities conducted at Pueblo Memorial Airport.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, the hangar space will remain vacant.

RECOMMENDATION:

It is the recommendation of the Department of Aviation that this Ordinance be approved.

ATTACHMENTS:

1. 530 Skyway Street Lease

ORDINANCE NO.

AN ORDINANCE APPROVING A HANGAR LEASE AGREEMENT FOR 530 SKYWAY STREET AT PUEBLO MEMORIAL AIRPORT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND JAMES SPITZER, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, the City of Pueblo is the owner and operator of the Pueblo Memorial Airport together with the land on which said Airport is situated; and

WHEREAS, James Spitzer, is desirous of leasing 530 Skyway Street, which is owned by the City of Pueblo; NOW, THEREFORE,

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

SECTION 1.

A certain Hangar Lease for 530 Skyway Street ("Lease"), by and between the City of Pueblo, a Municipal Corporation, and James Spitzer dba Spitzer Aviation Management, to lease hangar space, office space, and a portion of the landside parking lot at 530 Skyway Street at Pueblo Memorial Airport, a copy of which is attached hereto and made a part hereof by reference, after having been approved as to form by the City Attorney, is hereby approved subject to the conditions as set forth in said Lease.

SECTION 2.

The Mayor is hereby authorized to execute the Lease on behalf of the City of Pueblo, and the City Clerk shall 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 and the attached Lease to implement the terms and conditions 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

**HANGAR LEASE
HANGAR 530**

THIS LEASE AGREEMENT ("Lease") is made and entered into as of **November 14, 2022** ("Effective Date"), between the City of Pueblo, a Municipal Corporation, "Lessor," and **James Spitzer dba Spitzer Aviation Management**, a general aviation repair business, together jointly and severally liable as the "Lessee."

WHEREAS, the Lessor is the owner and operator of the Pueblo Memorial Airport ("Airport"), together with the land on which said Airport is situated; and

WHEREAS, Lessee is desirous of utilizing hangar space of the Lessor on a short-term basis, the property generally known as **530 Skyway Street, Pueblo, Colorado 81001**.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Leased Premises:

- A. The Lessor hereby leases unto the Lessee and Lessee hereby leases from Lessor for the term and upon the requirements and conditions hereinafter stated, approximately 2,058 sq. ft. of hangar space ("Hangar"), including certain office space contained therein, and certain parking spaces with landside access ("Parking") (both together the "Leased Premises"), all with the street address of 530 Skyway Street, Pueblo, Colorado, depicted in Exhibit "A" attached hereto and incorporated herein, situated in the County of Pueblo, State of Colorado, subject to existing restrictions and easements.
- B. The Hangar will be used solely for the repair and subsequent storage of third-party aircraft that Lessee maintains in the course of its aviation repair business. Lessee agrees that if storage of any given aircraft extends past 30 days, it will submit the aircraft tail number, commission report, and any other required information to the Director of Aviation for the duration of the storage.
- C. Lessee shall have exclusive use of the Leased Premises subject to the terms of this Lease.
- D. This Lease and Lessee's use of the Leased Premises are subject to the easements, rights of way, covenants, conditions, restrictions, reservations, and limitations appearing of record, and all applicable zoning and land use laws, ordinances, codes and regulations, including but not limited to all conditions, regulations, restrictions, and requirements imposed by the FAA, governing and regulating the Leased Premises and its use.

2. Term:

- A. This Lease is made on a month-to-month basis commencing on the Effective Date and shall automatically renew for successive one-month terms, unless earlier

terminated by a party as provided herein. After six months from the Effective Date, the terms of this Lease may be renegotiated by the parties.

- B. All conditions and covenants contained herein shall remain in full force and effect during any and all extension periods.
- C. Either party may terminate this Lease at any time and for any reason upon thirty (30) days prior written notice to the other party.

3. Rental Rate and Other Fees:

- A. In consideration of the rights and privileges contained herein, Lessee agrees to pay a monthly fee, payable in advance without notice or offset by the first day of each month, of **\$400.00** ("Rent") for use of the Leased Premises. Water and electricity will be provided by Lessor, but no other utilities shall be provided or allowed at the Leased Premises.
- B. Rent not paid by the tenth (10th) of the month shall accrue a late fee of eight percent (8%) per month, starting with the month which is past due and compounding on the first day of the month for every subsequent past due payment.
- C. Rent shall increase annually on the anniversary of the Effective Date by three and one-half percent (3.5%) over the previous monthly rent beginning with the first anniversary of the Effective Date and continuing every year thereafter.
- D. The Lessee hereby agrees to pay when due all rent, fees and charges imposed by the Lessor for the use and operation of the Airport. The fees and charges include, but are not limited to, fuel flowage fees, landing fees, permit fees, self-fueling fees, security charges, and administrative or service fees.
- E. In consideration for this Lease and commercial use of the Airport, Lessee shall pay to Lessor two percent (2%) of Lessee's gross revenues derived from all activities conducted at Pueblo Memorial Airport. Lessee shall file with Pueblo Memorial Airport monthly activity reports on or before the tenth (10th) day of each calendar month throughout the effective term indicating gross revenues and commissions derived from activity on any part of the Airport.

4. Deposit:

- A. Lessee agrees to pay a security deposit to the airport equal to one month's rent of **\$400.00**. The security deposit and first month's rent shall be paid immediately upon execution of this agreement. Deposit shall be refunded following termination of this agreement, less any rent due or damages to the Leased Premises.
- B. In the event that Lessee fails, neglects or refuses to pay any rent, fee, or other sum due, or fails to perform any obligation under this Lease, then Lessor may, in its sole and absolute discretion, draw from the security deposit to remedy Lessee's default. Nothing contained in this Lease shall require Lessor to remedy Lessee's default in

this manner, and Lessor may instead, in its sole and absolute discretion, refuse to remedy Lessee's default by drawing on the security deposit, and instead pursue the remedies for default provided in this Lease or by law.

- C. In the event that Lessor draws from this security deposit to remedy Lessee's default, Lessor shall notify Lessee in writing and require Lessee to replenish the deposit to its original level. Failure of Lessee to comply with this section shall constitute a material breach of this Lease.

5. Use of Leased Premises:

- A. Lessee shall make no alterations or adjustments to the Leased Premises, without the prior written approval of the Director of Aviation.
- B. Lessee shall not sublease or assign any portion of the Leased Premises.
- C. The Hangar shall be utilized for the repair and storage of aircraft, and minor incidental material storage and aeronautical purposes only. All aircraft stored in City owned buildings for 30 or more days must be reported to Airport administration. Lessee may perform maintenance and repairs in the Hangar, including routine maintenance, preventative maintenance, and regular maintenance required prior to flight. No repairs, maintenance, storage, or other work will be allowed outside of the Hangar. The Leased Premises shall not be used for the storage of non-aeronautical personal property, living accommodations, or in any other way inconsistent with this Lease. Failure to abide by this provision shall constitute a material breach of this Lease.
- D. Lessee may wash aircraft within the Hangar but shall at all times protect the Lessor's stormwater system and abide by any requirements Lessor places on Lessee with regards to the cleaning of aircraft, including for the disposal of used water and other products.
- E. The office shall be used for Lessee's business and other incidental office work. Lessee shall have no right to utilize the Leased Premises, or any improvement thereon, other than as specifically allowed under this Lease, and it is specifically understood that the Leased Premises shall not be used for an aviation fixed base operation or for the sale of aviation fuel.
- F. Lessor retains and Lessee grants to the Lessor the right to enter the Leased Premises to do what is necessary for the purposes of repairing, replacing, and/or maintaining any and all utility lines under the Leased Premises which serve other uses at the Pueblo Memorial Airport, it being understood that the Lessor will repair, in a good and workmanlike fashion, any and all damage done to the Leased Premises as the result of work done hereunder.
- G. Lessee shall maintain the Leased Premises in accordance with the requirements and regulations of the Lessor and Lessor's fire code. The Lessee shall be responsible for all costs, fees, charges, and penalties associated with the discharge or release of

any hazardous material (including petroleum products) or mitigating the containment or removal of any contamination or hazardous material (including petroleum products) on, over or under the leased premises which is caused by the Lessee, its officers, agents, or employees. The storage and accumulation of aviation fuel, flammables, explosive liquids, or solids, waste, debris, or other hazardous materials within or on the Leased Premises shall be in an environmentally sound manner and comply with all federal, state, and local laws and regulations. Lessee agrees that no flammable liquids or hazardous materials shall be used or stored on the premises, excepting the fuel in the aircraft fuel tanks or in the tank of a stored automobile, properly parked. Lessee agrees to provide drip pans of a non-flammable material under the aircraft to prevent damage to the floor, should said aircraft leak any fluids.

- H. Lessee will not modify, alter, paint, or improve the Leased Premises except to the extent required to maintain its original state. Any additional modification, painting, or improvements to the Leased Premises must receive prior written approval from the Director of Aviation and will be at Lessee's sole cost and expense.
- I. Lessee shall not park or leave or allow to be parked or left aircraft or equipment on the taxiways or on pavement adjacent to the Leased Premises in a manner which interferes with or obstructs access to adjacent hangars or public ramp area. Parking of automobiles will be permitted only designated spaces outside of the airport fence. No person or automobile shall go beyond the immediate vicinity of the Leased Premises without the express written consent of the Director of Aviation. Automobiles must be parked in designated parking spaces or within the Hangar, except that the Hangar cannot be used solely for storage of automobiles.
- J. Lessee, its employees, and invitees shall have the right of ingress and egress between designated Airport access points and the Leased Premises over, upon, and through such streets and not others as from time to time shall be designated by the Director of Aviation. Driveways from existing streets into the Leased Premises shall be located as designated by the Lessor through the Director of Aviation.
- K. Lessee shall, at its own expense, keep the premises neat, clean, safe, and orderly at all times, free of waste, rubbish and debris, and shall provide a complete and proper arrangement for the sanitary handling and disposal of all trash, garbage and other refuse resulting from Lessee's activities at the Airport. No outside storage of parts, materials, equipment, inventory, or other material shall be permitted.
- L. Locks shall be provided by the Lessor and shall be the only locks placed on the hangar. Locks shall be removed and replaced solely by the Lessor. Lessee shall have no right to alter, change, or replace the Lessor's locks.
- M. Hangar doors shall remain closed and locked except during periods when the Hangar is attended by Lessee. This is to prevent damage from sudden storms and the creation of foreign object debris.

6. Ramp Use:

- A. Lessee's use of the ramp, taxiways, and runways is non-exclusive and same may be used by the Airport, other tenants, users, and occupants of the Airport ("Airport Users"). Use of the ramp shall be limited to the movement of aircraft, fueling of aircraft, movement and parking of aircraft service vehicles, temporary parking of aircraft, servicing and tie-down of aircraft.
- B. Lessee and Airport users shall use the ramp in compliance with Lessor's ground traffic and aircraft parking plans and regulations, which will reasonably accommodate Lessee's current and future use for the purposes set forth in Subsection A above.
- C. Lessee acknowledges that portions of the ramp, taxiways, and runways are currently in need of repairs and resurfacing and accepts in whole the ramp, taxiways, and runways in their present condition "AS IS" and "WITH ALL ITS FAULTS," without warranty or representation, express or implied, including, without limitation, any warranties of merchantability or fitness for a particular purpose or condition or usability in their present condition. Lessee agrees that Lessor shall have no obligation to upgrade, repair, resurface, or maintain the taxiways, runways, and ramp. Lessor maintains the right to close any portion of the Airport not limiting Lessee's access to airport runways.

7. Maintenance Obligations:

- A. Lessee shall, at its own expense, keep the premises neat, clean, safe and orderly at all times, free of waste, rubbish, and debris, and shall provide a complete and proper arrangement for the sanitary handling and disposal of all trash, garbage and other refuse resulting from Lessee's activities at the Airport. No outside storage of parts, materials, equipment, inventory, or other material shall be permitted.
- B. Lessee, at its sole cost and discretion, shall maintain all walkways, sidewalks, and apron access on the Leased Premises, including to the public taxiway or ramp area. This includes pavement maintenance, pest control, and other such activities necessary to access said areas. At no time shall snow, dirt, or other debris be piled or stored on these areas. It is the Lessee's responsibility to keep these areas free and clear of all snow, dirt, and other debris. Lessee understands that snow removal from the hangar door to the taxi lane is always the responsibility of Lessee.

8. Utility Costs:

- A. Lessee shall be responsible for all utilities supplied to the Leased Premises other than electricity and water. Agreements for service with utility providers are the responsibility of Lessee.
- B. Additions, deletions, or adjustments to utilities extended to the Leased Premises shall not be made without prior written approval from the Director of Aviation.

9. Signs:

Lessee shall not erect, paint, or maintain any signs whatsoever upon the Leased Premises without first securing the written consent of the Lessor. Any such signs shall comply with all ordinances and regulations of the Lessor and standards which might be developed by the Department of Aviation.

10. Right of Inspection:

The Lessor reserves and retains for its officers, employees, and authorized representatives the right to enter the Leased Premises during reasonable business hours, and after prior notice, for the purpose of inspecting and protecting the Leased Premises and for doing any and all things which the Lessor may deem necessary for the proper general conduct and operation of the Pueblo Memorial Airport and in the exercise of the Lessor's police power.

11. Taxes, Licenses, and Liens:

- A. Lessee covenants and agrees to pay promptly when due all taxes, fees, licenses, and other governmental charges of whatever nature assessed against or applicable to the Leased Premises. Possessory interest tax is assessed by the County of Pueblo and is the responsibility of the Lessee. The Lessor is a tax-exempt entity and shall not be liable for any tax of the Lessee. Lessee should be aware that there are multiple taxes and costs associated with owning and operating an aircraft, including the leasing of hangar space. All applicable taxes and costs shall be paid by Lessee, even if Lessee was unaware of such taxes and costs.
- B. Lessee also covenants and agrees not to permit any mechanic's or material man's lien to be filed against the Leased Premises or any part or parcel thereof by reason of any work or labor performed or materials furnished by any contractor, subcontractor, mechanic, or material man. Lessee further covenants and agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations on the Leased Premises, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment, or execution to be filed against the Leased Premises.

12. Indemnification:

Lessee assumes the risk of loss or damage to the Leased Premises and property thereon and therein, including but not limited to aircraft and personal property, whether from windstorm, fire, earthquake, snow, water run-off, or any other causes whatsoever. Lessee covenants and agrees to indemnify, defend, and save the Lessor, its agents, officer, representatives, and employees, harmless from and against any and all penalties, liability, or loss, including costs and attorney fees and all expenses incurred by Lessor in investigating or resisting the same, resulting from claims or court action, whether civil, criminal, or in equity, and arising directly or indirectly out of: (i) acts of the Lessee, its agents, employees, or representatives; (ii) occurring in on or about the Leased Premises; (iii) arising out of or resulting from the Leased Premises, or any condition thereon, or from Lessee's use and occupancy of the Leased Premises, or any equipment thereon or

appurtenances thereto, or any activity conducted therein; or (iv) through any injury or damage that may be caused or occasioned. Lessee shall not hold or attempt to hold Lessor liable for any injury, including loss of life, to any person, or for damage to any property while on the Leased Premises or the Airport, irrespective of how such injury or damage may be caused or occasioned. The provisions of this Paragraph 11 shall survive the termination of this Lease Agreement.

13. Insurance and Damage:

- A. Lessee assumes all risk of loss, damage, injury and liability for the same that may occur to Lessee, Lessee's guests, Lessee's aircraft and Lessee's improvements and property in or upon the Leased Premises and Lessor shall not be liable or responsible for any such loss, damage or injury, regardless of the cause thereof, including, without limitation, the negligence of Lessor, its officers, agents or employees.
- B. Lessee, at its sole cost and expense, shall, during the life of this agreement, procure, pay for and keep in full force and affect a comprehensive policy of commercial general liability insurance. The policy shall have limits in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Leased Premises (including acts or omissions of the Lessee). This policy shall name the City of Pueblo as additional insured and loss payee for the policy. The policy shall contain a provision that the policy cannot be canceled or materially altered either by the insured or the insurance company unless thirty (30) days prior written notice thereof is given to the Lessee and City. Upon issuance or renewal of any such insurance policy, the Lessee shall furnish to the City a certificate of insurance evidencing coverage required under this contract.
- C. If the Hangar or other improvements (the "Improvements") are damaged or destroyed by fire or other casualty, Lessee shall within one hundred twenty (120) days from the occurrence of such casualty either (1) repair and restore the damaged or destroyed Improvements, (2) demolish the damaged or destroyed Improvements, restore the Leased Premises to their original condition, and terminate this Lease, in which event the net proceeds of the property damage insurance required to be provided by Lessee pursuant to Section 13.A. shall be retained by Lessee, or (3) demolish the damaged or destroyed Improvements and commence construction of replacement Improvements, and thereafter complete such construction within nine (9) months from the occurrence of such casualty. All repairs to or restoration of Improvements and/or construction of replacement Improvements shall be in compliance with applicable laws and codes, and in accordance with plans and specifications therefor approved by Lessor, which approval will not be unreasonably withheld. Except in the event of (2) above, the net proceeds of property damage insurance provided by Lessee pursuant to Section 13.A. shall be released by City and paid to Lessee for the purpose of Lessee repairing, restoring,

or replacing improvements damaged or destroyed by such insured fire or other casualty.

- D. Lessee shall obtain statutory workers' compensation insurance which shall contain an endorsement waiving subrogation against the City of Pueblo. Such insurance shall cover all employees and agents of Lessee performing work at the Leased Premises or Airport irrespective of whether such employees may be shareholders, managers, partners, or owners of Lessee or exempt employees under the Act. Any independent contractors of Lessee shall be covered under Lessee's workers' compensation insurance and/or participant accident insurance policy or show evidence that said independent contractor is covered under its own workers' compensation insurance policy. Lessee shall have full and sole responsibility for ensuring compliance with this Section, including without limitation indemnification required under this Lease. All insurance policies required hereunder shall provide that such policies not be cancelled or reduced without thirty (30) days' advance written notice to the Lessor.
- E. Lessee shall not violate the terms or prohibitions of any insurance policy herein required to be furnished by Lessee. Coverage and limits enumerated in this insurance section represent only the minimum insurance required by the Lessor, and Lessee should rely on its expertise to obtain any additional insurance coverage needed for the Lessor and Lessee in its performance under this Lease. Failure of Lessee to comply with the provisions of this section shall constitute a material breach of this Lease by Lessee.

14. Waivers:

No provision of this Lease may be waived except by an agreement signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision. Should Lessee holdover the use of or continue to occupy the Leased Premises after the termination or cancellation of this Lease, such holding over shall be deemed merely a tenancy for successive monthly terms upon the same conditions as provided in this Lease subject to termination upon fourteen (14) days prior written notice.

15. Inconvenience During Construction:

Lessee recognizes that from time to time it will be necessary for the Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair at and to the Pueblo Memorial Airport in order that the Pueblo Memorial Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or interrupt Lessee's operations at the Pueblo Memorial Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, subcontractors and representatives by reason of such inconvenience or interruption, and for and in further consideration of the premises, Lessee waives any right to claim damages or other consideration therefore, provided, however, that this waiver shall not extend to, or be construed to be a waiver of, any claim for physical damage to property resulting from

negligence or willful misconduct of the Lessor, its officers, agents, employees, contractors, subcontractors, and representatives. The Lessee shall be obligated to pay all rent and fulfill all obligations of this Lease at all times, including, but not limited to, when access to the Airport is temporarily restricted due to routine construction, reconstruction, expansion, or other potential alteration of the airfield.

16. Place and Manner of Payments:

In all cases where Lessee is required by this Lease to pay any rentals, rates, fees or other charges or to make other payments to Lessor, such payments shall be made at the office of the Director of Aviation at the Pueblo Memorial Airport, or at such other place as Lessor may hereafter designate by notice in writing to Lessee and shall be made in legal tender of the United States and any check shall be received by Lessor subject to collection. Lessee agrees to pay any bank charges made for the collection of any such checks. All payments of rent shall be made on the first of each month.

17. Assignments and Subletting:

Lessee shall not assign this Lease or any interest therein nor sublet the Leased Premises or any portion thereof. Any assignment may be conditioned upon the payment of an assignment fee and/or an increase in rent to be determined by the Lessor in its sole and absolute discretion. Any assignment or subletting without the prior written consent of Lessor shall be void. No subletting of this Lease or the Leased Premises shall release or discharge Lessee from its obligations under this Lease.

18. Agreements with United States:

This Lease is subject and subordinate to the terms, reservations, restrictions, provisions, and conditions of the deed of conveyance from the United States Government to the Lessor and of any other existing or future agreement between the Lessor and the United States, relative to the use, operation, or maintenance of the Pueblo Memorial Airport and its appurtenant facilities, the execution of which has been or may be required as a condition precedent to the participation by any Federal Agency in the extension, expansions, or development of said Airport and its facilities.

19. Lessee's Default:

A. Any one of the following shall constitute an event of default by Lessee hereunder:

- (1) Failure of Lessee to pay in full all installments of rent due by the first day of each month or immediately after written notice and demand therefor are given by Lessor to Lessee.
- (2) Failure of Lessee to perform or comply with any obligation, covenant, or agreement of Lessee hereunder other than payment of money for a period of fourteen (14) days after written notice specifying such failure is given by Lessor to Lessee, except that if such obligation, covenant, or agreement is not capable of being performed within said fourteen (14) day period, Lessee

shall not be in default if Lessee shall commence such performance within said fourteen (14) day period and thereafter prosecute the same with diligence and continuity to completion.

- B. In the case of a continuing event of default by Lessee, Lessor shall have the following remedy in addition to all other rights and remedies provided by law or in equity, including without limitation, damages and specific performance:
- (1) Terminate this Lease by fourteen (14) days prior written notice given to Lessee specifying the date of termination, and Lessee shall within said fourteen (14) day period vacate the Leased Premises and surrender possession thereof to Lessor.
- C. If the Lessee shall be declared insolvent or bankrupt, or if any assignment of the Lessee's property shall be made for the benefit of creditors or otherwise, or if Lessee's leasehold interest herein shall be levied upon under execution, or seized by virtue of any writ of any Court of Law, or a Trustee in Bankruptcy or a Receiver appointed for the property of the Lessee, whether under the operation of the State or the Federal statutes, then and in any such case, the Lessor may, at his option, immediately with or without notice, notice being expressly waived, terminate this Lease and immediately retake possession of the Leased Premises without the same working any forfeiture of any accrued obligations of the Lessee hereunder.
- D. After the expiration of this Lease or any violation of any term or provision as herein provided for, if Lessee shall refuse to surrender and deliver possession of the Leased Premises after notice of termination, then in that event Lessor may, without further notice or demand, enter into and upon said premises, or any part thereof, and take possession thereof and repossess them, and expel, remove and put out of possession the Lessee, using such help, assistance and force in so doing as may be needful and proper, without prejudice to any remedy allowed by law, available in such cases.
- E. That in case the Leased Premises are left vacant and any part of the rent herein reserved be due and unpaid, then the Lessor may, without in anyway being obligated to do so, and without terminating this Lease, retake possession of said premises and rent the same for such rent, and upon such conditions as the Lessor may think best, making such changes and repairs as may be required, giving credit for the amount of rent so received less all expenses of such changes and repairs, and said Lessee shall be liable for the balance of the rent herein reserved until the expiration of this Lease.
- F. Lessee agrees to pay the Lessor all costs, including reasonable attorney fees, incurred by Lessor in recovering any rent or other money due and unpaid under the terms of this Lease or to recover possession of the Leased Premises after termination of this Lease.

20. Notices:

All notices, required to be given to Lessor hereunder, shall be in writing and be sent by certified mail to Pueblo Memorial Airport, Administration Office, 31201 Bryan Circle, Pueblo, Colorado 81001. All notices required to be given to Lessee hereunder shall be in writing and sent by certified mail, addressed to **James Spitzer, 311 Lamkin St., Pueblo, Colorado 81003**, provided that the parties, or either of them, may designate in writing from time to time subsequent or supplementary persons or address in connection with said notices. The effective date or service of any such notice shall be the date such notice is mailed by Lessee or Lessor.

21. Environmental Provisions:

- A. For the purpose of this Lease, "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local government authority, the State of Colorado, or the United States government and shall include, but not be limited to: (i) substances defined as "hazardous waste," "restricted hazardous waste," "hazardous substance" or "hazardous material" under any applicable federal, state, or local law or regulation (Environmental Regulations); (ii) asbestos-containing materials; (iii) PCBs; (iv) petroleum or petroleum based products; and (v) lead.
- B. Lessee will comply with Environmental Regulations that are applicable to Lessee and its use of the Leased Premises. No activity shall be undertaken by Lessee, its guests, employees, agents, contractors, or subcontractors, on all or any portion of the Leased Premises which would cause or permit: (i) the presence, use, generation, release, discharge, storage or disposal of any Hazardous Material in, on, under, about, or from the Leased Premises or any part thereof in violation of any Environmental Regulations; (ii) any portion of the Leased Premises to become a hazardous waste treatment, storage or disposal facility without receiving proper governmental authorization, and in compliance with all Environmental Regulations; or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions without receiving proper governmental authorization, and in compliance with all Environmental Regulations, including, without limitation, the Federal Water Pollution Control Act, U.S.C. Section 1251 et seq. and the Clean Air Act, 42 U.S.C. Section 7401 et seq.
- C. Lessee agrees to defend, indemnify, and forever hold harmless Lessor, and its officers, employees, agents, successors, and assigns, from all claims, losses, damages, penalties, expenses and costs, including, but not limited to, attorneys' fees, characterization, remediation and cleanup costs, incurred by reason of the use, storage, generation, release, discharge, maintenance, disposal, or removal of Hazardous Materials in, on, under, about, or from the Leased Premises, or any part thereof, by Lessee, its employees, agents, guests, contractors and subcontractors.

22. Law, Rules and Regulations:

- A. Lessee, its officers, agents, and employees shall faithfully observe and comply with all applicable federal, state, and local laws, regulations, and ordinances now existing or hereafter adopted relating to the use and occupancy of the Airport or Leased Premises including without limitation Chapter 1 of Title III of the Pueblo Municipal Code and rules affecting the operation of motor vehicles upon, to, and from the Airport. The Lessee, and all officers, agents, and employees of Lessee, hereby agree to be bound by and subject to all police ordinances of the City of Pueblo at all times while on the Airport, whether acting in the course of Lessee's business or otherwise.
- B. Lessee, its officers, agents, and employees shall faithfully observe and comply with all minimum standards and rules regulating operations and activities from and upon the Airport adopted from time to time by Lessor. Such minimum standards and rules shall not be applied arbitrarily, discriminatorily, or unreasonably. Except with respect to matters of public health and safety, if any provision of this Lease shall conflict with any provision of the minimum standards and rules adopted or amended by Lessor after commencement date, the conflicting provision of this Lease shall control.
- C. It is expressly understood by Lessee that security within the air operations area of the Airport is vital. The drive through gate entering the air operations area shall be kept closed and locked at all times except for ingress and egress. Only automobiles belonging to Lessee and its employees will be permitted on the air operations area. Any automobile brought by Lessee shall be the sole responsibility of the Lessee. Violation of airport security rules as now, or in the future may, exist shall be grounds for immediate termination of this Lease.

23. F.A.A. Lease Requirements:

- A. The Lessor reserves the right, without any obligation on its part to do so, to develop, modify, change, improve, or abandon the Pueblo Memorial Airport or any part thereof, as it may determine in its sole discretion, at any time, regardless of the desires or view of Lessee, and without interference or hindrance from Lessee or liability to Lessee.
- B. The Lessor reserves the right, without any obligation on its part to do so, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.
- C. Lessor shall have full and unrestricted right to enter upon those portions of the Airport occupied and leased herein by the Lessee, and Lessor, its agents, or representatives shall be permitted to inspect same during any regular business hours or upon twenty-four (24) hours' notice to Lessee.
- D. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the Lessor and the United States, relative to the use, development, operation, and maintenance of the Airport.

- E. Lessee shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations with respect to the construction of any structure or building on the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure on the Leased Premises.
- F. All rights not herein granted to the Lessee are reserved to Lessor and nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 as amended.
- G. Lessor reserves for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation or flight in said airspace, and for use of said airspace for landing on, taking off from, or operations on or over the Pueblo Memorial Airport.
- H. By accepting this Lease, Lessee expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure, building, or object nor permit the growth of any tree on the Leased Premises to a height not to exceed twenty-five (25) feet above ground level. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the Leased Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.
- I. Lessee shall not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at Pueblo Memorial Airport or otherwise constitute a hazard to aviation. In the event the aforesaid covenant is breached, the Lessor reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the expense of the Lessee.
- J. If during the term of this Lease, all or part of the Leased Premises should be taken or threatened to be taken for any public or quasi-public use under any governmental law or by right of eminent domain or sold to the condemning authority under threat of condemnation, this Lease shall terminate and the proceeds, if any, from such taking or sale shall be allocated between Lessor and Lessee in accordance with applicable condemnation law.
- K. Lessor reserves the right to grant and to take easements or rights of way in, under, over, and across the Leased Premises, in which event, Lessor shall only be entitled to compensation for damages to improvements of the Lessee destroyed or damaged thereby, but not to damages for loss of use of the Leased Premises.

24. Nondiscrimination Assurances

- A. The Lessee, for itself, its successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in

the event facilities are constructed, maintained, or otherwise operated on the Leased Premises or ramp, for a purpose for which Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lease shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as the regulations may be amended.

- B. The Lessee, for itself, its successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (i) no person on the grounds of race, color, religion, sex, sexual orientation, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises or ramp; (ii) that in construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, sexual orientation, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that the Lessee shall use the Leased Premises and ramp in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as the regulations may be amended.
- C. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, religion, disability, national origin, sex, or sexual orientation be excluded from participating in any contracting, leasing, or employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- D. Lessee agrees to operate the Leased Premises for the use and benefit of the public and to furnish good, prompt and efficient services adequate to meet all the demands for its services at the Airport, to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit of service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

25. Miscellaneous:

- A. This Lease and all of its covenants and provisions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, subtenants, and approved assigns.

- B. This Lease and any amendments hereto are subject to prior approval of the Federal Aviation Administration.
- C. Lessee is leasing the Leased Premises "AS IS, WHERE IS, WITH ALL FAULTS" in its present condition. Lessor makes no representation or warranties of any kind or character, express or implied, with respect to the Leased Premises, including but not limited to, any warranty or representation as to suitability or fitness for a particular purpose, title, zoning, physical or environment conditions, utilities, governmental approvals, the compliance of the Leased Premises with governmental and environment laws and regulations, the truth, accuracy or completeness of any document or other information provided to Lessee by Lessor or any other person, or any other matter or thing regarding the Leased Premises.. Lessor shall be under no obligation to maintain the Leased Premises or the Pueblo Memorial Airport or any part thereof in a particular location or condition. If the Pueblo Memorial Airport shall permanently close or relocate, the use restrictions stated in section 5 shall not apply, and the Lessee may use the Leased Premises for any lawful use or purpose allowed by the then existing Pueblo Municipal Code, or in the alternative, Lessee may terminate this Lease upon thirty (30) days prior written notice given to Lessor.
- D. The Lessee represents that it has inspected the Airport, Leased Premises, and facilities and accepts the conditions of same and fully assumes the risk incident to the use thereof. The Lessor shall not be liable to the Lessee for any damages or injuries to the property or personnel of the Lessee which result from hidden, latent, or other dangerous conditions on the Airport or Leased Premises. Lessee's taking of possession of the Leased Premises shall be conclusive evidence that Lessee accepts the Leased Premises in its present condition and that the Leased Premises is in good and satisfactory condition at the time such possession was taken.
- E. The acts and omissions of Lessee's employees, agents, contractors, and guests shall be imputed to Lessee for purposes of this Lease.
- F. This Lease is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Lease, with respect to any financial obligation of Lessor which may arise under this Lease in any fiscal year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this Lease, including any sub-agreement, attachment, schedule or exhibit thereto, by the Lessor.
- G. Nothing in this Lease is intended, nor should it be construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations otherwise conferred upon the

Lessor under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.

- H. This Lease contains the entire and exclusive agreement between the parties relating to the Leased Premises and may not be amended except by written instrument signed by the parties. Neither party shall be, or hold itself out as, agent of the other or as joint venturers or partners under this Lease.
- I. This Lease shall be governed by the laws of the State of Colorado. Venue for any action arising under this Lease or for the enforcement of this Lease shall be in a state court with jurisdiction located in Pueblo County, Colorado.
- J. Each person signing this Lease 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 Lease on behalf of such party and that this Lease is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

LESSOR:

CITY OF PUEBLO,
A Municipal Corporation

By _____
Nicholas A. Gradisar

Title: Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

LESSEE:

James Spitzer, dba Spitzer Aviation
Management

By 
James Spitzer

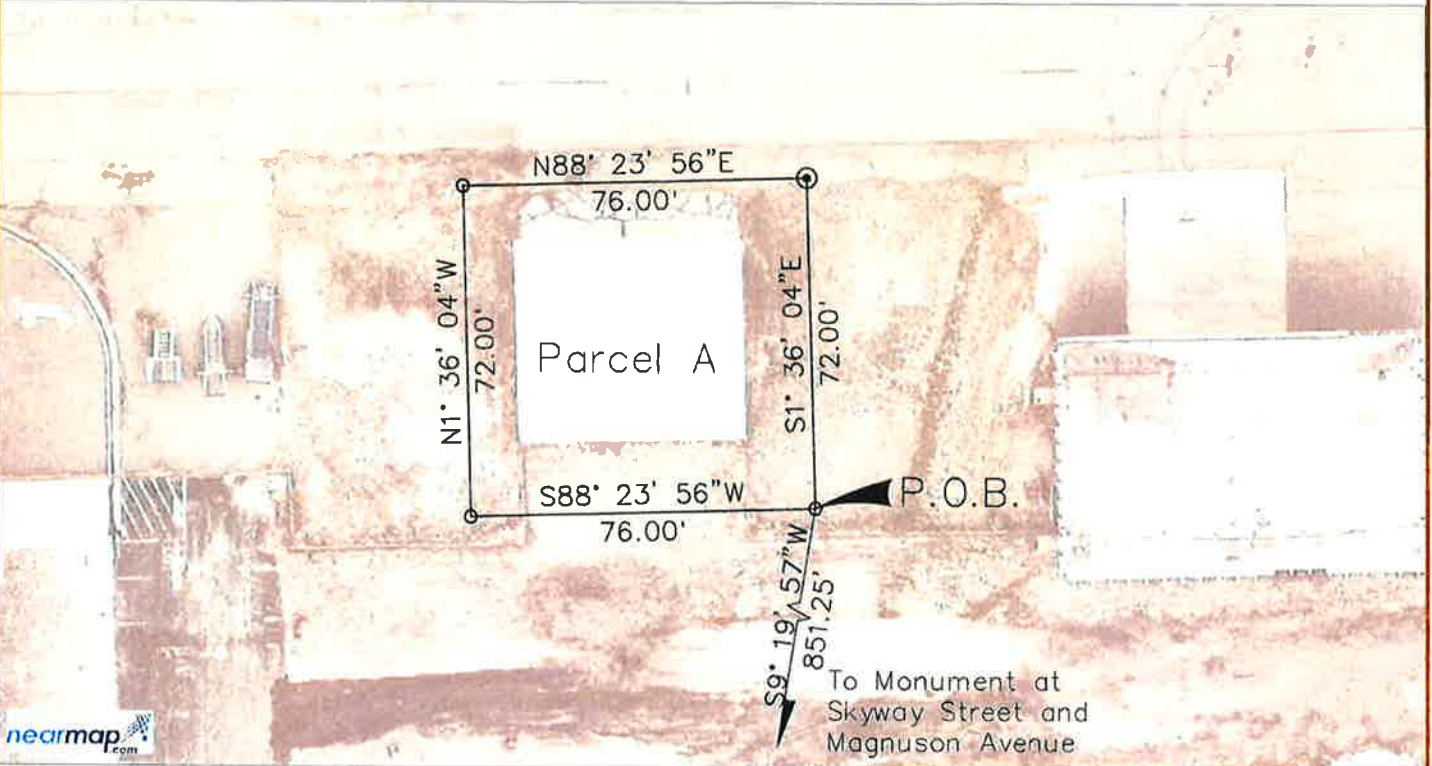
Title: Owner

EXHIBIT A

530 SKYWAY STREET - PARCEL A



March 2022 Imagery



Legend

- Set PK Nail with Shiner P.L.S. 31925
- Set Rebar and Yellow Cap P.L.S. 31925

Description

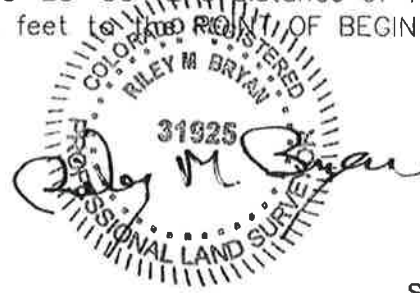
A parcel of land located within a portion of Parcel H of Pueblo Memorial Airport Industrial Park Subdivision, located in the SE 1/4 of the NE 1/4 of Section 25, Township 20 South, Range 64 West, and in a portion of the SW 1/4 of the NW 1/4 of Section 30, Township 20 South, Range 63 West of the Sixth Principal Meridian, being more particularly described as follows:

Parcel A

BEGINNING at a point from which the monument found at the intersection of Skyway Street and Atlas Avenue bears S 9° 19' 57" W a distance of 851.25 feet (bearings based on the monument found at the intersection of Skyway Street and Atlas Avenue to the monument found at the intersection of Skyway Street and Magnuson Avenue to bear N 1° 31' 26" E, with all bearings contained herein being relative thereto) thence S 88° 23' 56" W a distance of 76.00 feet; thence N 1° 36' 04" W a distance of 72.00 feet; thence N 88° 23' 56" E a distance of 76.00 feet; thence N 1° 36' 04" E a distance of 72.00 feet to the POINT OF BEGINNING.

Area = 0.13 Acres (5,472 s.f.) more or less.

Riley Monroe Bryan
Riley Monroe Bryan
P.L.S. 31925
Date 4/8/2022



SHEET 1 OF 1



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 24, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Daniel C. Kogovsek, City Attorney

SUBJECT: AN ORDINANCE CREATING A NEW SECTION 14 OF CHAPTER 1 OF TITLE XV OF THE PUEBLO MUNICIPAL CODE RELATING TO PEDESTRIAN SAFETY AND ACCESS TO SIDEWALKS AND PUBLIC RIGHTS OF WAY IN THE DOWNTOWN BUSINESS AREA OF THE CITY

SUMMARY:

Attached for consideration is a new Section 14 of Chapter 1 of Title XV of the Pueblo Municipal Code that would prohibit persons from sitting or lying down in public rights of way in the Downtown Business Area during regular business hours.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

City Council President Heather Graham requested the drafting of an ordinance prohibiting persons from sitting or lying down in public rights of way in the Downtown Business Area during regular business hours. The attached Ordinance is modeled after a similar ordinance adopted by the City of Durango, Colorado.

FINANCIAL IMPLICATIONS:

The financial implications of this Ordinance are currently unknown.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to adopt the attached Ordinance.

RECOMMENDATION:

None.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE CREATING A NEW SECTION 14 OF CHAPTER 1 OF TITLE XV OF THE PUEBLO MUNICIPAL CODE RELATING TO PEDESTRIAN SAFETY AND ACCESS TO SIDEWALKS AND PUBLIC RIGHTS OF WAY IN THE DOWNTOWN BUSINESS AREA OF THE CITY

WHEREAS, the City Council finds that it is beneficial to encourage pedestrian-friendly and shared walkways in the City, particularly in the downtown commercial district; and

WHEREAS, persons obstructing walkways cause unreasonable harm and inconvenience to pedestrians and persons utilizing wheelchairs or with other mobility issues; and

WHEREAS, because City Council's concern is about the mobility of persons near businesses and not who is causing the obstruction, the intent of the City Council is for this Ordinance to apply to all people violating the Ordinance, and not certain segments of the population; and

WHEREAS, the City Council finds that the City has a compelling interest in encouraging and preserving a vital, pedestrian-friendly City particularly in the Downtown Business Area of the City; and

WHEREAS, when persons misuse public walkways it makes those City facilities unavailable to others who want or need to use them; and

WHEREAS, the City Council, Mayor and City staff have received complaints from a wide variety of citizens and visitors about concerns over the safety of sidewalks and accessibility to the public sidewalks in the City, with a focus on concerns about people sitting and lying down in the most crowded portions of the central business district; and

WHEREAS, the City Council desires to minimize the congestion on the sidewalks and public right of way to make the Downtown Business Area more hospitable to local citizens as well as to out of town visitors, thereby promoting economic vitality; and

WHEREAS, the City Council is committed to maximizing the public health, safety and welfare of the citizens of and visitors to the City; and

WHEREAS, numerous downtown business owners and managers have submitted complaints regarding the safety of pedestrians and reduced accessibility to the sidewalks and public rights of way by persons sitting or lying down on those sidewalks and public rights of way; and

WHEREAS, the surface of the public sidewalks are constructed and maintained for the primary purpose of providing safe and unimpaired passage of pedestrians rather than for sitting down or lying down; and

WHEREAS, the use of sidewalks and other public rights of way for purposes of sitting or lying down creates significant and serious safety concerns for pedestrians, and vehicles as well as for those sitting or lying down in those areas; and

WHEREAS, weather conditions during a portion of the year, including ice and snow, increase the hazards associated with access to sidewalks and public rights of way in the Downtown Business Area; and

WHEREAS, the City of Pueblo is host to many tourists and out of town travelers who are not familiar with the sidewalks and public rights of way, leading to increased concerns over safety and accessibility and conflicts with those who are using those areas for purposes other than their primary intended uses: and

WHEREAS, the City of Pueblo has a lively night life, causing people to use the sidewalks and alleys at night, with darkness increasing the chances of conflicts between pedestrians and persons sitting or lying on sidewalks and public rights of way; and

WHEREAS, there are established benches and other places to rest within the Downtown Business Area that will afford more than adequate opportunities for persons to sit down or rest; and

WHEREAS, the surface of alleys, streets, curbs, parking spaces and other public rights of way are constructed and maintained for the primary purpose of providing safe and unimpaired passage of pedestrians and vehicles rather than for sitting or lying down; and

WHEREAS, the presence of persons sitting on the sidewalks and public rights of way is unexpected, creating a sense of hazard and disorder that discourages people from visiting the Downtown Business Area; and

WHEREAS, persons who attempt to avoid the dangers and disorder caused by people sitting or lying down on the sidewalks often causes them to avoid the congestion and danger by

walking in the streets, thereby creating even greater hazards to pedestrians and traffic; and

WHEREAS, the alleys in close proximity to the streets located in the Downtown Business Area are used for primary access to businesses in the alleys by pedestrians visiting those businesses, causing conditions similar to those on the sidewalks downtown. People sitting and lying in the alleys or other rights of way create dangerous interactions with traffic and service vehicles such as delivery trucks, garbage trucks and utility vehicles. People sitting or lying down near solid waste receptacles could suffer serious injury during operations to pick up those items; and

WHEREAS, there are legitimate circumstances where a person may be required to sit or temporarily lie down on sidewalks, and reasonable exceptions to the restrictions are appropriate and are identified in this Ordinance; and

WHEREAS, the City Council finds that the adoption of the restrictions contained herein will promote pedestrian safety and accessibility and are in the best interests of the public health, safety and welfare of the City; NOW, THEREFORE,

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

SECTION 1.

The City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

SECTION 2.

Section 15-1-14 of Chapter 1 of Title XV of the Pueblo Municipal Code is hereby added to the Pueblo Municipal Code to read as follows:

Sec. 15-1-14. – Obstruction of Public Rights-of-Way.

(1) As used herein, “Public Right-of-Way” shall be defined as any public sidewalk, street, railway, alley, parking space, curb, or other publicly owned property intended for pedestrian or vehicular travel.

(2) As used herein, the “Downtown Business Area” shall be defined as the area beginning at the intersection of W 13th and N Elizabeth St., east along centerline of W 13th St. to the center of Interstate 25; thence south along the center of existing or future Interstate 25 to the northern edge of the railroad lines at an approximate location of 38° 15'48.369" N, 104° 36'18.691" W. thence SW along the northern edge of the railroad to a point on the top of the Arkansas River levee at an approximate latitude and longitude of 38° 15'38.319" N, 104° 36'57.711" W; thence NW along the top of the levee to an approximate location of 38° 15'50.625" N, 104° 37'11.123" W; thence NE at 43 degrees for a distance of ~2139 ft. to the centerline of N Elizabeth St. at approximately 38° 16'4.9" N, 104° 36'51.34" W; continuing north along the centerline of N Elizabeth St. to the point of beginning at the intersection of W 13th St. and N Elizabeth St. The area included within the above description shall include the full width of all described railroad, street, or alley

rights of way, including all public sidewalks.

(3) It shall be unlawful for any person to sit, kneel, recline, or lie down in the Downtown Business Area upon any surface of any Public Right-of-Way, or upon any bedding, chair, stool, or any other object placed upon the surface of any Public Right-of-Way, between the hours of 7:00 a.m. and 10:00 p.m.

(4) The following activities or circumstances shall not be deemed to be a violation of this section: _

a. The person is experiencing a bona fide medical emergency.

b. The person has a disability or is utilizing a wheelchair, walker, crutches, or other similar mobility assisting device within the Public Right-of-Way.

c. The person is sitting or lying on furniture or other objects installed in or placed upon the Public Right-of-Way by the City, or by others with a license or permit issued by the City, that are intended primarily to allow persons to sit or rest, including items such as chairs, benches, and low walls.

d. The person is a child in a stroller.

e. The person is attending a parade, festival, performance, rally, demonstration, meeting, or other special event conducted pursuant to a permit or license issued by the City.

(5) No peace officer shall issue a citation or otherwise enforce this Section against any person until the peace officer first seeks voluntary compliance and unless the person continues to engage in conduct that is prohibited by this Section after having been notified by a peace officer that the conduct violates the provisions of this Section.

(6) Violation of this Section is a civil infraction. Upon conviction for a first violation of this Section, the Municipal Court shall impose a fine not to exceed one hundred dollars (\$100.00). Upon a second or subsequent conviction for the violation of this Section, the Municipal Court shall impose a fine not to exceed two hundred dollars (\$200.00).

SECTION 3.

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 described therein.

SECTION 4.

This Ordinance shall become effective thirty (30) days after 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 24, 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
Lindsey Vigna - Assistant Director of Animal Law Enforcement HSPPR

SUBJECT: AN ORDINANCE AMENDING CHAPTER 4 OF TITLE XI OF THE PUEBLO MUNICIPAL CODE TO ALLOW ANIMAL SHELTER PERSONNEL TO ADMINISTER ANIMAL VACCINATIONS

SUMMARY:

Attached for consideration is a set of amendments that will define what constitutes a vaccinating veterinarian, to add contextual definitions and define who is authorized to administer animal vaccinations, and to add the requirement that the name of the person administering an animal vaccination be included on the vaccination form provided to the licensing officer.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Effective June 8, 2022, Governor Polis signed HB22-1235 into law. HB22-1235 provided for many changes within the Veterinary Practices Act. Said legislation expanded the ability of non-veterinarians to administer animal vaccinations under certain statutory conditions, dependent upon the administration of said animal vaccines was done under direct or indirect supervision.

Section 11-4-2 of the Pueblo Municipal Code currently regulates vaccinations within the City of Pueblo and requires the vaccination to be administered by a licensed veterinarian. Passage of the attached ordinance will bring the City's Code in line with state law and provide additional definitions necessary for that purpose. Additionally, passage of the attached ordinance will allow for more expeditious vaccinations of animals by a licensed animal shelter.

FINANCIAL IMPLICATIONS:

There are no financial implications.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If the Code is not amended in accordance with this Ordinance, vaccinations within the City of Pueblo will not be in conformity with state law.

RECOMMENDATION:

Staff recommends approval of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 4 OF TITLE XI OF THE
PUEBLO MUNICIPAL CODE TO ALLOW ANIMAL SHELTER
PERSONNEL TO ADMINISTER ANIMAL VACCINATIONS

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

SECTION 1.

Section 11-4-1 of Chapter 4 of Title XI of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-4-1. – Definitions.

As used in this Chapter, the term:

1. *Owner* shall mean any person who owns, keeps or harbors any animal or any person who permits or suffers any animal to remain on or about his or her premises for a period of thirty (30) days.
2. *Animal* shall mean all domesticated mammals, reptiles, birds, amphibians, and other domesticated creatures. The term does not include humans.
3. *Dangerous animal* shall mean any animal that without provocation bites or attacks a human being or another animal, either on public or private property, and causes serious bodily injury, or that may otherwise meet the definition per Pueblo Municipal Code Section 11-4-14.
4. *At large* shall mean off the premises of its owner or person having charge thereof, and not under the direct physical control of the owner or other responsible person by either leash, cord or chain. An animal within the automobile or an enclosed portion of any other motor vehicle of its owner or other authorized person shall not be deemed to be at large. An animal which is not restrained or tethered and is left unattended in an unenclosed portion of a motor vehicle shall be deemed to be at large.
5. *Harboring or keeping* shall mean the act of keeping or caring for an animal or the act of providing a premises to which an animal returns for food, shelter or care for a period of three (3) days or more.
6. *Vaccination* shall mean the inoculation of an animal with a vaccine approved by the Colorado Department of Health for use in prevention of rabies.
7. *Person* shall mean any individual, firm, corporation, limited liability company, partnership or association. All members of one (1) household shall be considered as one (1) person for the purposes of this Chapter.
8. *License Officer* shall mean the Shelter Operator or, if none, the Director of Finance, or his or her designee.
9. *Manure* shall mean the excrement of any domestic animal or fowl and all stable bedding.
10. *Lot or parcel of land* shall mean any area of land in the City under one (1) ownership as shown on the last assessor's roll of the County, or any area of land under legal control of any person.
11. *Improved lot* shall mean any lot or parcel of land on which is located a dwelling house, occupied or unoccupied.
12. *Property line* shall mean the boundary of any lot or parcel of land as the same is described in the conveyance to the owner of such lot or parcel, and shall not include the street or any portion thereof upon which said lot or parcel may abut; provided, however, that for purposes of this Chapter, the property line of a lot or parcel abutting on an alley shall be deemed to extend to the centerline of such alley.
13. *Fence* shall mean an enclosing structure of any construction with sufficient strength, durability and dimensions to prevent an animal from straying from within.
14. *Wild animal* shall mean any species of animal which exists in a natural unconfined state

and is not commonly domesticated or suitable for domestication. The term specifically includes, without limitation, all species of venomous reptiles, lizards belonging to the family Varanidae and crocodilians.

15. *Domesticated pot-bellied pig* shall mean a domesticated porcine animal of the species *Sus scrofa vittatus* which meets both of the following criteria: (i) the animal shall not exceed one hundred (100) pounds in weight, and (ii) if over four (4) months of age, the animal shall be spayed or neutered.
16. *Neglect* or *neglecting* means failure to provide food, water, protection from the elements or other care generally considered to be normal, usual and accepted for an animal's health and well-being consistent with the species, breed and type of animal.
17. *Mistreatment* means neglect and every other act or omission which creates a substantial probability of causing injury to or unnecessary suffering by an animal.
18. *Abandon* or *abandoning* shall mean the leaving of an animal by a person having possession or custody of the animal under circumstances where the animal will not likely be provided with adequate food, water or protection from the elements.
19. *Shelter Operator* shall mean the Animal Control Division of the Police Department, except that if the City has entered into a management agreement with a nonprofit corporation which assigns and delegates to such entity the authority and responsibility to enforce this Chapter and to manage and operate the Animal Shelter and the administration of the vaccination and licensing system provisions of this Chapter, the term shall instead mean such entity.
20. *Potentially dangerous animal* shall mean an animal that causes any injury that is less than a serious bodily injury, or that may otherwise meet the definition per Pueblo Municipal Code Section 11-4-14.
21. *Tether* shall mean to tie up or chain to a fixed or heavy inanimate object to restrict the free movement of an animal to a distance no greater than the length of its leash or chain.
22. **Vaccinating veterinarian shall mean a veterinarian who physically administers a vaccination to an animal, as well as a veterinarian under whose supervision a vaccine is administered to an animal, regardless of whether said administration is done under direct or indirect supervision**

SECTION 2.

Section 11-4-2 of Chapter 4 of Title XI of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-4-2. – Vaccinations.

(a) Definitions. When used in this Section:

1. **Indirect supervision means supervision where the vaccinating veterinarian directs or supervises the authorized delegated treatment or collection of diagnostic information of a patient at the veterinary premises without being on the premises but readily available for communication.**
2. **Animal shelter shall have the same meaning as set forth in §35-80-102 of the Colorado Revised Statutes (C.R.S.), as may be amended.**

(b) Every owner of a dog four (4) months old or older shall have such dog vaccinated against rabies by: (i) a licensed veterinarian, (ii) by a person under the direct supervision of a licensed veterinarian and who has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events, or (iii) with respect to animal shelter-owned animals, by a person working on behalf of an animal shelter if the person is under the indirect supervision of a licensed veterinarian and has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events. If a dog four (4) months old or older, whose owner is a nonresident, shall remain within

the City for more than thirty (30) days, it shall be vaccinated in accordance with the provisions of this Chapter.

(c) Every owner of a cat four (4) months old or older shall have such cat vaccinated against rabies by: **(i) a licensed veterinarian, (ii) by a person under the direct supervision of a licensed veterinarian and who has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events, or (iii) with respect to animal shelter-owned animals, by a person working on behalf of an animal shelter if the person is under the indirect supervision of a licensed veterinarian and has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events.** If a cat four (4) months old or older, whose owner is a nonresident, shall remain within the City for more than thirty (30) days, it shall be vaccinated in accordance with the provisions of this Chapter.

(d) Every owner of a ferret four (4) months old or older shall have such ferret vaccinated against rabies by: **(i) a licensed veterinarian, (ii) by a person under the direct supervision of a licensed veterinarian and who has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events, or (iii) with respect to animal shelter-owned animals, by a person working on behalf of an animal shelter if the person is under the indirect supervision of a licensed veterinarian and has been trained in rabies vaccine storage, handling, and administration and in the management of adverse events.** If a ferret four (4) months old or older, whose owner is a nonresident, shall remain within the City for more than thirty (30) days, it shall be vaccinated in accordance with the provisions of this Chapter.

(e) A veterinarian, with the written consent of an animal's owner, may issue a written exemption waiving the requirement that an animal be vaccinated from rabies if the veterinarian, in his or her professional opinion, determines that the rabies vaccination is contraindicated due to the animal's health.

(f) A valid veterinary-client-patient relationship, as defined under Section **12-315-104(19)**, C.R.S., **as may be amended**, must have been established between the veterinarian, owner and animal in order for a veterinarian to issue a written exemption.

(g) It shall be unlawful and a Class 2 municipal offense for any animal owner required by this Section to have his or her animal vaccinated to fail to have said animal so vaccinated or obtain a written exemption from vaccination.

SECTION 3.

Section 11-4-3 of Chapter 4 of Title XI of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-4-3. – Certificate of vaccination; exemption from rabies vaccination.

(a) Upon vaccination, the **vaccinating** veterinarian shall execute in triplicate a signed vaccination certificate upon forms approved by the Shelter Operator and License Officer. The certificate shall contain the following information:

1. The name, address and telephone number of the owner of the vaccinated dog or cat;
2. The date of vaccination;
3. The breed, age, color and sex of the vaccinated dog or cat;
4. The expiration date of vaccination;
5. A statement indicating whether the animal has been surgically sterilized;
6. The number of the vaccination tag issued; **and**
7. **The name of the person who administered the vaccine.**

(b) The veterinarian shall deliver a copy of the certificate to the owner, retain the original for his or her files and send a copy to the Shelter Operator. It shall be unlawful and a municipal offense for any owner of any dog or cat to fail or refuse to exhibit his or her copy of the vaccination certificate upon demand to any person charged with enforcement of this Chapter.

(c) If the veterinarian determines that an exemption to the requirement for rabies vaccination is appropriate, the veterinarian shall complete and sign the veterinary section of the Exemption from Rabies Vaccination Form available for download from the Colorado Department of Public Health and Environment or on file at the office of the City Clerk. The animal owner shall sign the informed consent section of the Exemption from Rabies Vaccination Form.

(d) The veterinarian shall keep a copy of each signed Exemption from Rabies Form in the animal's medical record and provide a copy to the animal's owner. The veterinarian shall send a copy of the Exemption from Rabies Vaccination Form to the Shelter Operator. It shall be unlawful and a municipal offense for any owner of any dog or cat to fail or refuse to exhibit his or her copy of the Exemption from Rabies Vaccination Form upon demand to any person charged with enforcement of this Chapter.

(e) Any exemption issued pursuant to this Section may not exceed a period of three (3) years from the date of issuance. If the medical condition exists beyond a three-year period, and in the professional opinion of a veterinarian licensed in the State of Colorado the exemption continues to be appropriate, a new waiver may be issued.

(f) A veterinarian supplying a waiver exempting an animal from a rabies vaccination, the veterinarian's assistants and employees, the City, and any person enforcing Section 11-4-2 shall not be liable for any subsequent accident, disease, injury or quarantine that may occur as a result of an animal exempted from a rabies vaccination.

SECTION 4.

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

SECTION 5.

This Ordinance shall become effective thirty (30) days after 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 24, 2022

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Marisa Stoller, City Clerk

SUBJECT: AN ORDINANCE AMENDING CHAPTER 3 OF TITLE XI OF THE PUEBLO MUNICIPAL CODE TO ALLOW THE CITY CLERK TO ADMINISTRATIVELY APPROVE CERTAIN LIQUOR LICENSE MATTERS DESIGNATED BY THE LIQUOR BOARD WHEN ALLOWED BY STATE LAW

SUMMARY:

This Ordinance will streamline the approval process for liquor renewals and minor license changes by allowing them to be administratively approved by the Office of the City Clerk instead of requiring them to be brought before the Liquor Board via placement on its agenda. These items are rarely if ever discussed, and administrative approval will shorten their wait process by an additional 2-3 weeks. Any licenses where renewal may be questionable or protested will continue to be brought before the Liquor Board.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Many liquor licensees are currently struggling with the wait times at the State level, where it can take months to process licenses. This delay means that many licenses expire while in the process of being renewed. While retailers can still continue to use their license as long as they have a renewal in process, this expiration causes wholesalers to threaten to stop distributing to their businesses. Shortening the time an application takes to be renewed and to make minor changes will help our local businesses.

Many other municipalities including Centennial, Littleton, Wheat Ridge, and others, administratively approve licenses and modifications in this way. The Liquor Board will be able to designate certain areas that the City Clerk may approve administratively, such as applications for renewal, transfer of ownership, temporary permit, or for changes in manager.

FINANCIAL IMPLICATIONS:

This streamlined process will result in a minimal decrease of required staff time.

BOARD/COMMISSION RECOMMENDATION:

The Liquor Board discussed this proposal at the August 17, 2022 meeting and is supportive of this ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If Council denies this Ordinance, the Liquor Board will continue to approve these items.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 3 OF TITLE XI OF THE PUEBLO MUNICIPAL CODE TO ALLOW THE CITY CLERK TO ADMINISTRATIVELY APPROVE CERTAIN LIQUOR LICENSE MATTERS DESIGNATED BY THE LIQUOR BOARD WHEN ALLOWED BY STATE LAW

WHEREAS, the City of Pueblo Liquor and Beer Licensing Board (the "Board") was duly formed by the City of Pueblo, Colorado and exists pursuant to and in accordance with Pueblo Municipal Code Section 11-3-4 et seq. ("Code"); and

WHEREAS, consistent with said Code provisions, the Board possesses all the powers of a licensing authority as set forth in the Colorado Liquor Code, Articles 3, 4, and 5 of Title 44, C.R.S., as amended; and

WHEREAS, pursuant to the Colorado Liquor Code, the Board is not required to conduct hearings for certain matters, including on applications for renewal, transfer of ownership, a temporary permit, nor for changes in manager; and

WHEREAS, as such, City Council desires to ensure the Board has the discretion to delegate the authority to administratively process and approve such matters, without a hearing, upon certain terms and conditions as the Board may establish; and

WHEREAS, the City finds that the administrative processing and approval of applications for renewal, transfer of ownership, temporary permits, and changes in manager when there does not appear to be any cause for the Board to review such an application, is the most efficient and cost-effective manner of acting on such applications and could reduce the delays that applicants sometimes encounter with such applications; and

WHEREAS, the City and Board therefore desire to delegate to the City Clerk the authority to administratively process and approve applications for renewal, transfer of ownership, temporary permits, and changes in manager on the terms and conditions set forth by the Board; NOW, THEREFORE,

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

(brackets indicate matter being deleted, underscoring indicates new matter being added)

SECTION 1.

Section 11-3-4 of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-3-4. - Licensing authority.

(a) The Liquor and Beer Licensing Board shall be the local licensing authority in the City for the licensing of **businesses and** locations **that desire** to sell beer and alcoholic liquors as authorized by Articles 3, 4, and 5 of Title 44, C.R.S., as amended, and the rules and regulations of the State Licensing Authority, and shall possess all powers given to local licensing authorities by the provisions of said statutes and rules and regulations.

(b) **The City Clerk is authorized to administratively process and approve certain matters designated by the Liquor and Beer Licensing Board, upon terms and conditions established by the Board, in accordance with Articles 3, 4, and 5 of Title 44, C.R.S., as same may be amended, when there does not appear to be cause for the Board to review**

such matters.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective thirty (30) days after 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
Resolution**

COUNCIL MEETING DATE: October 24, 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. 15039

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	\$ 685,650.28
<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	\$ 160,000.00
<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	\$1,000,000.00

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 24, 2022

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
DEPUTY 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: Daniel C. 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. 10304

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 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



Deputy 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
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

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: Daniel C. 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. ARPA 11 -Crazy Faith - Subrecipient Agreement_FINAL

ORDINANCE NO. 10305

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

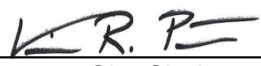
☐ Council did not act to override the Mayor's veto.

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

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

President of City Council

ATTEST



Deputy 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 Crazy Faith Street Ministry, a Colorado nonprofit corporation, hereinafter referred to as the "Subrecipient." City and Subrecipient 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 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, water and other drinks and supplies. 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	Up to \$48,000.00

(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.

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 50 homeless individuals may be housed at the overnight shelter at any one time
- Subrecipient shall use two (2) professionally trained security officers to provide security when the overnight shelter is in operation

The aggregate of all payments made to CFSM shall not exceed Fifty Thousand 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, water and other drinks and supplies. 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	Up to \$48,000.00

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 the Agreement 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. 10306

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 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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.

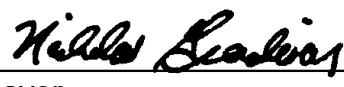


President of City Council

Action by the Mayor:

☒ Approved on October 27, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

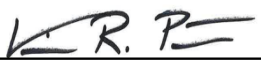
☐ Council did not act to override the Mayor's veto.

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

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

President of City Council

ATTEST



Deputy 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	

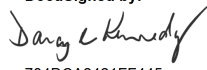
SIGNATURE PAGE

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:



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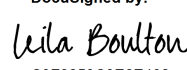
By: Darcy R. Kennedy, Deputy Executive Director

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. 10307

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 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



Deputy 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 (2nd 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 B, SAMPLE OPTION LETTER
EXHIBIT C, FUNDING PROVISIONS (Budget) (Currently version C-2)
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EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM
EXHIBIT R, APPLICABLE FEDERAL AWARDS
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
b. Federal Funds ARPA US Treasury Expenditure Category EC6 (100% of ARPA Award)	\$ 1,022,542.00

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." <u>Charles Roy</u> <u>719-553-2271</u> 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 <u>719-553-2271</u> 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. <u>Don Scanga</u> <u>719-546-5434</u> 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. 10308

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 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



Deputy 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
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE
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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)
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:


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

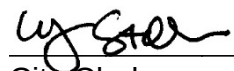

City Clerk

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 "*" 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. 10309

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 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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

- ☒ Approved on October 27, 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

K.R. P
Deputy 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. 10310

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 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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022 .



President of City Council

Action by the Mayor:

- ☒ Approved on October 27, 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

K.R. P.
Deputy 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



**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)

ORDINANCE NO. 10311

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 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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

- ☒ Approved on October 27, 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

K.R. P.
Deputy City Clerk

**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. 10312

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 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

K.R. P
Deputy 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. Cooperation Agreement with Exhibit A

ORDINANCE NO. 10313

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 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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

- ☒ Approved on October 27, 2022.
- ☐ Disapproved on _____ based on the following objections:



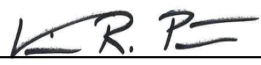
Mayor

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



Deputy City Clerk

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (“Agreement”) is entered into as of October 24, 2022, between 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, with an address of 125 Riverwalk Place, Pueblo, Colorado 81003 (hereinafter referred to as “Authority”),

WITNESSETH:

WHEREAS, the Authority is the recipient of Pueblo County 1-A funding for the expansion of the Historic Arkansas Riverwalk of Pueblo channel and the construction of a boat house/office/event facility (“Project”), and,

WHEREAS, City and 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 said Project.

NOW THEREFORE, in consideration of the foregoing and mutual covenants contained herein, City and Authority agree as follows:

1. The Authority assumes and shall be responsible for the contracting and payment of a professional licensed surveyor within the State of Colorado for the completion of documents required for the approval, by City Council, of a re-subdivision plat of the area that will be utilized for the expansion of the Historic Arkansas Riverwalk of Pueblo channel east to the western right-of-way of Santa Fe Avenue and other improvements within the Project.

2. The Authority has received a proposal from Edward James Surveying, Inc., 4732 Eagleridge Circle, Pueblo, CO 81008 (“Surveyor”) to complete professional surveying services encompassing the re-subdivision, alley vacation, and rezoning approvals that will be utilized for said Project. A true and correct copy of the proposal from Edward James Surveying, Inc. is attached hereto as Exhibit “A” and incorporated herein. The cost of \$22,800 will be paid by Authority for the services provided by the Surveyor. Any cost for the recording of the alley vacation and subdivision plats shall be paid by City.

3. Upon the Pueblo City Council’s approval of this Agreement by ordinance, and the submittal of an invoice by the Authority to City, the amount of \$12,600 will be paid by City to the Authority toward the cost for the professional licensed surveyor to complete the re-subdivision, alley vacation, and rezoning of the properties that will be utilized for said Project work identified in the attached Exhibit “A”.

4. Authority warrants and represents that:

(a) Authority is duly organized and validly existing in good standing under the laws of the State of Colorado; has all necessary power to enter into the perform the covenants, conditions, assurances and obligations on its part to be performed under Agreement; and by proper action has duly authorized the execution and delivery of this Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of Authority enforceable against Authority in accordance with their terms.

(c) Authority has sufficient funds committed and available from sources, which may lawfully be used to timely meet and pay its financial obligations under this Agreement.

5. Any notice required or permitted to be given under this Agreement shall be deemed given when delivered in person or mailed certified mail, postage prepaid, as follows:

(a) If to City, City of Pueblo, 1 City Hall Place, 2nd Floor, Pueblo, CO 81003, Attention: Mayor; with a copy to the City Attorney, 1 City Hall Place, 3rd Floor, Pueblo, CO 81003.

(b) If to Authority, HARP Authority, 125 Riverwalk Place, Pueblo, Colorado 81003, Attention: Executive Director, or to such other person or address as either party may designate in writing given to the other party as above provided.

6. If any provision of this Agreement or the application thereof shall be determined to be invalid by a court of competent jurisdiction, such determination shall not affect the validity of any other provision hereof. The waiver of any breach of any provision hereof shall not be construed as a waiver of any other provision, or the same provision upon subsequent breach.

7. This Agreement may not be assigned by either party without the consent of the other party and shall be binding upon and inure to the benefit of the City and Authority and their respective successors and approved assigns.

Executed at Pueblo, Colorado, as of the day and year first above written.

ATTEST:

CITY OF PUEBLO, A MUNICIPAL
CORPORATION

City Clerk

By _____
Nicholas A. Gradisar, Mayor

Date _____

HISTORIC ARKANSAS RIVERWALK OF
PUEBLO AUTHORITY

By _____
David Anderson, Board Chairman

Date _____



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
---	--------------------

***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.

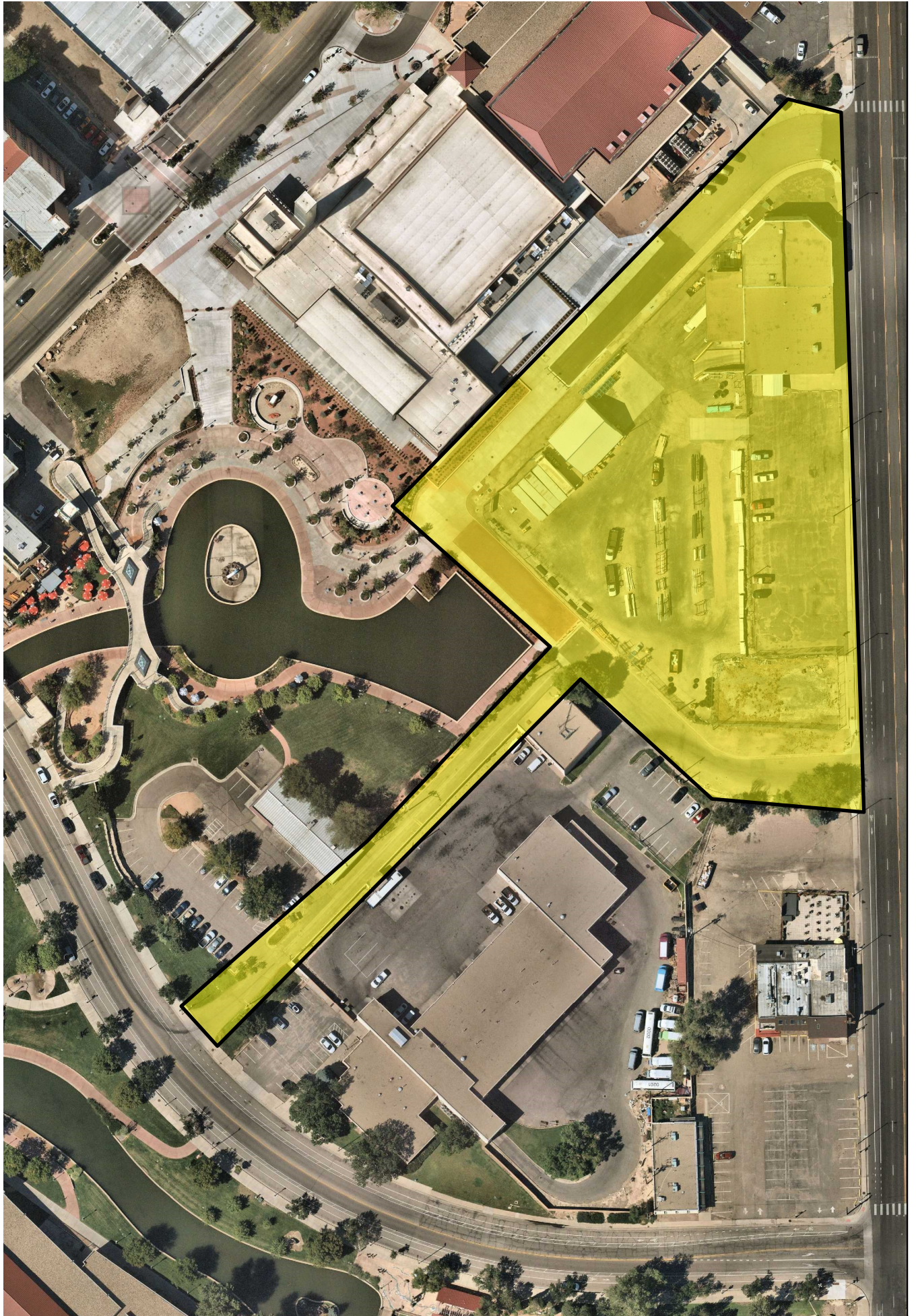
ACCEPTED BY:



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. 10314

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 2022.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

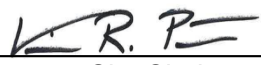
☐ Council did not act to override the Mayor's veto.

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

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

President of City Council

ATTEST



Deputy 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. 10315

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 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

K.R. P
Deputy 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 (15) 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. 10316

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.

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022 .



President of City Council

Action by the Mayor:

- ☒ Approved on October 27, 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

K.R. P.
Deputy 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 required 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.



37

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.



38

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.



39

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.



40

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.



41

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

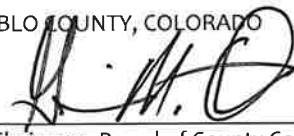
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IN WITNESS WHEREOF, the parties have entered into this Memorandum of Understanding the day and year first written above.

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. 10317

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 October 11, 2022.

Final adoption of Ordinance by City Council on October 24, 2022.



President of City Council

Action by the Mayor:

☒ Approved on October 27, 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



Deputy 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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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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