



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

**MONDAY, JANUARY 23, 2023
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 Jerry Mance, Mercy and Peace Gospel
Mission Church in Jesus Name

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 January 9, 2023, as distributed.

J1 City Council Minutes for January 9, 2023

K. 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.

L. COMMUNICATIONS

L1 Minutes of the Planning and Zoning Commission Regular Meeting for 12/14/2022

M. RESOLUTIONS

- M1 A Resolution approving and accepting a donation of funds from the Garone Nicksich Foundation to the City of Pueblo on behalf of the Pueblo Food Project for the Entrepreneur Development Program in the amount of \$20,000 and transferring said funds to Project No. CO2102
- M2 A Resolution approving agreements between the City of Pueblo, a Municipal Corporation, and Bohannon-Huston, Inc., and Wilson Company, Inc., for Project No. 22-069 Pueblo regional on-call transportation technical assistance consulting services for PACOG/MPO and the City of Pueblo, and authorizing the purchasing agent to execute same
- M3 A Resolution confirming the appointment of council members to various boards and commissions for the year 2023
- M4 A Resolution confirming the appointment by the Mayor of Melissa Nereson and Jon Walker to the Pueblo Urban Renewal Authority

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 Southern Colorado Harm Reduction Association, 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 nine hundred seventy-five thousand dollars (\$975,000) 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 United Way of Pueblo County, Inc., 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 nine hundred seventy-five thousand dollars (\$975,000) from Project No. CI2113 - American Rescue Plan Act, for purposes thereof
- N3 An Ordinance approving and accepting a grant agreement for the City of Pueblo from the State of Colorado Department of Public Safety, Division of Criminal Justice for the better LED spaces grant, authorizing the Mayor to execute same, establishing project number CI2314, and budgeting and appropriating funds in the amount of \$744,000 to project number CI2314
- N4 An Ordinance approving and accepting a PACOG multimodal transportation and mitigation options fund, coronavirus state and local fiscal recovery (MMOF-ARPA-SLFRF) funds grant, relating to transportation planning services, establishing Project number TP2241, budgeting and appropriating funds not to exceed \$200,000 and authorizing the Mayor to execute same
- N5 An Ordinance approving an amendment to the 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
- N6 An Ordinance approving a lease between the City of Pueblo, a Colorado Municipal Corporation and Black Hills Colorado Electric, LLC, a Delaware limited liability for the use of city-owned parcel no. 536100025 and authorizing the Mayor to execute same
- N7 An Ordinance approving an exchange agreement between the City of Pueblo and BIF IV Intrepid OpCo, LLC, allowing for the use of a city-owned conduit for the installation of Intrepid's fiber optic pathway in exchange for twelve (12) fiber strands for the city's exclusive use, and authorizing the Mayor to execute same
- N8 An Ordinance approving an animal services contract between the City of Pueblo, a

Colorado municipal corporation and Pueblo County, a political subdivision of the State of Colorado and the Humane Society of The Pikes Peak Region, a Colorado non-profit corporation relating to the operation of the Pueblo Animal Shelter and the enforcement of local animal control ordinances and authorizing the Mayor to execute said contract

N9 An Ordinance amending Chapter 1 of Title XI of the Pueblo Municipal Code, updating the provisions for dangerous animals and potentially dangerous animals

N10 An Ordinance amending Chapter 1 of Title XI of the Pueblo Municipal Code to update the harassment provisions in accordance with recent supreme court rulings

N11 An Ordinance amending Article VI of Chapter 3 of Title XI of the Pueblo Municipal Code, updating alcohol beverage tasting provisions due to changes in state law

O. APPROVAL OF CONSENT AGENDA

I move to receive and file the minutes of the Planning and Zoning Commission, approve all Resolutions Set Forth in the Consent Agenda; Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for February 13, 2023, and Order the Ordinances to be published BY TITLE.

P. REGULAR AGENDA

Q. HEARINGS

Q1 Hearing on the Appeal of Mr. Henry Borunda regarding the decision of the Historic Preservation Commission on the Applications for Certificate of Appropriateness for the proposed installation of a steel facade at 322-326 South Union Ave

Required Council Action: Receive Testimony in Regard to the Historic Preservation Commission's Denial for Facade Improvements to 322-326 S. Union Ave, Pueblo, Colorado. Uphold the decision made by the Historic Preservation Commission or Remand Back to the Historic Preservation Commission for further review.

Q2 Hearing on the Appeal of Mr. Henry Borunda regarding the decision of the Historic Preservation Commission on the Applications for Certificate of Appropriateness for the proposed installation of the "Core" mural on 326 South Union Ave

Required Council Action: Receive Testimony in Regard to the Historic Preservation Commission's Denial for installtion of "Core" mural on 326 S. Union Ave, Pueblo, Colorado. Uphold the decision made by the Historic Preservation Commission or Remand Back to the Historic Preservation Commission for further review.

R. RESOLUTIONS

R1 A Resolution authorizing payment from the council contingencies account in the 2023 general fund budget to the Pueblo Community College Foundation in the amount of \$1,000 to sponsor the Pueblo Hall of Fame event on Saturday, February 18, 2023 at the PCC Fortino Ballroom

R2 A Resolution authorizing payment from the council contingencies account in the 2023 general fund budget to the Steelworks Center of the West, DBA Bessemer Historical Society, in the amount of \$1,000 to sponsor the Faces of CF&I Dinner on Saturday, February 4, 2023 at the Pueblo Union Depot

R3 A Resolution authorizing payment from the council contingencies account in the 2023 general fund budget to Catholic Charities of Diocese of Pueblo in the amount of \$1,500 to sponsor the Espiritu Dinner on Friday, February 10, 2023 at the Pueblo Convention Center

S. ORDINANCES – FINAL PRESENTATION

- S1 An Ordinance establishing Project PL2203 for Colorado Smelter Revitalization Project Support, and budgeting and appropriating funds in the amount of \$22,000 to said project account - *Introduced January 9, 2023 by Vicente Martinez Ortega*
- S2 An Ordinance establishing Project PL2101 for Safe Routes to School for Haaff Elementary School, approving an intergovernmental agreement between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado, acting by and through the Colorado Department of Transportation, Project: SAR M086-094 (24468), budgeting and appropriating funds in the amount of \$279,180 and authorizing the Mayor to execute same - *Introduced January 9, 2023 by Vicente Martinez Ortega*
- S3 An Ordinance approving the fourth amendment to the Annexation Agreement for the area commonly known and described as north of Red Creek Springs Road and east of the Goodnight Arroyo, as approved by Ordinance No. 7241 - *Introduced January 9, 2023 by Vicente Martinez Ortega*

T. ADJOURN



**REGULAR CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE
MONDAY, JANUARY 9, 2023 - 7:00 PM
MINUTES**

A. CALL TO ORDER

President Graham called the meeting to order at 7:07 p.m.

B. INVOCATION

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

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

Council Members Present via Zoom: None.

Council Members Absent: None.

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

E. ELECTION OF 2023 OFFICERS

Councilor Winner, seconded by Councilor Maestri, nominated Larry Atencio for City Council President.

Councilor Martinez, seconded by Councilor Martinez Ortega, nominated Heather Graham for City Council President.

Councilors voted via secret ballot; result was 3 votes for Larry Atencio, 4 votes for Heather Graham. Heather Graham was named City Council President.

President Graham, seconded by Councilor Martinez Ortega, nominated Dennis Flores as City Council Vice President.

Roll Call - **Ayes:** Atencio, Flores, Graham, Maestri, Martinez, Martinez Ortega, Winner. **Nays:** None. Motion Passed 7-0. Dennis Flores was named City Council Vice President.

President Graham nominated Sarah Martinez as Chair of the Executive Committee. Councilor Martinez accepted.

F. SPECIAL RECOGNITIONS

G. PUBLIC FORUM

- Frank Arteaga - Gun Exchange Program
- Fred Galves - MLK Day of Service
- Shaylan Wilson - MLK Day of Service
- Karen Blagg - Homeless/Assault
- Steve Villegas - Many topics
- Jocquelyn Montanez - Reproductive Health

H. COUNCIL MEMBER AND MAYOR COMMENTARY

Mayor Gradisar congratulated the newly elected officers and looks forward to continuing to work with Council in the new year. He highlighted the State of the City address on Friday and that there are great things going on in Pueblo as well as the problems the City faces.

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

I. REVIEW AND APPROVAL OF AGENDA

Councilor Martinez, seconded by Councilor Flores, moved to approve the agenda as distributed.

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

J. READING AND APPROVAL OF MINUTES

J1 CITY COUNCIL MINUTES FOR DECEMBER 27, 2022

Councilor Martinez Ortega, seconded by Councilor Flores, moved to dispense with the reading and approve the Minutes of the Regular Meeting dated **December 27, 2022** as distributed.

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

K. CONSENT AGENDA

L. COMMUNICATIONS

M. RESOLUTIONS

M1 A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$3,964.40 WITH PARKER EXCAVATING, INC. FOR EMERGENCY SANITARY SEWER POINT REPAIR AT 616 E D ST, PROJECT NO. 20-059 (WWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF SAME

This Resolution was assigned as 15110.

M2 A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$33,252.95 WITH PARKER EXCAVATING, INC. FOR EMERGENCY SANITARY SEWER POINT REPAIR AT 125 RIVERWALK PL,

PROJECT NO. 20-059 (WWAN03) AND APPROVING THE PURCHASING AGENT'S EXECUTION OF SAME

This Resolution was assigned as 15111.

- M3 A RESOLUTION APPROVING AND ACCEPTING A COLORADO DEPARTMENT OF LAW PEACE OFFICER STANDARDS AND TRAINING (POST) GRANT, JULY 1, 2022, THROUGH JUNE 30, 2023, ESTABLISHING PROJECT NUMBER PS2215, TRANSFERRING FUNDS NOT TO EXCEED THE AMOUNT OF \$4000 FROM PROJECTS-TO-BE-DETERMINED IN THE PUBLIC SAFETY LEADERSHIP DEVELOPMENT GRANT FUND**

This Resolution was assigned as 15112.

- M4 A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT TO FUEL AND IRON RESIDENTIAL, LLC FOR THE USE OF THE S. MAIN STREET RIGHT-OF-WAY WITHIN THE CITY OF PUEBLO TO CONSTRUCT, OPERATE, AND MAINTAIN A VEHICLE PARKING LOT**

This Resolution was assigned as 15113.

- M5 A RESOLUTION APPROVING REVISIONS TO THE STANDARD CONSTRUCTION SPECIFICATIONS AND STANDARD DETAILS FOR THE CITY OF PUEBLO**

This Resolution was assigned as 15114.

- M6 A RESOLUTION ACCEPTING AN EASEMENT FOR PUBLIC SANITARY SEWER UTILITIES FROM CLARK SPRING WATER COMPANY WITH RESPECT TO PARCEL 1501142020**

This Resolution was assigned as 15115.

- M7 A RESOLUTION FIXING AN ALTERNATE DAY FOR THE REGULAR CITY COUNCIL MEETING CURRENTLY SCHEDULED FOR THE SECOND MONDAY IN OCTOBER 2023 AND THE FOURTH MONDAY IN DECEMBER 2023**

This Resolution was assigned as 15116.

- M8 A RESOLUTION DESIGNATING PUBLIC PLACES FOR THE POSTING OF NOTICE OF MEETINGS FOR THE PUEBLO CITY COUNCIL FOR THE YEAR 2023**

This Resolution was assigned as 15117.

- M9 A RESOLUTION DESIGNATING A PUBLIC PLACE FOR THE POSTING OF NOTICE OF MEETINGS FOR ALL BOARDS, COMMISSIONS, AND COMMITTEES OF THE CITY OF PUEBLO FOR THE YEAR 2023**

This Resolution was assigned as 15118.

- M10 A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF JUSTIN BOWEN TO THE SANGRE DE CRISTO ARTS & CONFERENCE CENTER BOARD OF TRUSTEES**

This Resolution was assigned as 15119.

- M11 A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF**

TURA COWAN TO THE PUEBLO ADA ADVISORY COMMITTEE

This Resolution was assigned as 15120.

M12 A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF BENJAMIN CALDERA TO THE PUEBLO HUMAN RELATIONS COMMISSION

This Resolution was assigned as 15121.

N. ORDINANCES – FIRST PRESENTATION

N1 AN ORDINANCE ESTABLISHING PROJECT PL2203 FOR COLORADO SMELTER REVITALIZATION PROJECT SUPPORT, AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$22,000 TO SAID PROJECT ACCOUNT.

N2 AN ORDINANCE ESTABLISHING PROJECT PL2101 FOR SAFE ROUTES TO SCHOOL FOR HAAFF ELEMENTARY SCHOOL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, PROJECT: SAR M086-094 (24468), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$279,180 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

N3 AN ORDINANCE APPROVING THE FOURTH AMENDMENT TO THE ANNEXATION AGREEMENT FOR THE AREA COMMONLY KNOWN AND DESCRIBED AS NORTH OF RED CREEK SPRINGS ROAD AND EAST OF THE GOODNIGHT ARROYO, AS APPROVED BY ORDINANCE NO. 7241

O. APPROVAL OF CONSENT AGENDA

Councilor Martinez Ortega, seconded by Councilor Flores, moved to approve all Resolutions Set Forth in the Consent Agenda, Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for January 23, 2023, and Order the Ordinances to be published BY TITLE.

Roll Call – **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

P. REGULAR AGENDA

Q. RESOLUTIONS

Q1 A RESOLUTION AUTHORIZING PAYMENT FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT FOR THE PURCHASE OF 718 W. 4TH STREET, PUEBLO CO 81003, FOR PURPOSES OF PROVIDING AN OUTDOOR SHELTER FOR HOMELESS 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

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Martinez, Councilor Martinez Ortega. **Nays:** Councilor Maestri, Councilor Winner. Motion Passed 5-2.

This Resolution was assigned as 15122.

Q2 A RESOLUTION AUTHORIZING PAYMENT OF TWO HUNDRED NINETY THOUSAND FOUR HUNDRED DOLLARS (\$290,400) FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT TO 171 LOCAL SMALL BUSINESSES LOCATED IN QUALIFIED CENSUS TRACTS IN THE CITY OF PUEBLO WHICH WERE THEREBY 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

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Resolution was assigned as 15123.

Q3 A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO THE LATINO CHAMBER DEVELOPMENT FOUNDATION IN THE AMOUNT OF \$2,000 TO SPONSOR THE 44TH ANNUAL DINNER ON SATURDAY, FEBRUARY 11, 2023 AT THE PUEBLO CONVENTION CENTER

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Resolution was assigned as 15124.

Q4 A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO MT. CARMEL VETERANS SERVICE CENTER IN THE AMOUNT OF \$2,500 TO SPONSOR THE SALUTE TO HEROES RECEPTION ON THURSDAY, JANUARY 19, 2023 AT 4 PM

A staff report and detailed review of the Resolution was given by Councilor Regina Maestri.

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Resolution was assigned as 15125.

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 PUEBLO COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, AS FISCAL AGENT OF THE PUEBLO COUNTY HOUSE BILL 04-1451 COLLABORATIVE MANAGEMENT PROGRAM, 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 TWENTY-FIVE THOUSAND DOLLARS (\$25,000) 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:

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10366.

R2 AN ORDINANCE ESTABLISHING PROJECT PL2201, WESTSIDE TRAIL (WILDHORSE TRAIL) PROJECT, AND APPROVING AN 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: MTF M086-098 (25192) IN THE AMOUNT OF \$850,000, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$850,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10367.

R3 AN ORDINANCE ESTABLISHING PROJECT PL2202, LAKE AVENUE AND ORMAN AVENUE ROUNDABOUT PROJECT, AND APPROVING AN 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: SHO M086-097 (25101) IN THE AMOUNT OF \$1,350,000, TRANSFERRING \$150,000 FROM CI2204 TO PL2202, BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$1,500,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10368.

R4 AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND THE PUEBLO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, RELATED TO THE ESTABLISHMENT OF PUEBLO HISTORY AND ART WALK AND THE INSTALLATION OF COMMUNITY WAYFINDING AND GATEWAY SIGNS, AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

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

PUBLIC HEARING:

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

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

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

Motion Passed 7-0.

This Ordinance was assigned as 10369.

R5 AN ORDINANCE APPROVING AN AIRPORT USE AND LEASE AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND SOUTHERN AIRWAYS EXPRESS, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10370.

R6 AN ORDINANCE APPROVING AN AIRPORT COMMUNITY HANGAR LEASE AGREEMENT BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND SOUTHERN AIRWAYS EXPRESS, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 7-0.

This Ordinance was assigned as 10371.

S. EMERGENCY ORDINANCES

S1 An Emergency Ordinance accepting the assignment of a contract to buy and sell real estate from Pueblo Rescue Mission, A Colorado nonprofit corporation, for purposes of purchasing 718 W. 4th Street, Pueblo, CO 81003 and authorizing the Mayor to execute an acceptance of said assignment

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

PUBLIC HEARING:

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Martinez, Councilor Martinez Ortega. **Nays:** Councilor Maestri, Councilor Winner. Motion Passed 5-2.

This Ordinance was assigned as **10372**.

T. COUNCIL MEMBER CONFLICT OF INTEREST

T1 A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$103,582.50 TO BAHAMAS CONSTRUCTION, INC., FOR PROJECT NO. 22-088, CONCRETE IMPROVEMENTS - CITY PARK POOL PARKING LOT, SETTING FORTH \$16,417.50 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

Councilor Maestri declared a conflict of interest and left the room.

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

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

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, President Graham, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** None. Motion Passed 6-0.

This Resolution was assigned as **15126**.

U. ADJOURN

President Graham adjourned the meeting at 8:58 p.m.

Respectfully submitted,

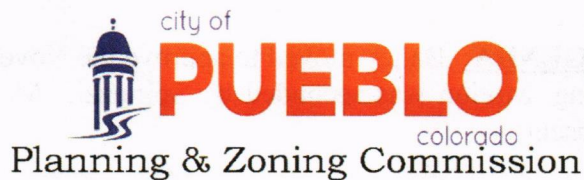


Marisa Stoller
City Clerk

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, December 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 3:46 p.m. with Commissioner Castellucci presiding.

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

Commissioners Absent: Alexandra Aznar, 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, Cindy Capritta, Land Use Technician.

APPROVAL OF THE AGENDA: Bailey moved to approve the November 09, 2022, agenda Commission Public Hearing. Motion was seconded by Spinuzzi. Motion passed 4-0, (Aznar, Martinez, and Pasternak absent).

PUBLIC MEETINGS AND ACTION

1. MP-23-01 Three Mile Annexation Plan

Discussion: Staff recommends the Planning and Zoning Commission make the necessary findings of fact to forward a recommendation to City Council that the City of Pueblo Three-Mile Annexation Plan be **APPROVED**. Staff report by Beritt Odom, Principal Planner.

Commission Action: Bailey moved to recommended that the Three Mile Annexation Plan be sent to City Council for approval, seconded by Spinuzzi.

Motion Passed: 4 – 0, (Aznar, Martinez, and Pasternak absent).

2. A-22-06 Dorcy Community Housing: Annexation of 10.74 acres located south of Red Creek Springs Rd., north of Regency Park, 10th Filing Subdivision, and west of the Meadows, Filing 4 Subdivision.

Discussion: Avalos moved to amend the agenda, to take action on A-22-06 following agenda item Z-22-15, Dorcy Community Housing, because the two items are related.

Commission Action: Avalos moved to amend the agenda to move item A-22-06 following agenda item Z-22-15. Seconded by Bailey.

Motion Passed: 4 – 0, (Aznar, Martinez, and Pasternak absent).

REGULAR AGENDA:

Public Hearing:

- Applicants: Mike Cuppy, Northstar Engineering and Kim Bowman, Posada, were sworn in and requested that the Public Hearings for the Dorcy Community Housing Annexation and the Rezone be continued to the January 11, 2023, meeting to allow for all the Board Members to be in attendance.

3. Z-22-15 Rezone: Dorcy Community Housing, parcel 1504300019, approximately 10.74 acres generally located south of Red Creek Springs Road and north of the Kingsroyal Blvd. terminus. Rezone from Pueblo County A-4 to City R-5. Staff report by Beritt Odom, Principal Planner.

Public Hearing:

- Applicants: Mike Cuppy, Northstar Engineering and Kim Bowman, Posada, were sworn in and requested that the Public Hearings for the Dorcy Community Housing Annexation

and the Rezone be continued to the January 11, 2023, meeting to allow for all the Board Members to be in attendance.

- Board Members along with Attorney Dan Kogovsek agreed to hear testimony from both **Supporting** and **Opposing** sides on item **Z-22-15** with the condition that if the testimony was heard today, the testifying citizens would be prohibited from testifying again for the January 11, 2023, hearing.
- Beritt Odom, Principal Planner, entered Exhibit A, written support for the rezoning request, and Exhibit B, written opposition of the rezoning request into the record and presented both sets of documents to the Planning Commission.
- Sworn in by Attorney Dan Kogovsek, the following citizens testified in **Support of item Z-22-15**:

Daniel Cordova, Alexis Ellis, Laytona Yargrough, Carla Barela, Katie Schilling, and Zolanye McCulley-Bachicha.

- Sworn in by Attorney Dan Kogovsek, the following citizens testified in opposition of item **Z-22-15**:

Greg Harms, Susan Whittemore, Joel Baca, Gene Rizzi, Alicia Jimenez, and Nick Gemma.

Commission Action: Avalos moved to continue agenda item A-22-06 and the public hearing and action on agenda item Z-22-15 to the January 11, 2023, Planning and Zoning Commission meeting. Seconded by Bailey.

Motion Passed: 4 – 0, (Aznar, Martinez, and Pasternak absent).

4. V-22-07 Vacation: Vacation of drainage, public access, sidewalk, utility easements and. Sumo Court, Lots 1-12, Block 2, Pinion Ridge Commercial Center Subdivision Filing No.1. Located at the northeast corner of Elizabeth Street and Drew Dix Parkway. Staff report by Wade Broadhead Senior Planner

Public Hearing: Applicant, Emily Bennett, was sworn in by City Attorney Kogovsek and testified in support of the application.

Commission Action: Bailey moved to approve the vacation with staff conditions. Second by Spinuzzi.

Motion Passed: 4 – 0, (Aznar, Martinez, and Pasternak absent).

5. S-22-08 Subdivision: Steel City Industrial Park Subdivision, a Special Area Plan, subdivision of 14.68 acres into five industrial lots and parcels for utilities and ingress/egress. Generally located east of Interstate 25 and north of W. Pueblo Blvd. A full legal description is on file at the office of Planning and Community Development. Staff report by Beritt Odom, Principal Planner.

Public Hearing: Applicant, Rick Magness, was sworn in by City Attorney Kogovsek and testified in support of the application.

- Mike Cuppy, NorthStar Engineering and Surveying, was still under oath and testified in support of the application.

Commission Action: Bailey moved to approve the subdivision with staff conditions. Second by Avalos.

Motion Passed: 4 – 0, (Aznar, Martinez, and Pasternak absent).

6. SAP-22-02 Special Area Plan: Steel City Industrial Park Subdivision, a Special Area Plan, to allow unique development of the 14.68 acres, generally located east of Interstate 25 and north of W. Pueblo Blvd. A full legal description is on file at the office of Planning and Community Development. Staff report by Beritt Odom, Principal Planner

Public Hearing: Applicant, Rick Magness, testified in support of the application.

Commission Action: Bailey moved to approve the subdivision with staff conditions. Second by Avalos.

Motion Passed: 4 – 0, (Aznar, Martinez, and Pasternak absent).

Approval of Minutes: November 9, 2022

Bailey moved to approve the minutes. Second by Spinuzzi.

Motion passed: 4 – 0, (Aznar, Martinez, and Pasternak absent).

Old/New Business: None

There being no further business the Regular Meeting was adjourned at 6:15 p.m.

Respectfully submitted,

Attest:



Mike Castellucci
Chairperson



Scott Hobson
Executive Secretary

Digital recordings of all the meetings of the Planning and Zoning Commission are maintained and available for inspection and review during normal business hours (M – F, 8 a.m. – 5 p.m.) at the Department of Planning & Community Development, 211 East D Street, Pueblo, CO.



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: A RESOLUTION APPROVING AND ACCEPTING A DONATION OF FUNDS FROM THE GARONE NICKSICH FOUNDATION TO THE CITY OF PUEBLO ON BEHALF OF THE PUEBLO FOOD PROJECT FOR THE ENTREPRENEUR DEVELOPMENT PROGRAM IN THE AMOUNT OF \$20,000 AND TRANSFERRING SAID FUNDS TO PROJECT NO. CO2102

SUMMARY:

This Resolution approves and accepts a donation of funds from the Garone Nicksich Foundation to the Pueblo Food Project ("PFP"). The funds are a contribution toward the Pueblo Food Project Entrepreneur Development Program.

PREVIOUS COUNCIL ACTION:

City Council has approved a similar donation from the Garone Nicksich Foundation in 2021 for the purpose of the supporting the Pueblo Food Project Entrepreneur Development Program.

BACKGROUND:

The Pueblo Food Project is seeking approval to receive a donation in the amount of \$20,000.00 from the Garone Nicksich Foundation to be used for the Pueblo Food Project Entrepreneur Development Program. This is the second donation of its kind for the Pueblo Food Project Entrepreneur Development Program.

FINANCIAL IMPLICATIONS:

There are no matching funds required for this donation. The City of Pueblo will receive the entire \$20,000.00 on behalf of the Pueblo Food Project upon passage of the Resolution.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

If City Council does not approve this Resolution, the donated money will not be accepted. The PFP will not be able to use the donation for the Pueblo Food Project Entrepreneur Development Program.

RECOMMENDATION:

Approval of this Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15127

A RESOLUTION APPROVING AND ACCEPTING A DONATION OF FUNDS FROM THE GARONE NICKSICH FOUNDATION TO THE CITY OF PUEBLO ON BEHALF OF THE PUEBLO FOOD PROJECT FOR THE ENTREPRENEUR DEVELOPMENT PROGRAM IN THE AMOUNT OF \$20,000 AND TRANSFERRING SAID FUNDS TO PROJECT NO. CO2102

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The donation of funds from the Garone Nicksich Foundation to the City of Pueblo, on behalf of the Pueblo Food Project, in the amount of \$20,000.00 to be used for the Pueblo Food Project Entrepreneur Development Program, is hereby accepted and approved. The funds shall be accepted and transferred into Project No. CO2102.

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 effectuate the transaction described herein.

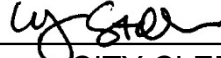
SECTION 3.

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

INTRODUCED January 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 23, 2023

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: A RESOLUTION APPROVING AGREEMENTS BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND BOHANNAN-HUSTON, INC., AND WILSON COMPANY, INC., FOR PROJECT NO. 22-069 PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL ASSISTANCE CONSULTING SERVICES FOR PACOG/MPO AND THE CITY OF PUEBLO, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a Resolution approving agreements for professional services for Project No. 22-069 Pueblo Regional On-Call Transportation Technical Assistance Consulting Services for PACOG/MPO and the City of Pueblo. This Resolution establishes an approved list of qualified transportation planning consultants to perform technical transportation planning services for three years, with optional renewal of the agreement for two successive one-year periods after the initial term.

PREVIOUS COUNCIL ACTION:

Not applicable to this Resolution.

BACKGROUND:

The City has requested proposals from qualified technical transportation planning firms to assist the City with On-Call Transportation Technical Assistance services. The City intends to issue contracts on an as-needed basis for technical transportation planning projects, to include assistance with MPO Long Range Transportation Plans, aiding PACOG/MPO staff with the PACOG Transportation Improvement Program, providing area-wide local roadway safety plans, and providing an updated traffic model. The work for each project under these agreements will vary in scope and complexity. Services include all personnel, supervision, management, labor, tools, equipment, material, and travel necessary to perform these services.

A total of two proposals were received and two firms were selected based on their initial submittals and fee schedules to perform On-Call Transportation Technical Assistance consulting services for PACOG/MPO and the City of Pueblo. This Resolution authorizes two contracts under Project No. 22-069 On-Call Transportation Technical Assistance Services for PACOG/MPO and the City of Pueblo and will provide both competitive bid cost controls and rapid response capability by creating a list of qualified Transportation Planning consultants.

No minimum amount of work is guaranteed under these agreements. For each on-call service request, PACOG/MPO and the City will develop a complete scope of work and require the consultants to provide a not-to-exceed amount (limit) based on their hourly fee rate and a delivery schedule for services for each specific project assigned under the agreement. The most advantageous proposal to PACOG/MPO and the City, and in the best interest of PACOG/MPO and the City, shall be determined based on the evaluation criteria set forth in the future Request for Qualifications.

FINANCIAL IMPLICATIONS:

Funding for this Project will come from the associated project account.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

Denial of this Resolution will result in the City being unable to proceed with the agreements.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 22-069 Master Contracts for Wilson and Bohannon-Huston

RESOLUTION NO. 15128

A RESOLUTION APPROVING AGREEMENTS BETWEEN THE CITY OF PUEBLO, A MUNICIPAL CORPORATION, AND BOHANNAN-HUSTON, INC., AND WILSON COMPANY, INC., FOR PROJECT NO. 22-069 PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL ASSISTANCE CONSULTING SERVICES FOR PACOG/MPO AND THE CITY OF PUEBLO, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The Master Contract between the City of Pueblo, a Municipal Corporation, and Bohannon-Huston, Inc., and the Master Contract between the City of Pueblo, a Municipal Corporation, and Wilson & Company, Inc., Engineers & Architects, (together the "Agreements") for Technical Transportation Planning Services, copies of which are attached hereto, having been approved as to form by the City Attorney, are hereby approved.

SECTION 2.

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

SECTION 3.

Work orders under these Agreements shall only be approved upon written approvals from the Director of Purchasing and the Director of Finance, showing that a balance of appropriation exists for the Work Order and funds are available. The Director of Purchasing is authorized to approve a work order which is determined to be most advantageous to the City and in the best interest of the City based upon the submitted hourly fee rates and delivery time for Technical Transportation Planning consulting services for each specific project which may be assigned under the Agreements.

SECTION 4.

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

SECTION 5.

This Resolution shall become effective immediately upon passage and approval

INTRODUCED January 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**MASTER CONTRACT
BY AND BETWEEN CITY OF PUEBLO AND
WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS**

22-069

PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL
ASSISTANCE

MASTER CONTRACT
BY AND BETWEEN CITY OF PUEBLO AND
WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS

THIS MASTER CONTRACT ("Contract") is made and entered this _____ day of _____, 2023 by and between the City of Pueblo, a Municipal Corporation, located at 1 City Hall Place, Pueblo, Colorado 81003 (hereinafter referred to as "City") and Wilson & Company, Inc., Engineers & Architects, a Kansas Corporation registered to do business in the State of Colorado, located at 5755 Mark Dabling Blvd., Suite 220, Colorado Springs, Colorado 80919 (hereinafter referred to as "Consultant").

WITNESSETH:

1. RECITALS

- A. The City solicited competitive proposals for Bid 22-069 RFQ Pueblo Regional On-Call Transportation Technical Assistance to provide services to include professional transportation planning and related services for future PACOG/MPO and City of Pueblo projects (hereinafter referred to as the "RFQ").
- B. In response to the RFQ, Consultant submitted its proposal (hereinafter referred to as "Response").
- C. City has evaluated all Responses submitted and selected Consultant to perform transportation planning services for various anticipated projects.

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual covenants, City and Consultant agree as follows:

2. ENGAGEMENT

- A. City engages Consultant and Consultant accepts such engagement to perform the services set forth in this Contract and the standard form Agreement for Professional Services ("Consultant Agreement"), attached hereto and incorporated herein as Appendix A, execution of which will be required for each Project as may be directed by the City.
- B. Anticipated Projects (hereinafter referred to as the "Projects") may include a scope of services ("Scope of Services") for each Consultant Agreement for any Project and shall be consistent with and at least meet the following requirements:
 - Assist the City and PACOG/MPO (Pueblo Area Council of Governments/Metropolitan Planning Organization) staff with the Implementation of the MPO Long Range Transportation Plan
 - Aid City MPO staff in the development and ongoing monitoring and updating of the PACOG Transportation Improvement Program

- Assist the City MPO staff with development of an Area-Wide Highway Safety Plan
 - Provide area-wide local roadway safety plan
 - Provide traffic model for MPO
 - Perform project scenarios based on projects identified in the 2045 LRTP
 - Refine travel demand model developed in 2015 as new social/economic such as the 2020 census data becomes available
 - Develop the 2050 regional population forecast
 - Update local transportation system data to reflect changes to the future transportation network as modified by local or county government actions
 - Review functional classification and update (may utilize 2020 census data)
 - Update TAZ with 2020 census data and reconfigure traffic model
 - Collaborate with CDOT and MPO to establish baseline and mitigation plan
 - Assist MPO and CDOT with Green House Mitigation Plan and Carbon Reduction Plan
 - Facilitate MPO with administrative process for establishing, tracking, and verifying mitigation & performance measures
 - Provide updated GIS data (shape files) and update PACOG GIS maps:
 - New roadways
 - Proposed roadways
 - New trails, bike routes, and/or 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
- C. City may, or may not, in its sole and absolute discretion undertake any of the Projects. Upon written direction from City requesting Consultant to undertake a project, the Consultant shall prepare a specific Scope of Service, fee schedule (based upon Schedule 2 to this Contract,

attached hereto and incorporated herein) ("Fee Schedule"), and work schedule ("Work Schedule") necessary to complete the project.

- D. After mutual approval of the Scope of Service, Fee Schedule and maximum compensation, and Work Schedule, the City will incorporate such agreed upon terms into the applicable Consultant Agreement, which shall be executed by Consultant.
- E. After execution of such agreement by Consultant, City will submit same to City Council of City for approval and any such agreement shall be subject to and conditioned upon City Council approval.
- F. In addition to the Scope of Work set forth above and to be performed in accordance with a Consultant Agreement, City may request services on an as needed basis. Requests for such services shall be initiated and documented by a written work order agreement ("Work Order") signed by the City's Planning Director, and approved by the City's Director of Finance and Director of Purchasing. A Work Order shall set forth the work to be performed, the time for completion, and the compensation, including that the maximum compensation is not to exceed \$10,000.00 for performance of such work, and shall otherwise be in substantially the same form as Schedule 4 attached hereto and incorporated herein. Said compensation shall be approved as provided in Section 2.G of this Contract. The work to be performed under any Work Order shall be detailed in such order and shall be subject to all terms and conditions of this Contract and the Consultant Agreement attached as Appendix A, as if the latter had been fully executed by the parties for such work to be performed. The maximum sum under Section 5 of the Consultant Agreement shall, for the purposes of the work to be performed, be the maximum compensation set forth in the Work Order and approved pursuant to Section 2.G of this Contract. All such services shall include all usual and customary professional services necessary for such work to be performed.
- G. When requested by City, Consultant shall prepare without charge to City a bid amount for any proposed Work Order ("Work Order Compensation") requested under Section 2.F which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should City have any dispute, question, required clarification, or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with City to resolve such issue. No Work Order shall be signed and issued by the City's Planning Director unless and until City approves the Work Order Compensation. No Work Order shall be approved for which the maximum compensation exceeds \$10,000.00.
- H. No minimum amount of work is guaranteed under this Contract. City reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Contract.

3. TERM

- A. This Contract is for a term of three (3) years commencing January 30, 2023 and ending January 29, 2026. The term of this Contract may be extended for two (2) additional one (1) year terms upon mutual written agreement of City and Consultant.
- B. In the event the City exercises the provision to extend the agreement after the initial term, requests for price increases may not exceed 1) three percent (3%), or 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.
- C. This Contract may be terminated by the City at any time, without cause or liability, upon thirty (30) days prior written notice to the Consultant specifying the date of termination, provided, however, that the termination of this Contract shall not terminate or be deemed to terminate any existing agreements or Work Orders executed by and between the parties pursuant to Section 1 of this Contract.

4. GENERAL COVENANTS

Consultant covenants that it is:

- A. Competent and qualified to perform, and will perform the services and work contemplated by this Contract and its underlying agreement(s) in a professional manner to the satisfaction of the City.
- B. Familiar with the requirements stated in the RFQ, Scope of Service, with respect to the services and work contemplated by this Contract and its underlying agreement(s) and will perform such services and work in compliance therewith.

5. SPECIFIC COVENANTS

Consultant covenants that, during the performance of this Contract and any other agreements for a specified Project, Consultant will:

- A. Comply with all federal statutes and regulations relating to nondiscrimination in federally assisted programs.
- B. Comply with the State of Colorado's requirements for State Revolving Fund Loan Projects.
- C. Comply with all other laws, regulations, and requirements for applicable Federal, State, local, and grant funded Projects.

6. RECORDS AND DATABASE

Consultant shall maintain a cost accounting system acceptable to City. The City shall have access to any books, documents, papers, and records of the Consultant that are directly pertinent or relate to this

Contract or any agreements for a specified Project, for audit purposes, examination, inspection, excerpts, and transcription. The Consultant shall maintain such records for three (3) years after City makes final payments to Consultant and all pending matters are closed. Consultant shall prepare and maintain an electronic database (compatible with AutoCAD) that accurately represents all existing and future civil infrastructure for all Projects completed under this Contract and any agreements for a specified Project.

7. RIGHTS TO INVENTIONS

Plans, drawings, designs, specifications, inventions, reports, and all other documents and materials generated under this Contract or any agreements for a specified Project shall become the sole property of City, subject to applicable federal grant requirements, and City shall be vested with all rights therein of whatever kind and however created, whether by common law, statute, or equity. Consultant shall retain sole ownership of pre-existing proprietary property, including but not limited to, computer programs, software, diagrams, and models.

8. INSURANCE AND INDEMNITY

- A. Consultant agrees that it has procured and will maintain during the term of this Contract, such insurance as will protect it and City from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph 8.B.
- B. The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:
 - 1. Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.
 - 2. Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Contract and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by it and all its subcontractors under the Contract, to be written on a comprehensive policy form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury, including death and bodily injury, and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers, and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual

liability assumed by Consultant under the provisions of the Contract, and “Completed Operations and Projects Liability” coverage.

3. Professional Liability Insurance with coverage of not less than \$1,000,000 and in a form and with a deductible acceptable to City.
 4. Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Contract and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes, and similar equipment whether owned, leased, hired, or used by Consultant.
- C. Consultant shall furnish to City a certificate or certificates of insurance showing compliance with this Section. Consultant shall obtain a special endorsement from its insurance carrier that provides that the insurance shall not be changed or cancelled until ten (10) days after written notice has been given to City and provide a copy of such endorsement to City. Consultant shall immediately notify City of any substantial change in, or cancellation, or non-renewal of any such insurance.
- D. Consultant agrees to hold harmless, defend and indemnify City from and against any liability to third parties, arising out of negligent acts, errors or omissions of Consultant, its employees, subcontractors, and consultants.

9. CERTIFICATIONS

- A. Neither Consultant nor any of its principals are presently, or at the time of execution of any agreements for a specified Project, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract or in any such subsequent agreements for a specified Project by any entity or agency. Consultant will include this clause in all lower tier transactions, solicitations, proposals, contracts, subcontracts, and agreements.
- B. Consultant is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representatives and that it will comply with the Department of Transportation trade restriction regulations of 49 CFR Part 30. Consultant will include this clause and other clauses required by said trade restriction regulations in all lower tier transactions, solicitations, proposals, contracts, subcontracts, and agreements.

10. NOTICES

Any notice required or permitted by this Contract shall be in writing and may be served personally or mailed by first-class mail, postage prepaid, addressed to the party at its address shown on the first page hereof, and if to the City, a copy of thereof shall be given to City of Pueblo, Planning Department, Attn: Scott Hobson, Director, 211 E. D Street, Pueblo, CO, 81003. Either party may change addresses upon written notice given to the other party specifying the changed address.

11. FINANCIAL OBLIGATIONS OF CITY

All financial obligations of the City under this Contract and any agreements for a specified Project in any subsequent fiscal year of the City are subject to, and contingent upon, funds being specifically budgeted and appropriated for such purposes. This Contract and its underlying agreements are 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 of Pueblo, contrary to Article X, § 20 Colorado Constitution or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract and any agreements for a specified Project, with respect to any financial obligation of the City which may arise under this Contract in any fiscal year after 2023, 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 Contract or any agreements for a specified Project by the City, and the City may terminate this Contract or any agreements for a specified Project without liability.

12. REQUIRED FEDERAL, STATE, AND/OR GRANT PROVISIONS

- A. Consultant understands that City may be funding the Project in whole or part with funds provided by the State of Colorado Department of Transportation (CDOT). Consultant agrees it is subject to and shall comply with all applicable provisions and regulations of any CDOT funding (or Intergovernmental Agreements between CDOT and City of Pueblo) that may be applicable to future PACOG and City of Pueblo projects.
- B. Consultant shall comply and any/all other Federal, State, and local laws applicable to its activities.
- C. All records with respect to any matters covered by this Contract and any subsequent agreements shall be available for inspection by City and or CDOT at any time during normal business hours and as often as agencies deem necessary, to audit, examine and make excerpts or transcripts of relevant information, and otherwise to perform its official functions or duties.

13. MISCELLANEOUS

- A. This Contract and any other agreements contemplated herein shall be governed and interpreted in accordance with the laws of the State of Colorado. In the event of any litigation arising out of

this Contract or other agreements, the court shall award to the prevailing party its costs and reasonable attorney fees. Venue for any such litigation shall be Pueblo County, Colorado.

- B. This Contract contains the entire agreement between the City and Consultant and incorporates all prior written and oral understandings and agreements between the parties.
- C. This Contract may only be modified or amended by written instrument signed by both City and Consultant.
- D. This Contract shall be binding upon and inure to the benefit of City and Consultant and their respective successors and assigns, provided, however, Consultant shall not assign this Contract, agreements for a specific Project, or any interest herein without the prior written consent of City.

14. IMMIGRATION REFORM AND CONTROL ACT OF 1986

Consultant certifies that it has complied with the United States Immigration Reform and Control Act of 1986. Consultant represents and warrants that to the extent required by said Act, all persons employed by Consultant for performance of this Contract have completed and signed Form I-9 verifying their identities and authorization for employment.

15. PERA LIABILITY

The Consultant 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 contracted services for the City under this Contract. The Consultant shall fill out the Colorado PERA Questionnaire and submit the completed form to City as part of the signed Contract.

16. LIST OF ATTACHEMENTS

The following attachments are attached hereto and incorporated herein:

- Appendix A - Agreement for Professional Services
- Appendix B - Professional Services Local Agency Contract Requirements
- Schedule 1 – Scope of Services
- Schedule 2 – Fee Schedule
- Schedule 3 – Identification of Personnel, Subcontractors, and Task Responsibility
- Schedule 4 – Work Order Form
- Additional Information for Agreement

17. ELECTRONIC SIGNATURE

This Contract and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email,

or by other electronic means and in one or more counterparts, each of which shall be: (i) an original, and all of which taken together shall constitute one and the same contract, (ii) a valid and binding contract and fully admissible under state and federal law, and (iii) enforceable in accordance with its terms.

This Contract, together with all Project Documents incorporated by reference, constitutes the entire agreement between City and Contractor with respect to their subject matter, and may not be amended or modified except by written document signed by both parties.

IN WITNESS WHEREOF the parties hereto have made and executed this Contract as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

WILSON & COMPANY, INC., ENGINEERS &
ARCHITECTS

By _____
Naomi Hedden, Director of Purchasing

By _____
Maureen Paz de Araujo,
Senior Transportation Planner

Attest _____
Marisa Stoller, City Clerk

[SEAL]

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

Alexandria Romero, Finance Director

APPROVED AS TO FORM

Dan Kogovsek, City Attorney



**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN CITY OF PUEBLO AND
WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS**

22-069

PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL
ASSISTANCE

NOTE: This form shall be completed at time of award for each individual project as applicable.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN CITY OF PUEBLO AND
WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS**

THIS AGREEMENT ("Agreement") is made and entered this _____ day of _____, 20__ by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as "City") and Wilson & Company, Inc., Engineers & Architects, a Kansas Corporation registered to do business in the State of Colorado, (hereinafter referred to as "Consultant") a professional transportation planning firm, for Consultant to render certain professional planning, design, architectural, and related services for Owner in connection with Bid 22-069 Pueblo Regional On-Call Transportation Technical Assistance, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. GENERAL

- A. Consultant shall satisfactorily perform the professional planning and consulting services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Scope of Services"). Such services shall include all usual and customary professional transportation planning and related ancillary services including any required drafting or design services incidental to its work on the Project. In the event this Agreement follows the selection of Consultant by Client pursuant to a Request for Qualification (RFQ) or Master Contract ("Master Contract"), all of the requirements of the RFQ and Master Contract are incorporated herein by reference, unless any requirement is expressly excluded in Schedule 1.
- B. To the extent Consultant performs any of the Project work through subcontractors or subconsultants, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subcontractors or subconsultants as it is for services performed directly by Consultant or Consultant's employees.
- C. To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

2. CONSULTANT'S RESPONSIBILITIES

- A. Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's

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

- B. Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- C. Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant represents that Schedule 3 attached hereto and incorporated herein is the schedule by which Consultant proposes to accomplish its work, with time periods for which it will commence and complete each major work item. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to this schedule and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of Project work. Consultant further acknowledges that its schedule has accounted for all reasonably anticipated delays, including those inherent in the availability of tools, supplies, labor and utilities required for the work, the availability of information which must be obtained from any third parties, and all conditions to access to public and private facilities.
- D. Before undertaking any work or incurring any expense which Consultant considers beyond or in addition to the Scope of Work described in Schedule 1 or otherwise contemplated by the terms of this Agreement, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of this Agreement, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. The compensation for such authorized work shall be negotiated, but in the event the parties fail to negotiate or are unable to agree as to compensation, then Consultant shall be compensated for its direct costs and professional time at the rates set forth in Schedule 2 attached hereto and incorporated herein.

3. CITY'S RESPONSIBILITIES

- A. Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.
- B. Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said

representative shall not, however, have authority to bind Client as to matters of governmental policy or fiscal policy, nor to contract for additions or obligations exceeding a value which is the lesser of \$5000 or 5% of the maximum contract price.

- C. Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.
- D. Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 46 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

4. TIME FOR PERFORMANCE

Consultant's obligation to render services shall continue for such period of time as may reasonably be required for completion of the work contemplated in Schedule 1 – “Scope of Services” and Section 2 of this Agreement. The proposed work schedule attached as Schedule 3 may be adjusted by mutual agreement of all parties.

5. PAYMENT

- A. City will pay to Consultant as full compensation for all services required to be performed by Consultant under this Agreement, except for services for additional work or work beyond the scope of this Agreement, an amount not to exceed _____ in the aggregate as set forth in Schedule 2 - "Fee Schedule" and computed in accordance with this Section. In the event compensation for services is set forth in Schedule 2 as to each phase of work indicated in Section 1.1 of this Agreement, the maximum amount of compensation for any phase shall not exceed the amount specified in Schedule 2 for such phase.
- B. Consultant shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount set forth above, for actual professional services rendered and reimbursable expenses incurred. Such applications shall be submitted based upon the hourly rates and expense reimbursement provisions set forth in Schedule 2 attached hereto and shall contain appropriate documentation that such services have been performed and expenses incurred. Thereafter, City shall pay Consultant for the amount of the application within 45 days of the date of such application is received, provided that sufficient documentation has been furnished, and further provided that City will not be

required to pay more than 90% of the maximum amount unless the Consultant's services on the Project phases for which this Agreement is applicable have been completed to City's reasonable satisfaction and all required Consultant submittals have been provided.

- C. No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time or similar expenses unless otherwise provided and listed in Schedule 2 - "Fee Schedule."
- D. No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.
- E. Compensation for authorized work beyond the scope of this Agreement shall be governed by Section 2.

6. TERMINATION

- A. City reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work, stop incurring expenses, and shall promptly deliver to City all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress.
- B. Upon termination of this Agreement for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered and reasonable costs incurred to the date of termination, together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or City. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 5.
- C. In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and Consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by City's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of: (a) the reasonable value of completed work to City, or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.
- D. Consultant's responsibility for its completed work and services shall survive any termination.

7. GENERAL PROVISIONS

7.1. Ownership of Documents

All designs, drawings, specifications, technical data, and other documents or instruments procured or produced by the Consultant in the performance of this Agreement shall be the sole property of the City and the City is vested with all rights therein of whatever kind and however created, whether created by common law, statutory law, or by equity. The Consultant agrees that the City shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data pertaining to the work to be performed under this Agreement. In the event City uses the designs, drawings or specifications provided hereunder for another project independent from Project, without adaptation by Consultant, City shall hold harmless Consultant from all loss, claims, injury, and judgments arising from the use of such designs, drawings, or specifications for such other project.

7.2. Advertising

Unless specifically approved in advance in writing by City, Consultant shall not include representations of the Project in any advertising or promotional materials, except for accurate statements contained in resumes or curriculum vitae of Consultant's employees. If Consultant wishes to include representations in advertising or promotional materials, it shall submit a draft of same and printer's proof of the proposed advertising or promotional materials to the City for prior review and shall not publish or distribute same unless written approval of the materials is first obtained.

7.3. Equal Employment Opportunity

In connection with the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, disability, or age. Consultant shall endeavor to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, national origin, disability, or age.

7.4. Access to Property Not Under City's Control

Consultant acknowledges that the Project may require access to property not under the control of City at the time of execution of this Agreement. Consultant and Consultant's employees and consultants shall, at Consultant's expense, obtain all additional necessary approvals and clearances required for access to such property. City shall assist Consultant in obtaining access to such property at reasonable times but make no warranty or representation whatsoever regarding access to such property. Consultant understands and agrees that entry to properties not under City's control may require Consultant to comply with the terms of separate access agreements to be negotiated hereafter with owners of such property.

7.5. Notices

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either the City or the Consultant by the other party shall be in writing and shall be

deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed: to the City of Pueblo, Planning Department, Attn: Scott Hobson, Director, 211 E. D Street, Pueblo, CO, 81003; or to the Consultant, Wison & Company, Inc., Engineers & Architects, Attn: Maureen Paz de Araujo, Senior Transportation Planner, 5755 Mark Dabling Blvd., Suite 220, Colorado Springs, CO, 80919. Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

7.6. Entire Agreement

This instrument contains the entire agreement between the City and the Consultant respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either the City or the Consultant in relation thereto not expressly set forth in this instrument are null and void. Notwithstanding the foregoing, the terms of 22-069 RFQ Pueblo Regional On-Call Transportation Technical Assistance and the Master Contract are hereby incorporated herein, and Consultant agrees to abide by and comply with the same. In the event of any conflict between any provision of this Agreement and a provision of any Schedule or attachment to this Agreement, the provision in this Agreement shall control and supersede the conflicting provision in the Schedule or attachment. Any inconsistent resolution provision in any attachment to this Agreement shall be void.

7.7. Subcontracts

- A. Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.
- B. Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.
- C. Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. A list of said key personnel and consultants will be attached hereto and incorporated herein as Schedule 4 - "Identification of Personnel, Subcontractors, and Task Responsibility". Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

7.8. Successors and Assigns

This Agreement shall be binding on the parties hereto and on their partners, heirs, executors, administrators, successors, and assigns; provided, however, that neither this Agreement, nor any part thereof, nor any moneys due or to become due hereunder to the Consultant may be assigned by it without the written consent of the City. 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 hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement. It is the express intention of the parties hereto that any person or entity, other than the parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

7.9. Amendments

No amendment to this Agreement shall be made nor be enforceable unless made by written Amendment signed by an authorized representatives of both Consultant and City.

7.10. Choice of Law and Venue

This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.

7.11. Severability

If any provision of this Agreement, except for Section 2.6, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2.6 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

7.12. Appropriations

Subject to execution of this Agreement by the Director of Finance certifying that a balance of appropriation exists and funds are available, the amount of money appropriated for this Agreement is equal to or in excess of the maximum compensation payable hereunder; provided, however, that if work is phased and subject to annual appropriation, funds only in the amount of initial appropriation are available and Consultant shall confirm availability of funds before proceeding with work exceeding initial and subsequent annual appropriations.

8. DISPUTES

- A. Any dispute or disagreement between Consultant and City arising from or relating to this Agreement or Consultant's services or right to payment hereunder shall be determined and decided by the City's Director of Planning and Zoning whose written decision shall be final and binding unless judicial review is sought in a Colorado Court of competent jurisdiction located in Pueblo County, Colorado, pursuant to Rule 106, C.R.C.P.

- B. Pending resolution of any dispute or disagreement, or judicial review, Consultant shall proceed diligently with performance of its work under this Agreement.

9. REQUIRED FEDERAL, STATE, AND/OR GRANT PROVISIONS

- A. Consultant understands that City may be funding the Project in whole or part with funds provided by the State of Colorado Department of Transportation (CDOT). Consultant agrees it is subject to and shall comply with all applicable provisions and regulations of any CDOT funding (or Intergovernmental Agreements between CDOT and City of Pueblo) that may be applicable to future PACOG and City of Pueblo projects.
- B. Consultant shall comply and any/all other Federal, State, and local laws applicable to its activities.
- C. All records with respect to any matters covered by this Contract and any subsequent Agreements shall be available for inspection by City and or CDOT at any time during normal business hours and as often as agencies deem necessary, to audit, examine and make excerpts or transcripts of relevant information, and otherwise to perform its official functions or duties.
- D. If any of the work to be performed by Consultant under this Agreement is funded in whole or in part with federal or state funds, then this Agreement shall be construed to include all applicable terms required by the federal or state assistance agreement and integrated federal or state regulations. By executing this Agreement, Consultant agrees to be bound by all such mandatory federal or state requirements, irrespective of Consultant's actual knowledge or lack of knowledge of such requirements prior to execution of this Agreement.

10. INSURANCE

10.1. Conditions

- A. Consultant agrees that it has procured and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth below.
- B. Consultant agrees to hold harmless, defend and indemnify City from and against any liability to third parties, arising out of negligent acts, errors or omissions of Consultant, his employees, subcontractors, and consultants.

10.2. Minimum Requirements

- A. Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this agreement and for such additional time as work on the project is being performed,

Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by it and all its subcontractors under the agreement, to be written on a comprehensive policy form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury, including death and bodily injury, and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the agreement, and "Completed Operations and Projects Liability" coverage.

- B. Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.
- C. Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.
- D. Professional Liability Insurance with coverage of not less than \$1,000,000 in a form and with a deductible acceptable to City.

11. ACCESSIBILITY

The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. The Consultant therefore, will use its best reasonable professional efforts to implement applicable ADA requirements and other federal, state, and local laws, rules codes, ordinances and regulations as they apply to the Project.

12. IMMIGRATION REFORM AND CONTROL ACT OF 1986

Consultant certifies that it has complied with the United States Immigration Reform and Control Act of 1986. Consultant represents and warrants that to the extent required by said Act, all persons employed

by Consultant for performance of this Agreement have completed and signed Form I-9 verifying their identities and authorization for employment.

13. PERA LIABILITY

The Consultant 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 contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire and submit the completed form to City as part of the signed Agreement.

14. SCHEDULES

The following Schedules are attached to and made a part of this Agreement:

- Schedule 1 - "Scope of Services" consisting of ____ pages.
- Schedule 2 - "Fee Schedule" consisting of ____ pages.
- Schedule 3 - "Project Schedule" consisting of ____ pages.
- Schedule 4 - "Identification of Personnel, Subcontractors, and Task Responsibility" consisting of ____ pages.
- Additional Information for Agreement

15. ELECTRONIC SIGNATURE

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

(Signature section on following page.)

This Agreement, together with all Project Documents incorporated by reference, constitutes the entire agreement between City and Contractor with respect to their subject matter, and may not be amended or modified except by written document signed by both parties.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

WILSON & COMPANY, INC., ENGINEERS &
ARCHITECTS

By _____
Naomi Hedden, Director of Purchasing

By _____
Maureen Paz de Araujo,
Senior Transportation Planner

Attest _____
Marisa Stoller, City Clerk

[SEAL]

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

Alexandria Romero, Finance Director

APPROVED AS TO FORM

Dan Kogovsek, City Attorney

Attachments: Schedule 1 - Scope of Services
Schedule 2 - Fee Schedule
Schedule 3 - Project Schedule
Schedule 4 - Identification of Personnel, Subcontractors, and Task Responsibility
Additional Information For Agreement

CDOT PROFESSIONAL SERVICES LOCAL AGENCY CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT REQUIREMENTS

Please refer to CDOT's Local Agency Civil Rights Guidelines for more information:
<https://www.codot.gov/business/civilrights/compliance/prof-services/overview>

The following requirements shall be applied to FHWA-assisted contracts.

I. DEFINITIONS

B2GNow. Web based platform utilized by CDOT to track Civil Rights compliance (DBE/ESB participation) and prompt payment requirements on its contracts. The Consultant will use this platform to submit Utilization Plan(s), Subconsultant and Supplier/Vendor information on the Contract.

CDOT Civil Rights. The CDOT Civil Rights office that assist with the contract and prompt payment requirements on contracts. This can be in either the region or headquarters.

Civil Rights and Business Resource Center (CRBRC). CDOT's Civil Rights office at Headquarters.

Commercially Useful Function (CUF). Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR Part 26.

Commitment. A portion of the Contract designated by the Consultant for participation by DBE firms. The DBE firm(s) are included in the proposal team for participation to meet the Contract Goal. Commitments must identify the work to be performed by the DBE and include the percentage of the contract committed to each DBE firm. Commitments are measured at the end of the contract and are calculated by the actual payments to a DBE firm divided by the total payments made under the Contract.

Contract. Agreement between the Local Agency and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services. For purposes of this document, the term "Contract" refers to an individual, executed Task Order for an On-Call Agreement or a Master Contract (overarching agreement) for Project-Specific and Program-Specific Agreements.

Contract Goal Percentage. The percentage of the Contract established by CDOT for reasonable participation by DBEs and stated in the invitation for consultant services.

Consultant. An individual, firm, corporation, or other legal entity with a direct contractual relationship with the Local Agency's solicitation to render Professional Services and ancillary services.

Disadvantaged Business Enterprise (DBE). A Colorado certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.

Emerging Small Business (ESB). A CDOT certified Emerging Small Business firm listed on the ESB Directory at www.coloradoesb.org.

Good Faith Efforts (GFE). All necessary and reasonable steps to secure the necessary Commitments to meet the Contract Goal or other requirements of this contract, which by their scope, intensity, and

appropriateness to the objective could reasonably be expected to fulfill the contract requirement. Guidance on Good Faith Efforts to meet the Contract Goal is provided in 49 CFR Part 26, Appendix A.

Local Agency. The City of Pueblo.

Professional Services. The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colorado Revised Statutes (CRS) 24-30-1402 and 48CFR Part 2.

Reduction. Reduction occurs when the Consultant reduces a Commitment to a DBE. A Reduction is a partial Termination.

Subconsultant. An individual, firm, corporation or other legal entity to whom the Consultant sublets part of the contract. For purposes of these requirements, the term Subconsultant includes Suppliers/Vendors.

Substitution. Substitution occurs when a Consultant seeks to find another certified DBE firm to perform work on the contract as a result of a Reduction or Termination.

Termination. Termination occurs when a Consultant no longer intends to use a DBE firm for fulfillment of a Commitment. This includes, but is not limited to, instances in which a Consultant seeks to perform work originally designated for a DBE Subconsultant with its own forces or those of an affiliate, a nonDBE firm, or with another DBE firm.

Utilization Plan (UP). The documentation of Subconsultant and Supplier/Vendor participation on the awarded Contract. The Utilization Plan details all Subconsultants and Suppliers/Vendors included as part of the proposal team and Commitments by percentage made by the Consultant. The Consultant must submit the Utilization Plan within five (5) calendar days of receiving notice from CDOT's B2GNow system.

Vendor. Participant on a CDOT contract that is providing services not considered to be a Professional Services as defined in Colorado Revised Statute 24-30-1402 and 48 CFR Part 2. A vendor would provide Non- Engineering Services (i.e. Geotechnical drilling, Public Information/Relations, traffic control, etc.) and would not be overseen by a licensed engineer.

Work Code. A code to identify the work that a DBE is certified to perform. A work code includes a six (6) digit North American Industry Classifications System (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory at <https://coucp.dbesystem.com/>. The Local Agency may include CDOT in discussions for clarification. The consultant may contact the Civil Rights and Business Resource Center to receive guidance on whether a work code covers the work to be performed.

II. NONDISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

The following requirements apply to all contracts and subcontracts on FHWA federally assisted contracts.

A. *Non-discrimination.* The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either 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.

B. *Civil Rights Act of 1964 Title VI.* CDOT, 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 for any contract entered into pursuant to this advertisement, disadvantaged business

enterprises 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 an award.

C. *Consultant Assurance.* By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract. Such other remedy as deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments
- Assessing sanctions
- Liquidated damages
- Disqualifying the consultant from future bidding as non-responsible

D. *Prompt Payment.* Payments to all Subconsultants shall be made within seven (7) calendar days of receipt of payment from the Local Agency, or no later than ninety (90) calendar days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. The Local Agency will assist in enforcing the Civil Rights Requirements outlined above as well as prompt payment as outlined in 49 CFR, Part 26. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify the Subconsultant 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 failure to timely submit an invoice or to deposit payments made. The Consultant shall electronically submit prompt payment audit reports in B2GNow by the fifteenth (15th) of each month through the B2GNow software. If no payment has been made, the Consultant shall document this in the prompt payment audit reporting.

E. *Subcontract Terms.* Parts A-D of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

III. CONTRACT COMMITMENT

At the time of initial proposal, the Consultant must make a contractually binding guarantee to meet the Contract Goal in accordance with 49 CFR 26.53.

A. *Affidavit of Small Business Participation.* The Affidavit of Small Business Participation is the Consultant's contractually binding guarantee to meet the Contract Goal or make Good Faith Efforts to do so. CDOT's *Affidavit of Small Business Participation* form must be submitted with the Consultant's

statement of interest proposal. Failure to submit the CDOT *Affidavit of Small Business Participation* form will result in the Consultant being deemed non-responsive and ineligible for award. The Local Agency will copy the top preferred proposals to CDOT's Civil Rights and Business Resource Center (CRBRC) for approval of CDOT's *Affidavit of Small Business Participation* form. This form includes the commitments to meet the DBE goal.

B. *Contract Utilization Plan (UP)*. Once the contract is awarded and the Local Agency receives a signed contract, the Local Agency will submit the *Local Agency Professional Services B2GNow Contract Information* form for CDOT to set up the contract in the B2GNow system. Once the contract is setup in the system, the Consultant will receive a notice from CDOT within five (5) calendar days of selection, to complete and submit a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Consultant shall list all DBE, ESB, and nonDBE/ESB Subconsultants and Suppliers/Vendors included as part of its "most qualified" team. The Utilization Plan shall also include all Commitments by percentage.

C. *Consultant Responsibility*. The Consultant is solely responsible for ensuring that the Contract Goal is achieved upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever occurs first. The Local Agency and CDOT assists in the monitoring as oversight agencies.

D. *Contract Good Faith Effort Requirement*. The UP will not be approved by CDOT until the Consultant documents sufficient Commitments to meet the Contract Goal or demonstrates Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining sufficient Commitments to do so.

1. Good Faith Efforts mean that the Consultant:
 - a. Documents it has obtained enough DBE participation to meet the Contract Goal, or
 - b. Documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so
2. If the Consultant has not documented sufficient Commitments to meet the Contract Goal, the Consultant shall provide an explanation of its efforts to obtain Commitments by submitting the CDOT's *Professional Services Good Faith Efforts Report* form and supporting documentation to CRBRC.
 - a. The CRBRC will conduct a review to determine whether the Consultant has demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The CRBRC will approve the Contract Utilization Plan if it determines that the Consultant has made Good Faith Efforts to meet the Contract Goal
3. In conducting Good Faith Effort reviews, the CRBRC will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The CRBRC may also consider, but is not limited to, the following factors in evaluating the Consultant's Good Faith Efforts:
 - a. Performance of other consultants in meeting DBE goals on contracts that have a similar scope of work, contract amount, location, and time frame
 - b. Reason(s) for choosing a nonDBE subconsultant over an interested DBE
 - c. Documentation of DBEs solicited by the Consultant and verification from the DBEs that they were actually contacted by the Consultant

- d. Past performance by the Consultant on contracts that have a similar scope of work, contract amount, location and time frame
- e. Any other factors that may be pertinent to the factual circumstances

If the CRBRC determines the Consultant has made Good Faith Efforts to meet the Contract Goal, the Master Contract Utilization Plan will be approved and all documentation of the determination will be uploaded into B2GNow.

E. *Administrative Reconsideration.* If the CRBRC determines that the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal, the Consultant will be provided a written notice of its determination and an opportunity for administrative reconsideration by the CDOT Chief Engineer or a designee.

1. The Chief Engineer or a designee will conduct administrative reconsideration.
 - a. The Consultant will have five (5) calendar days from the written notice to request administrative reconsideration of an adverse Good Faith Efforts determination
 - b. The request shall include the basis for reconsideration and any supporting documentation that the Consultant would like to be considered as part of the reconsideration
 - c. The reconsideration should also specify whether the Consultant is requesting an informal, in person or telephonic hearing with CDOT to address the issues in the Good Faith Efforts determination
 - d. If a request for an informal hearing is not made, the Consultant will be deemed to have waived this opportunity
2. Upon a hearing request, the Civil Rights and Business Resource Center will establish a date and time for the hearing and send written notice via email to the Consultant, the Local Agency and Civil Rights at least two (2) business days in advance of the hearing.
 - a. If schedules permit, the parties may waive the two (2) business day requirement
 - b. The CDOT Chief Engineer or designee may request additional documentation from the Consultant and/or the Local Agency
 - c. A copy of all requests and responses should be provided to the other party and the other party shall be given an opportunity to respond
3. The CDOT Chief Engineer or a designee shall issue the final determination as to whether the Consultant made Good Faith Efforts to meet the Contract Goal.
 - a. The determination will be in writing and explain the basis for the CDOT Chief Engineer's or designee decision regarding whether or not the Consultant demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The Good Faith Efforts determination of the CDOT Chief Engineer or designee is not appealable

IV. ELIGIBLE DBE PARTICIPATION

In order to count towards the Contract Goal, (1) the work performed by the DBE Consultant, Subconsultant, or Supplier/Vendor must be identified in an approved Commitment, and (2) the Consultant, Subconsultant, or Supplier/Vendor must be DBE certified in the committed work upon submission of the Commitment. The Local Agency will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Consultant, Subconsultant, or Supplier/Vendor is certified. The Local Agency may request assistance from CDOT if needed.

A. If a Consultant, Subconsultant, or Supplier/Vendor is decertified as a DBE following the approval of a Contract, its participation on that Contract may continue to count as DBE participation.

B. DBE participation will be tracked through the B2GNow.

C. Only work actually performed by the DBE will count towards the Contract Goal.

1. The Consultant may count the entire amount of fees or commissions charged by a DBE firm for:

- a. Providing a bona fide service, such as professional, technical, consultant, or managerial services; and/or
- b. Providing assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of work, provided that the fee or commission is determined by the Local Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services

2. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subcontractor is also a DBE certified firm.

- a. Work that a DBE subcontracts out to a non-certified firm will not count toward the goal
- b. DBE firms may use an employee leasing company for the work
 - i. The participation of the leased employees will count only if the certified DBE firm maintains an employer-employee relationship with the leased employees
 - ii. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees

c. Unless certified in the work to be performed, staffing agencies only count toward the Contract Goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay

3. When a DBE performs as a participant in a joint venture:

- a. Only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces may count toward the Goal
- b. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2GNow for review and approval by CDOT

D. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.

1. To perform a Commercially Useful Function:
 - a. The DBE must be responsible for the execution of the work to be performed and
 - b. Actually performing, managing, and supervising the work
2. In evaluating whether a DBE is performing a Commercially Useful Function, the Local Agency will consider factors, including but not limited to:
 - a. The amount of subcontracted work
 - b. Industry practices, and
 - c. Whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors
3. DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation.
4. A DBE is presumed as not performing a Commercially Useful Function:
 - a. When it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce; or
 - b. When the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved.
 - c. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption.
5. In order to finalize the Contract, the Consultant must have submitted a *Professional Services Commercially Useful Function Questionnaire* form for each DBE firm that performed work or provided supplies toward meeting the contract goal. The DBE, Consultant and Engineer must sign the *Professional Services Commercially Useful Function Questionnaire* form.
6. The Local Agency's determinations regarding Commercially Useful Function matters are not appealable.

V. UTILIZATION PLAN MODIFICATIONS

A. *Reduction, Substitution, Termination.* Reduction, Substitution, or Termination during the life of the Contract shall only be permitted at the discretion of the Local Agency based upon a demonstration of Good Cause by the Consultant. The Consultant may not Reduce, Substitute, Terminate, or add Commitments without the Local Agency's approval. Consultants may request modification approval to the Local agency. The Local Agency may request for CDOT's assistance and/or use CDOT's Professional Services DBE Participation Plan Modification Request form.

1. *Notice to Subconsultant.* Before requesting the Local Agency approval, the Consultant must give the DBE Subconsultant notice in writing of the Consultant's intent to Reduce, Substitute or Terminate the Subconsultant's work. Unless otherwise waived in writing by the DBE, the Consultant must give the DBE five (5) calendar days to respond to the Consultant's notice and advise the Local Agency of objections, if any, that it objects to the proposed Reduction, Termination and/or Substitution and why the Consultant's proposed action should not be approved. If required as a matter of public necessity (e.g., safety), the Local Agency may waive or reduce the period to respond. The DBE firm may also voluntarily waive the response period.

2. *Good Cause Requirement.* A Consultant must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by the Local Agency. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Consultant can self perform the work for which the DBE was engaged or so that the Consultant can substitute another firm to perform the work. In evaluating whether Good Cause exists, the Local Agency will consider, but is not limited to, the following factors:

- a. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE
- b. Failure or refusal by the DBE to execute a written contract
- c. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal the industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Consultant or one of its Subconsultants
- d. The DBE fails to meet reasonable, nondiscriminatory insurance requirement
- e. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
- f. The DBE is ineligible to work because of suspension or debarment proceedings or other state law
- g. The DBE is not a responsible Consultant
- h. The listed DBE voluntarily withdraws from the project and provides to the Consultant written notice of its withdrawal
- i. The listed DBE is ineligible to receive credit for its participation
- j. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform
- k. The DBE ceases business operations or otherwise dissolves; and/or
- l. Other documented good cause reasons determined by the Local Agency to compel the termination of the DBE Subconsultant

3. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Consultant shall make Good Faith Efforts to find a Substitution up

to the Contract Goal for the DBE whose Commitment has been Terminated or Reduced, Substitutions do not have to be in the same type of work that was Terminated or Reduced.

- a. Prior to making a Substitution, the Consultant must receive the Local Agency's approval for the Substitution.
- b. An approval of the modification constitutes a modification of the Utilization Plan through CDOT. Each substitute DBE approved by the Local Agency must have documentation. Documentation similar to a Project Cost Worksheet for Subconsultants or Letter of Intent for a Supplier/Vendor that shows commitments to the firm on the contract are required. Once approved, the Local Agency will work with the CRBRC to modify the UP in B2GNow.

VI. ENFORCEMENT

It is the responsibility of the Local Agency and Consultant to ensure that Commitments are fulfilled or to request Utilization Plan modifications in a timely manner as described in Section VI. Approvals under the Contract are not an explicit or implicit approval by the Local Agency or CDOT of any Commitment Terminations, Reductions, Substitutions, or any other waiver of the Contract Civil Rights requirements.

A. The Local Agency may conduct reviews or investigations of participants as necessary. All participants on the Contract, including, but not limited to, DBE Subconsultants or Suppliers/Vendors are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information. This also includes applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the Contract Goal.

B. If the Local Agency determines that a Consultant, Subconsultant or Supplier/Vendor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Local Agency to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, the Local Agency may:

1. Refuse to count any fraudulent or misrepresented DBE/ESB participation
2. Withhold progress payments to the Consultant commensurate with the violation
3. Reduce the Consultant's prequalification status
4. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
5. Seek any other available contractual remedy

VII. CONTRACT CLOSEOUT

The Local Agency will collect a completed CDOT *Professional Services Closeout Report* form upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever comes first. This form will report the final actual DBE participation on the Contract and any amounts for which CDOT will be seeking reimbursement due to the Consultant not meeting Commitments. The Local Agency will submit the form to CDOT Civil Rights with submission of the final invoice.

FEDERAL HIGHWAY ADMINISTRATION (FHWA) CONTRACT CLAUSES FOR CITY OF PUEBLO (NON CONSTRUCTION)

Updated July 2022

PART 1. ADDITIONAL FEDERAL REQUIREMENTS (IGA at Exhibit J)

A. 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 Agency and their contractors or the Local Agency).

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 Agency and the Local Agency 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.

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".

B. Nondiscrimination.

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:

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.

C. Incorporation of Provisions.

The Contractor will include the provisions of the foregoing ADDITIONAL FEDERAL REQUIREMENTS (IGA at 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.

PART 2. OMB UNIFORM GUIDANCE FOR FEDERAL PROJECTS (IGA at Exhibit M and related OMB Guidance).

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:

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.”

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 City must report all suspected or reported violations to the Federal awarding agency.

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. **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). If applicable, Contractor agrees to the following:

Clean Air Act:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the federal, state, or other grant funding agency and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract meeting or exceeding \$150,000.

Federal Water Pollution Control Act:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the federal, state, or other grant funding agency and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract meeting or exceeding \$150,000.

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. If applicable, Contractor shall be bound by it's Bidder's Certification for Debarment, Suspension, Ineligibility and Voluntary Exclusion throughout the period of the Contract.
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. **Domestic Preference for Procurement (C.F.R. § 200.322).** To the extent consistent with law and in accordance with 2 C.F.R. § 200.322, Contractor and all of its subcontractors will to the greatest extent practicable under the Contract, 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 that Contractor may enter into.

8. **Procurement of Recovered Material (C.F.R. § 200.323).** In the performance of this contract/agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items in accordance with 40 C.F.R. Part 247, unless the product cannot be acquired:

Competitively within a timeframe providing for compliance with the contract performance schedule.

Meeting contract performance requirements.

At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor 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.

9. **Additional Provisions.**

Access to Records. The Contractor agrees to provide the federal fund and/or grant provider, the City, the Comptroller General of the United States, and/or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the federal fund and/or grant provider or authorized representatives access to construction or other work sites pertaining to the work being completed under the Project.

In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the federal fund and/or grant provider or the Comptroller General of the United States.

Changes. The cost of changes, modifications, change orders, or constructive changes must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of the project scope.

Changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract as long as the City and Contractor agree to change in writing and change still meets any funding submittal and expiration dates.

No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims or Statements) applies to the Contractor's actions pertaining to this contract.

PART 3. CDOT PROFESSIONAL SERVICES CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS (IGA to be attached to agreement as needed).

Please refer to CDOT's Local Agency Civil Rights Guidelines for more information:

<https://www.codot.gov/business/civilrights/compliance/prof-services/overview>

Contractor agrees to be bound by and subject to this PART III. CDOT PROFESSIONAL SERVICES CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.

I. DEFINITIONS

B2GNow. Web based platform utilized by CDOT to track Civil Rights compliance (DBE/ESB participation) and prompt payment requirements on its contracts. The Consultant will use this platform to submit Utilization Plan(s), Subconsultant and Supplier/Vendor information on the Contract.

CDOT Civil Rights. The CDOT Civil Rights office that assist with the contract and prompt payment requirements on contracts. This can be in either the region or headquarters.

Civil Rights and Business Resource Center (CRBRC). CDOT's Civil Rights office at Headquarters.

Commercially Useful Function (CUF). Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR Part 26.

Commitment. A portion of the Contract designated by the Consultant for participation by DBE firms. The DBE firm(s) are included in the proposal team for participation to meet the Contract Goal. Commitments must identify the work to be performed by the DBE and include the percentage of the contract committed to each DBE firm. Commitments are measured at the end of the contract and are calculated by the actual payments to a DBE firm divided by the total payments made under the Contract.

Contract. Agreement between the Local Agency and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services. For purposes of this document, the term "Contract" refers to an individual, executed Task Order for an On-Call Agreement or a Master Contract (overarching agreement) for Project-Specific and Program-Specific Agreements.

Contract Goal Percentage. The percentage of the Contract established by CDOT for reasonable participation by DBEs and stated in the invitation for consultant services.

Consultant. Contractor whether designated as engineer, consultant or otherwise who has entered an agreement with Local Agency pursuant to which mandatory federal and state contract provisions have become applicable including the requirements of this Part III.

Disadvantaged Business Enterprise (DBE). A Colorado certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.

Emerging Small Business (ESB). A CDOT certified Emerging Small Business firm listed on the ESB Directory at www.coloradoesb.org.

Good Faith Efforts (GFE). All necessary and reasonable steps to secure the necessary Commitments to meet the Contract Goal or other requirements of this contract, which by their scope, intensity, and appropriateness to the objective could reasonably be expected to fulfill the contract requirement. Guidance on Good Faith Efforts to meet the Contract Goal is provided in 49 CFR Part 26, Appendix A.

Local Agency. Pueblo, a municipal corporation.

Professional Services. The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colorado Revised Statutes (CRS) 24-30-1402 and 48CFR Part 2.

Reduction. Reduction occurs when the Consultant reduces a Commitment to a DBE. A Reduction is a partial Termination.

Subconsultant. An individual, firm, corporation or other legal entity to whom the Consultant sublets part of the contract. For purposes of these requirements, the term Subconsultant includes Suppliers/Vendors.

Substitution. Substitution occurs when a Consultant seeks to find another certified DBE firm to perform work on the contract as a result of a Reduction or Termination.

Termination. Termination occurs when a Consultant no longer intends to use a DBE firm for fulfillment of a Commitment. This includes, but is not limited to, instances in which a Consultant seeks to perform work originally designated for a DBE Subconsultant with its own forces or those of an affiliate, a nonDBE firm, or with another DBE firm.

Utilization Plan (UP). The documentation of Subconsultant and Supplier/Vendor participation on the awarded Contract. The Utilization Plan details all Subconsultants and Suppliers/Vendors included as part of the proposal team and Commitments by percentage made by the Consultant. The Consultant must submit the Utilization Plan within five (5) calendar days of receiving notice from CDOT's B2GNow system.

Vendor. Participant on a CDOT contract that is providing services not considered to be a Professional Services as defined in Colorado Revised Statute 24-30-1402 and 48 CFR Part 2. A vendor would provide Non- Engineering Services (i.e. Geotechnical drilling, Public Information/Relations, traffic control, etc.) and would not be overseen by a licensed engineer.

Work Code. A code to identify the work that a DBE is certified to perform. A work code includes a six (6) digit North American Industry Classifications System (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory at <https://coucp.dbesystem.com/>. The Local Agency may include CDOT in discussions for clarification. The consultant may contact the Civil Rights and Business Resource Center to receive guidance on whether a work code covers the work to be performed.

II. NONDISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

The following requirements apply to all contracts and subcontracts on FHWA federally-assisted contracts.

- A. *Non-discrimination.* The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either 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.
- B. *Civil Rights Act of 1964 Title VI.* CDOT, 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 for any contract entered into pursuant to this advertisement, disadvantaged business enterprises 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 an award.
- C. *Consultant Assurance.* By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract. Such other remedy as deems appropriate, which may include, but is not limited to:
- Withholding monthly progress payments
 - Assessing sanctions
 - Liquidated damages
 - Disqualifying the consultant from future bidding as non responsible
- D. *Prompt Payment.* Payments to all Subconsultants shall be made within seven (7) calendar days of receipt of payment from the Local Agency, or no later than ninety (90) calendar days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. The Local Agency will assist in enforcing the Civil Rights Requirements outlined above as well as prompt payment as outlined in 49 CFR, Part 26. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify the Subconsultant 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 failure to timely submit an invoice or to deposit payments made. The Consultant shall electronically submit prompt payment audit reports in B2GNow by the fifteenth (15th) of each month through the B2GNow software. If no payment has been made, the Consultant shall document this in the prompt payment audit reporting.
- E. *Subcontract Terms.* Parts A-D of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

III. CONTRACT COMMITMENT

At the time of initial proposal, the Consultant must make a contractually binding guarantee to meet the Contract Goal in accordance with 49 CFR 26.53.

- A. *Affidavit of Small Business Participation*. The Affidavit of Small Business Participation is the Consultant's contractually binding guarantee to meet the Contract Goal or make Good Faith Efforts to do so. CDOT's *Affidavit of Small Business Participation* form must be submitted with the Consultant's statement of interest proposal. Failure to submit the CDOT *Affidavit of Small Business Participation* form will result in the Consultant being deemed non responsive and ineligible for award. The Local Agency will copy the top preferred proposals to CDOT's Civil Rights and Business Resource Center (CRBRC) for approval of CDOT's *Affidavit of Small Business Participation* form. This form includes the commitments to meet the DBE goal.
- B. *Contract Utilization Plan (UP)*. Once the contract is awarded and the Local Agency receives a signed contract, the Local Agency will submit the *Local Agency Professional Services B2GNow Contract Information* form for CDOT to set up the contract in the B2GNow system. Once the contract is setup in the system, the Consultant will receive a notice from CDOT within five (5) calendar days of selection, to complete and submit a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Consultant shall list all DBE, ESB, and nonDBE/ESB Subconsultants and Suppliers/Vendors included as part of its "most qualified" team. The Utilization Plan shall also include all Commitments by percentage.
- C. *Consultant Responsibility*. The Consultant is solely responsible for ensuring that the Contract Goal is achieved upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever occurs first. The Local Agency and CDOT assists in the monitoring as oversight agencies.
- D. *Contract Good Faith Effort Requirement*. The UP will not be approved by CDOT until the Consultant documents sufficient Commitments to meet the Contract Goal or demonstrates Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining sufficient Commitments to do so.
 - 1. Good Faith Efforts mean that the Consultant:
 - a. Documents it has obtained enough DBE participation to meet the Contract Goal, or
 - b. Documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so
 - 2. If the Consultant has not documented sufficient Commitments to meet the Contract Goal, the Consultant shall provide an explanation of its efforts to obtain Commitments by submitting the CDOT's *Professional Services Good Faith Efforts Report* form and supporting documentation to CRBRC.
 - a. The CRBRC will conduct a review to determine whether the Consultant has demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The CRBRC will approve the Contract Utilization Plan if it determines that the Consultant has made Good Faith Efforts to meet the Contract Goal

3. In conducting Good Faith Effort reviews, the CRBRC will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The CRBRC may also consider, but is not limited to, the following factors in evaluating the Consultant's Good Faith Efforts:
 - a. Performance of other consultants in meeting DBE goals on contracts that have a similar scope of work, contract amount, location, and time frame
 - b. Reason(s) for choosing a nonDBE subconsultant over an interested DBE
 - c. Documentation of DBEs solicited by the Consultant and verification from the DBEs that they were actually contacted by the Consultant
 - d. Past performance by the Consultant on contracts that have a similar scope of work, contract amount, location and time frame
 - e. Any other factors that may be pertinent to the factual circumstances

If the CRBRC determines the Consultant has made Good Faith Efforts to meet the Contract Goal, the Master Contract Utilization Plan will be approved and all documentation of the determination will be uploaded into B2GNow.

E. Administrative Reconsideration. If the CRBRC determines that the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal, the Consultant will be provided a written notice of its determination and an opportunity for administrative reconsideration by the CDOT Chief Engineer or a designee.

1. The Chief Engineer or a designee will conduct administrative reconsideration.
 - a. The Consultant will have five (5) calendar days from the written notice to request administrative reconsideration of an adverse Good Faith Efforts determination
 - b. The request shall include the basis for reconsideration and any supporting documentation that the Consultant would like to be considered as part of the reconsideration
 - c. The reconsideration should also specify whether the Consultant is requesting an informal, in person or telephonic hearing with CDOT to address the issues in the Good Faith Efforts determination
 - d. If a request for an informal hearing is not made, the Consultant will be deemed to have waived this opportunity
2. Upon a hearing request, the Civil Rights and Business Resource Center will establish a date and time for the hearing and send written notice via email to the Consultant, the Local Agency and Civil Rights at least two (2) business days in advance of the hearing.
 - a. If schedules permit, the parties may waive the two (2) business day requirement
 - b. The CDOT Chief Engineer or designee may request additional documentation from the Consultant and/or the Local Agency
 - c. A copy of all requests and responses should be provided to the other party and the other party shall be given an opportunity to respond
3. The CDOT Chief Engineer or a designee shall issue the final determination as to whether the Consultant made Good Faith Efforts to meet the Contract Goal.

- a. The determination will be in writing and explain the basis for the CDOT Chief Engineer's or designee decision regarding whether or not the Consultant demonstrated Good Faith Efforts to meet the Contract Goal
- b. The Good Faith Efforts determination of the CDOT Chief Engineer or designee is not appealable

IV. ELIGIBLE DBE PARTICIPATION

In order to count towards the Contract Goal, (1) the work performed by the DBE Consultant, Subconsultant, or Supplier/Vendor must be identified in an approved Commitment, and (2) the Consultant, Subconsultant, or Supplier/Vendor must be DBE certified in the committed work upon submission of the Commitment. The Local Agency will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Consultant, Subconsultant, or Supplier/Vendor is certified. The Local Agency may request assistance from CDOT if needed.

- A. If a Consultant, Subconsultant, or Supplier/Vendor is decertified as a DBE following the approval of a Contract, its participation on that Contract may continue to count as DBE participation.
- B. DBE participation will be tracked through the B2GNow.
- C. Only work actually performed by the DBE will count towards the Contract Goal.
 - 1. The Consultant may count the entire amount of fees or commissions charged by a DBE firm for:
 - a. Providing a bona fide service, such as professional, technical, consultant, or managerial services; and/or
 - b. Providing assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of work, provided that the fee or commission is determined by the Local Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services
 - 2. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subcontractor is also a DBE certified firm.
 - a. Work that a DBE subcontracts out to a non-certified firm will not count toward the goal
 - b. DBE firms may use an employee leasing company for the work
 - i. The participation of the leased employees will count only if the certified DBE firm maintains an employer-employee relationship with the leased employees
 - ii. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees

- c. Unless certified in the work to be performed, staffing agencies only count toward the Contract Goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay
- 3. When a DBE performs as a participant in a joint venture:
 - a. Only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces may count toward the Goal
 - b. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2GNow for review and approval by CDOT

C. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.

- 1. To perform a Commercially Useful Function:
 - a. The DBE must be responsible for the execution of the work to be performed and
 - b. Actually performing, managing, and supervising the work
- 2. In evaluating whether a DBE is performing a Commercially Useful Function, the Local Agency will consider factors, including but not limited to:
 - a. The amount of subcontracted work
 - b. Industry practices, and
 - c. Whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors
- 3. DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation.
- 4. A DBE is presumed as not performing a Commercially Useful Function:
 - a. When it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce; or
 - b. When the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved.
 - c. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption.
- 5. In order to finalize the Contract, the Consultant must have submitted a *Professional Services Commercially Useful Function Questionnaire* form for each DBE firm that performed work or provided supplies toward meeting the contract goal. The DBE, Consultant and Engineer must sign the *Professional Services Commercially Useful Function Questionnaire* form.

6. The Local Agency's determinations regarding Commercially Useful Function matters are not appealable.

V. UTILIZATION PLAN MODIFICATIONS

A. *Reduction, Substitution, Termination.* Reduction, Substitution, or Termination during the life of the Contract shall only be permitted at the discretion of the Local Agency based upon a demonstration of Good Cause by the Consultant. The Consultant may not Reduce, Substitute, Terminate, or add Commitments without the Local Agency's approval. Consultants may request modification approval to the Local agency. The Local Agency may request for CDOT's assistance and/or use CDOT's Professional Services DBE Participation Plan Modification Request form.

1. *Notice to Subconsultant.* Before requesting the Local Agency approval, the Consultant must give the DBE Subconsultant notice in writing of the Consultant's intent to Reduce, Substitute or Terminate the Subconsultant's work. Unless otherwise waived in writing by the DBE, the Consultant must give the DBE five (5) calendar days to respond to the Consultant's notice and advise the Local Agency of objections, if any, that it objects to the proposed Reduction, Termination and/or Substitution and why the Consultant's proposed action should not be approved. If required as a matter of public necessity (e.g., safety), the Local Agency may waive or reduce the period to respond. The DBE firm may also voluntarily waive the response period.
2. *Good Cause Requirement.* A Consultant must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by the Local Agency. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Consultant can self perform the work for which the DBE was engaged or so that the Consultant can substitute another firm to perform the work. In evaluating whether Good Cause exists, the Local Agency will consider, but is not limited to, the following factors:
 - a. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE
 - b. Failure or refusal by the DBE to execute a written contract
 - c. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal the industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Consultant or one of its Subconsultants
 - d. The DBE fails to meet reasonable, nondiscriminatory insurance requirement
 - e. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
 - f. The DBE is ineligible to work because of suspension or debarment proceedings or other state law
 - g. The DBE is not a responsible Consultant
 - h. The listed DBE voluntarily withdraws from the project and provides to the Consultant written notice of its withdrawal
 - i. The listed DBE is ineligible to receive credit for its participation
 - j. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform
 - k. The DBE ceases business operations or otherwise dissolves; and/or
 - l. Other documented good cause reasons determined by the Local Agency to compel the termination of the DBE Subconsultant

3. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Consultant shall make Good Faith Efforts to find a Substitution up to the Contract Goal for the DBE whose Commitment has been Terminated or Reduced, Substitutions do not have to be in the same type of work that was Terminated or Reduced.
 - a. Prior to making a Substitution, the Consultant must receive the Local Agency's approval for the Substitution.
 - b. An approval of the modification constitutes a modification of the Utilization Plan through CDOT. Each substitute DBE approved by the Local Agency must have documentation. Documentation similar to a Project Cost Worksheet for Subconsultants or Letter of Intent for a Supplier/Vendor that shows commitments to the firm on the contract are required. Once approved, the Local Agency will work with the CRBRC to modify the UP in B2GNow.

VI. ENFORCEMENT

It is the responsibility of the Local Agency and Consultant to ensure that Commitments are fulfilled or to request Utilization Plan modifications in a timely manner as described in Section VI. Approvals under the Contract are not an explicit or implicit approval by the Local Agency or CDOT of any Commitment Terminations, Reductions, Substitutions, or any other waiver of the Contract Civil Rights requirements.

- A. The Local Agency may conduct reviews or investigations of participants as necessary. All participants on the Contract, including, but not limited to, DBE Subconsultants or Suppliers/Vendors are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information. This also includes applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the Contract Goal.
- B. If the Local Agency determines that a Consultant, Subconsultant or Supplier/Vendor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Local Agency to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, the Local Agency may:
 1. Refuse to count any fraudulent or misrepresented DBE/ESB participation
 2. Withhold progress payments to the Consultant commensurate with the violation
 3. Reduce the Consultant's prequalification status
 4. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
 5. Seek any other available contractual remedy

VII. CONTRACT CLOSEOUT

The Local Agency will collect a completed CDOT *Professional Services Closeout Report* form upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever comes first. This form will report the final actual DBE participation on the Contract and any amounts for which CDOT will be seeking reimbursement due to the Consultant not meeting Commitments. The Local Agency will submit the form to CDOT Civil Rights with submission of the final invoice.

(Continue to next page.)

**Colorado Department of Transportation
AFFIDAVIT OF SMALL BUSINESS PARTICIPATION**

Project Description		Contract NTE \$ DBE Contract Goal %	
SECTION 1. CONSULTANT INFORMATION			
Prime Consultant		Consultant is an ESB ☐	
Compliance Contact Name		Consultant is a DBE ☐	
Email	Address	Phone	B2GNow Vendor #
SECTION 2. DBE PARTICIPATION PLAN			
Fill in All Lines: * The consultant is committing to _____ # _____ firm(s) not teamed with in the past 2 years (as of ad date of RFP, firms with successful bids allowed, each firm must be listed in this section). * The consultant is committing to _____ % of DBE participation based on NTE \$. * The consultant is committing to approximately _____ % DBE goal based on the NTE \$.			
The Prime Consultant shall submit _____ Professional Services Commercially Useful Function Questionnaire for every DBE on this contract that provides work or provides supplies whose participation counts toward the DBE contract goal for this contract.			
All DBE firms (Subconsultants, Supplier/Vendors, Prime if self performing)	Work Descriptor (i.e. survey, testing)	NEW DBE Teaming Partner?	ONLY for Project/Program Specific RFP/SOs Approximate % of Participation
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	

If more DBE subs/suppliers vendors, add additional sheet

**Colorado Department of Transportation
AFFIDAVIT OF SMALL BUSINESS PARTICIPATION**

SECTION 3. ESB PARTICIPATION PLAN

Fill in All Lines:

- * The consultant is committing to _____ # of ESB firm(s) not teamed with in the next 2 years (as of ad date of RFP, firms with unsuccessful bids allowed, each firm must be listed in this section).
- * The consultant is committing to approximately \$ _____ of ESB participation on this RFP/SOI.
- * The consultant is committing to approximately _____ % ESB goal set in the NTE S.

All ESB firms (Subconsultants, Suppliers/Vendors, Prime if self performing) and Level	Work to be performed (if subconsultant, teaming)	New ESB Teaming Partner?	ONLY for Project/Program Specific RFP/SOIs Approximate % of Participation
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	

If more ESB subs/suppliers/vendors, add additional sheet

SECTION 4. DECLARATION OF AFFIDAVIT

By signing below the Consultant affirms the statements made in this document are true and complete:

The Consultant shall make good faith efforts to meet the contract goal for each task order under the overall contract. The Consultant understands that making good faith efforts to achieve the contract goal is a condition of contract award. The Consultant understands that promised participation is a binding obligation of the contract if awarded. The Consultant attests that the information above is true and understands that a fraudulent misrepresentation or failure to make good faith efforts to meet the contract commitments or promised participation may result in the withholding of progress payments, reduction of prequalification status, referral of the matter to the Office of Inspector General of the USDOT and/or other contractual remedies.

I, _____ of _____
(Owner or Executive Officer Name AND Title) (Consultant Company Name)

(Tracked Signature Accepted)

(Date)

Attached with proposal (RFP) and small business plan (for scoring)

Jul-22

THE FOLLOWING PAGES INCLUDE REQUIRED FORMS FOR EACH AGREEMENT.

**BIDDER’S CERTIFICATION FOR DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION**

Only applicable for projects exceeding \$25,000.

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the US Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by a Federal and/or State entity official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Company_____ Date_____

Authorized Signature_____

Name/Title_____

LOBBYING RESTRICTIONS FORM

Only applicable for projects exceeding \$100,000.

The Contractor certifies, 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 an 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 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.
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Company_____ Date_____

Authorized Signature_____

Name/Title_____

CERTIFICATION OF INTENT TO MEET FUTURE PROJECT DBE REQUIREMENTS

Only applicable for CDOT, FHWA, FTA, and FAA projects.

The Contractor certifies, to the best of his or her knowledge and belief, that they shall be able to meet or intend to meet all future funding DBE project requirements as shown in Appendix C.

Company_____ Date_____

Authorized Signature_____

Name/Title_____

SCHEDULE 1
SCOPE OF SERVICES
EXCERPT FROM RFQ SECTION 3

3.4 Scope of Service

3.4.1 General.

- Work/tasks will be assigned on an as needed basis
- The project details, deliverables, format, cost, timing, and completion dates will be negotiated at the time of task assignment
- Consultant shall be responsible for actively managing the project and for providing complete services for each project/task
- All deliverables must be submitted in electronic format as agreed upon at time of task assignment
- All work completed shall be available for use by MPO staff in planning-related documents and for public review
- Consultant shall provide aid on plans, reports, and/or studies that require computer simulation/visualization of corridors, projects, systems, and road networks as needed
- At a minimum, Consultant shall provide project updates monthly

3.4.2 Multimodal Transportation Data Collection and Analysis.

Collect, organize, and analyze transportation data of all different modes from a range of sources including asset management and traffic data, freight transportation data, mobility, public health, transportation data, information from the PACOG Transportation Improvement Program (TIP), and other City and County sources.

3.4.3 Planning Data Analysis.

Analyze and report related transportation planning for Colorado by using available data from multiple sources (mostly web-based) including census, labor statistics, state, and national data sources.

3.4.4 Disproportionately Impacted Community Analysis.

Analyze and identify strategies for increased public engagement and improved decision-making for Disproportionately Impacted Communities.

3.4.5 General Planning Support.

Perform tasks that support multiple planning efforts ongoing at PACOG. Tasks may include, but are not limited to, data collection, analysis, research, meeting coordination, technical support, and quality checks on deliverables. Additional tasks may include the following:

- Freight planning
- Use of alternative fuels and alternative fuel vehicles
- Revitalizing Main Street program
- Complete streets
- Land use considerations and coordination

- Bicycle, pedestrian, and other non-motorized modal planning
- GHG emissions reduction programs
- Disproportionality impacted communities transportation programs
- Environmental justice and equity analysis
- Economic analysis
- Risk and resilience
- Transportation planning policy
- Environmental planning considerations
- Transportation technology
- Transportation travel demand modeling
- Traffic engineering and planning
- Public health and transportation
- Public, shareholder, and stakeholder involvement and engagement
- Regional transportation authority planning/implementation
- Note: All work items and deliverables will require compliance with the federal Infrastructure Investment and Jobs Act (IIJA), Colorado SB 21-260, 2 CCR 601-22, and all other applicable federal and state laws.

3.4.6 Anticipated Tasks.

Although task will be assigned on an as needed basis; it is anticipated that Consultant may assist or perform the following tasks:

- Assist the City and PACOG/MPO staff with the Implementation of the MPO Long Range Transportation Plan
- Aid City MPO staff in the development and ongoing monitoring and updating of the PACOG Transportation Improvement Program
- Assist the City MPO staff with development of an Area-Wide Highway Safety Plan
- Provide area-wide local roadway safety plan
- Provide traffic model for MPO
 - Perform project scenarios based on projects identified in the 2045 LRTP
 - Refine travel demand model developed in 2015 as new social/economic such as the 2020 census data becomes available
 - Develop the 2050 regional population forecast
 - Update local transportation system data to reflect changes to the future transportation network as modified by local or county government actions
 - Review functional classification and update (may utilize 2020 census data)
 - Update TAZ with 2020 census data and reconfigure traffic model
 - Collaborate with CDOT and MPO to establish baseline and mitigation plan

- Assist MPO and CDOT with Green House Mitigation Plan and Carbon Reduction Plan
 - Facilitate MPO with administrative process for establishing, tracking, and verifying mitigation & performance measures
- Provide updated GIS data (shape files) and update PACOG GIS maps:
 - New roadways
 - Proposed roadways
 - New trails, bike routes, and/or bike lanes
 - Create regional bike plan with updated information
 - Roadway classifications
- Provide Pueblo Transit
 - Route expansion studies and analysis
 - Increased ridership modeling and analysis
 - National Transit Database (NTD) data collection for federal reporting
- Route consolidation and expansion planning

SCHEDULE 2

FEE SCHEDULE

EXCERPT FROM BIDDER'S PROPOSAL, PART 2

The City of Pueblo/PACOG has requested on-call transportation technical assistance “when needed” for a broad ranges of potential service areas. Given the indefinite roles and quantity of work anticipated, we have chosen to structure our projects cost, offering as contract billing rates to be used for assignments that will be defined by PACOG as needed. These rates would be applied to our scope, methodology, and cost proposals for specific task order assignments from PACOG to include one or more support area roles.

Wilson & Company, WSP, and Chickenango have provided specific labor rates for key staff identified in our response as well as category labor billing rates for our firms to provide a broader labor pool for requested task order staffing.

Key personnel labor billing rates

Wilson & Company

Pueblo On-Call Transportation Technical Assistance – Wilson & Company Key Personnel Labor Rates		
Name	Responsibilities	Hourly Rate
Maureen Paz de Araujo, FAICP	Senior Transportation Planner	\$250.00
Eric Lundberg, PE, PTOE	Senior Traffic Engineer	\$190.00
Jacob Naumann, PE	Traffic Engineer	\$140.00
Tiffany Haugh	Senior CAD Manager/GIS Specialist	\$140.00
Doug Eberhart	Senior Environmental Planner	\$230.00
Sabrina Williams	Senior Environmental Planner	\$130.00
Charla Glendening, AICP	Senior Transportation Planner	\$200.00
Mary Lupa	Senior Transportation Modeler	\$200.00
Mark Sawyer	Senior Transportation Planner	\$200.00
Jim Townsend, AICP (MW)	Traffic/ Planning Operations Manager	\$250.00
Amy Moran (SW)	Senior Project Manager	\$220.00
Alex Arveson, PE (SW)	Traffic Engineer	\$140.00
Wendy Schlosberg (MSD)	Technical Writer/Editor/Grants Specialist	\$90.00
Kristin Manthei (MW)	Graphic Artist/Planning Intern	\$70.00
Hal Archer (SW)	Transportation Planner	\$90.00
Germaine Calimlim (SW)	Transportation Planner	\$100.00
Connor Shofner (SW)	Transportation Planner	\$100.00

WSP USA

Pueblo On-Call Transportation Technical Assistance – WSP USA Key Personnel Labor Rates		
Name	Responsibilities	Hourly Rate
Matthew Long	Task Manager	\$215
Paul Nelson	Task Lead	\$165
Myron Hora	Task Support	\$215

Labor category billing rates

Wilson & Company

Pueblo On-Call Transportation Technical Assistance – Wilson & Company Schedule A Rates		
Title / Classification	Responsibilities	Rate*
Engineer/Technical Specialist XXV	Principal III	\$300.00
Engineer/Technical Specialist XXIV	Principal II	\$290.00
Engineer/Technical Specialist XIII	Principal I	\$280.00
Engineer/Technical Specialist XXII	Project Manager IV	\$270.00
Engineer/Technical Specialist XXI	Contract Manager, Project Manager III, Sr. Engineer III	\$260.00
Engineer/Technical Specialist XX	Project Manager II, Sr. Transportation Planner	\$250.00
Engineer/Technical Specialist XIX	Project Manager II	\$240.00
Engineer/Technical Specialist XVIII	Survey Manager, Sr. Environmental Planner	\$230.00
Engineer/Technical Specialist XVII	Sr. Engineer II, Construction Manager	\$220.00
Engineer/Technical Specialist XVI	Sr. Engineer II	\$210.00
Engineer/Technical Specialist XV	Environmental Lead, Sr. Engineer I, Sr. Transportation Planner, Sr. Transportation Modeler	\$200.00
Engineer/Technical Specialist XIV	Engineer III, , Sr. Engineer I, Sr. Traffic Engineer	\$190.00
Engineer/Technical Specialist XIII	Engineer III	\$180.00
Engineer/Technical Specialist XII	Professional Surveyor	\$170.00
Engineer/Technical Specialist XI	Engineer II, Senior Architect	\$160.00
Engineer/Technical Specialist X	Engineer II	\$150.00
Engineer/Technical Specialist IX	Sr. Graphics Designer, Biologist, Engineer I, Traffic Engineer, Sr. CAD Manager/GIS Specialist	\$140.00
Engineer/Technical Specialist VIII	Hazardous Materials Specialist, Engineer I, Architect	\$130.00
Engineer/Technical Specialist VII	Jr Engineer III, Sr. CADD Tech	\$120.00
Engineer/Technical Specialist VI	Jr Engineer III, Construction Observer II, Project Accounting	\$110.00
Engineer/Technical Specialist V	Jr Engineer II, Construction Observer I, Transportation Planner	\$100.00
Engineer/Technical Specialist IV	Jr Engineer I, Party Chief II, Construction Observer I, Social Media, Technical Writer/Editor, Grants Specialist, Transportation Planner	\$90.00
Engineer/Technical Specialist III	Party Chief I	\$80.00
Engineer/Technical Specialist II	Office Administration, Instrument Person, Graphic Artist, Planning Intern	\$70.00
Engineer/Technical Specialist I	Instrument Person, Intern	\$60.00
Intern	Intern	\$55.00

** Billing rates effective from September 2022 through December 2023

WSP USA

Pueblo On-Call Transportation Technical Assistance – WSP USA Schedule A Rates	
Job Categories	Loaded Rate
Planner	\$115
Senior Planner	\$130
Lead Planner	\$165
Supervising Planner	\$190
Planning Manager	\$215
Transit Consultant	\$240
Engineer I	\$125
Engineer II	\$150
Senior Engineer	\$175

Chickenango Marketing Solutions

Pueblo On-Call Transportation Technical Assistance – Chickenango Schedule A Rates	
Role	Hourly Rate
Principal	\$170
Public Relations Manager	\$155
Website Designer	\$125
Marketing Strategist	\$110
Public Relations Strategist	\$100
Graphic Designer	\$100
Public Relations Admin	\$75
Marketing Assistant	\$65
Copywriter	\$55

Other direct costs

Pueblo On-Call Transportation Technical Assistance – Wilson & Company Schedule A Rates	
Reimbursable Costs	Unit Rate
Vehicle Mileage	\$0.80/Mile
Vehicle Day	\$75.00/Day
Vehicle Week	\$275.00/Week
Vehicle Month	\$1,100.00/Month
Survey GPS	\$125.00/Day
Survey Total Station	\$125.00/Day
3D Laser Scanner	\$600/Day
Contract Services	Cost Plus 4%
Outside Vendor Costs	Cost Plus 4%

SCHEDULE 3

Identification of Personnel, Subcontractors, and Task Responsibility

EXCERPT FROM BIDDER'S PROPOSAL, PART 1, PAGES 2-10

Prime and sub-contractor roles

For the Pueblo Regional On-Call Transportation Technical Assistance contract, Wilson & Company has assembled a local team that is supported by national expertise. We have selected our teaming partners, WSP and Chickenango, to provide a “no learning curve” start-up and seamless continuity in implementing your vision in an efficient and timely fashion. The leads from Wilson & Company developed and updated PACOG’s current four-step model for the 2040 and 2045 planning cycle, respectively. The Wilson & Company team includes the key personnel who designed, wrote, and delivered the state-of-the-art 2040 and 2045 Long Range Transportation Plans, validated the travel model, offered extensive documentation, provided model training and staff/materials for the required public outreach to serve the plan, and delivered public outreach. We are ready to support you moving forward through a seamless, on-call services framework. We are providing the following personnel in these roles and responsibilities:

Wilson & Company, prime consultant:

- Scott Asher, PE – Principal-in-Charge
- Jim Townsend, AICP – Senior Advisor/QC Manager
- Maureen Araujo, FAICP - Contract Manager/Task Lead
- Charla Glendening, AICP – General Planning Support Tasks Lead
- Doug Eberhart – Planning Data Analysis Tasks Lead
- Mary Lupa, AICP – Multimodal Transportation Data Collection and Analysis Tasks Lead

WSP USA, subconsultant:

- Matthew Long – Transit Planning Tasks Lead

Chickenango Marketing Solutions, subconsultant:

- AJ West – Website Development and Maintenance Tasks Lead

Staff professional qualifications, availability, and experience

Maureen Araujo, FAICP will be the primary liaison/point of contact with the City of Pueblo/PACOG contract manager. She will be supported by the following senior Wilson & Company leaders who will provide technical advice and will assure the quality of deliverables and the provision of required corporate resources to the project:

- Scott Asher, PE, Principal in Charge (Colorado Springs)
- Jim Townsend, AICP, Technical Advisor/QA/QC (National Planning & Traffic Manager)

The emphasis on a local principal-in-charge and project manager with support from a seasoned technical advisor is purposeful.

Wilson & Company anticipates building upon existing work and relationships in Colorado to provide the best possible product to the City of Pueblo and the Pueblo Area Council of Governments (PACOG/MPO). While the Wilson & Company leadership team is local, their knowledge base is national. Maureen is well known in the national modeling community with a wide range of MPO, National Park Service, military planning, transit, traffic simulation, and land use projects in her knowledge base. Additionally, Maureen will call upon Wilson & Company staff for key resource capabilities including roadway safety planning/complete streets (Jim Townsend), travel demand modeling/freight planning (Mary Lupa), MPO administration-coordination/RTA planning-implementation/environmental planning (Doug Eberhart), non-motorized modes planning/3-C planning compliance (Charla Glendening), traffic engineering/planning (Eric Lundberg), GIS/CAD/graphics (Tiffany Haugh) and editorial support/technical writing (Wendy Schlosberg).



Key personnel

The strength of the Wilson & Company team rests on the capabilities of individuals, the leadership of key staff, and the commitment of the entire team to work together within a multi-disciplinary framework. Our collaborating firms and individual team members bring the City of Pueblo a proven record of successful and rewarding partnering. Our team structure and roles, as shown in organization chart in Figure 2, can be summarized as follows:

The project management team will identify and direct the type, sequence, and schedule for the City of Pueblo/PACOG non-project specific consulting work assignments. **(Black).**

Wilson & Company's contract manager, Maureen Araujo will serve as single point of contact for this contract and will, in collaboration with task order managers Mary Lupa, Doug Eberhart, and Charla Glendening, identify task order technical teams. These task order leads will identify and assemble teams for each task order assignment and provide day-to-day management, leadership, and technical support for ongoing work. **(Blue).**

Jim Townsend will serve as senior advisor and oversee quality control for all task order assignments. Principal-in-charge, Scott Asher will provide required resources for task order assignments under the contract.

Key task order staffing will be drawn from technical specialists shown under multimodal transportation data collection and analysis, freight planning, complete streets, traffic engineering and planning, transit route planning, MPO Administration and coordination, road safety planning, alternative fuels and vehicle technology planning, land use planning and modeling, non-motorized planning, GHG standards and reduction programs, 3-C planning requirements, RTA planning and implementation, travel demand modeling, regional transportation planning and implementation, multi-resolution modeling and visualization, GIS applications and graphics, and website development and maintenance. **(Red).**

Figure 2. Project team organization



The team members identified are Wilson & Company staff unless otherwise noted:

WSP= WSP USA **C**= Chickenango

Team member qualifications

Professional qualifications of our key team members for the Pueblo Regional On-Call Transportation Technical Assistance contract are provided below.

Maureen Paz de Araujo, FAICP CTP CEP | Contract Manager/Disproportionately Impacted Community Analysis Task Lead, Alternative Fuels/Vehicle Technology, Land Use Modeling/Planning, Regional Transportation Planning/Implementation, and Multi-Resolution Modeling/Visualization Lead Specialist (Wilson & Company)

Maureen will serve as contract manager and task manager for disproportionately impacted community analysis. She will also act as lead specialist for alternative fuels and vehicle technology, land use modeling and planning, regional transportation planning and implementation, and multi-resolution modeling and visualization. Maureen is a nationally-recognized transportation planner, specializing in travel demand forecasting, simulation-based traffic operations analysis, and transportation air and noise impact modeling/analysis. For over three decades, Maureen has held leadership roles at public agencies, including serving for 10 years as the PPACG/Colorado Springs MPO Director, and in professional practice. The sustainable travel demand models and programs that she has built have been instrumental in building in-house capabilities within local agencies. Through innovation, Maureen has leveraged basic model functionalities to deliver high-impact model applications.

Maureen has led and contributed to several long-range plans at the MPO level including MPO and LRTP leadership in Colorado Springs and Pueblo. Of note is Maureen's leadership and work for PACOG in the previous two LRTP cycles. As part of the 2040 LRTP planning cycle, she led the development of PACOG's current TransCAD-platform Travel Demand Model (TDM). During this planning cycle, Maureen and Mary established performance-based planning measures for PACOG, allowing the MPO, for the first time, to integrate targets for safety, congestion, non-motorized travel (bicycling) and other 2040 LRTP components.

Jim Townsend, AICP | Senior Advisor/Quality Control Manager, Complete Streets Lead Specialist (Wilson & Company)

Jim will serve as senior advisor, quality control manager, lead technical specialist for complete streets, and as a technical specialist for roadway safety planning and non-motorized planning. Jim's experience in multimodal transportation planning, safety assessment, and alternatives development is key for any project. As the previous Jefferson County Transportation Planning Manager, Jim led the effort to extend the West Corridor LRT end-of-line station to the Jefferson County complex, like the conditions for the Lone Tree/Douglas County Sky Ridge end-of-line station. His national experience in bicycle, pedestrian, transit, auto, and freight movement, along with safety evaluation and concept design for complete streets and community connectivity, provides a strong foundation for any study, design, or program. Communicating technical elements of his expertise and evaluations to multiple audience types is a core strength.

Mary Lupa, AICP | Data Collection/Analysis Task Lead, Freight & Travel Demand Modeling Lead Specialist (Wilson & Company)

Mary will serve as multimodal transportation data collection and analysis task lead; lead specialist for data collection and analysis, freight planning, and travel demand modeling; and as a technical specialist for land use modeling and planning. Mary is an experienced travel demand modeler and supervising planner. She brings to the team 30 years of experience in travel demand model development and application, the last ten as a member of WSP's Systems Analysis Group. As a member of this group, which consists of fifty practitioners in transportation systems analysis and modeling, she worked closely with demand specialists to complete travel model and development projects for a range of public sector clients.

Mary specializes in regional and metropolitan planning including transit (commuter, subway, light rail, and bus), freight, and vehicular traffic modeling. She is experienced in TransCAD, Cube, and VISSIM travel demand modeling software. Mary's forte is applying her planning judgment in assessing the appropriate forecast method and software, based on the strengths and limitations of available data and software strengths to a given project. Her area of greatest interest and expertise is MPO modeling - her five-year tenure with Chicago's CMAP, formerly CATS, provided a strong understanding of multimodal modeling. She also spent three years in the local regional planning agency, the Chicago RTA.

In the performance-based planning arena, Mary's work on the PACOG 2040 LRTP with Maureen stands as a key accomplishment. For PACOG, Mary set up a performance measure spreadsheet, adapted them to Pueblo, then designed a stepwise approach for implementation with the smallest steps to be taken at the start of the process. She has participated in similar work for the Illinois DOT on the Illinois LRTP and the statewide freight plan, addressing performance measures for truck and marine freight sectors.

Doug Eberhart | Planning Data Analysis Task Lead, MPO Administration/Coordination, 3-C Planning Requirements, RTA Planning/Implementation Lead Specialist, and GHG Standards/Reduction Implementation Technical Specialist (Wilson & Company)

Doug will serve as Planning Data Analysis Task Lead, Lead Technical Specialist for MPO Administration and Coordination, RTA Planning/Implementation, and as a Technical Specialist for 3-C Planning Requirements. Doug has served as principal author, technical contributor, or quality control reviewer on numerous environmental analyses for major transportation projects in Colorado for the past two decades for clients including CDOT and Douglas County. He has also worked on projects in Kansas, Nebraska, and Arizona. Prior to joining Wilson & Company, Doug had 17 years of experience as a transportation planner for councils of governments in Colorado Springs (PPACG), Denver (DRCOG), and Phoenix (MAG). For each of these agencies, his responsibilities included various aspects of regional transportation plans, including transportation finance issues. His responsibilities in Phoenix also included assessment of air quality control measures and preparation of regional transportation/air quality conformity analyses. Recently, he has led assistance to an Arizona MPO for RTA planning and implementation and has prepared several local and regional agencies grant applications.

Charla Glendening, AICP | General Planning Support Task Lead–Non-Motorized Planning Lead Specialist (Wilson & Company)

Charla will serve as the General Planning Support Task Lead, Lead Technical Specialist for Non-Motorized Planning and 3-C Planning Requirements, and Technical Specialist for Complete Streets assignments. Charla is experienced in transportation and land planning in both the public and private sectors. She has a thorough understanding of federal transportation programs with the ability to assist in planning and construction activities in rural and urban areas. Her additional expertise includes strategic planning, program/project management and analysis, land entitlement, written and oral presentations, research/due diligence, public sector policy development, community outreach, metropolitan planning organizations, and contract management. Her prior experience includes 12 years with the Arizona Department of Transportation as the statewide planning manager. She served as the project manager in the development/implementation of the state freight plan, long-range transportation plan, rail plan, and planning-programming linkage. She understands the importance of coordination with local partners when advancing DOT construction projects, and confirms projects comply with all funding requirements.

Eric Lundberg, PE, PTOE | Traffic Engineering and Planning Lead Specialist (Wilson & Company)

Eric will serve as Lead Specialist for Traffic Engineering and Planning and Technical Specialist for Roadway Safety Planning assignments. Eric brings broad traffic engineering experience to the team, with a career spent entirely within Southern Colorado, including time spent working as a Traffic Operations Engineer for CDOT (Region 2) in Pueblo.

His traffic analysis expertise includes corridor evaluations and feasibility studies, intersection/interchange alternatives analysis, traffic impact studies, traffic signal timing studies, and signal warrant studies. Eric also has extensive experience in the analysis of crash data, having conducted numerous roadway safety assessments, and managing the planning of highway safety funds to include site evaluation, project selection and prioritization, and benefit-cost analysis. His traffic design expertise includes traffic signal design, signing/stripping design, and temporary construction traffic control design. Eric's experience as a project manager for on-call task orders has given him an understanding of client needs and the skills to collaborate with interdisciplinary staff to complete projects in a timely and efficient manner.

Tiffany Haugh | GIS Applications/Graphics Lead Specialist (Wilson & Company)

Tiffany will serve as the Lead Technical Specialist for GIS Applications and Graphics. Tiffany is a GIS specialist, graphic artist, and CAD designer with a broad range of experience in supporting transportation and environmental projects. She brings to the project 25 years of experience that includes development of GIS-based project analysis, database updates, document preparation, development of project mapping/graphics and creation of project illustrative materials including photo simulations and graphics to illustrate transportation volumes, levels of service, corridor improvements, safety issues, existing conditions, and proposed alternatives. Tiffany is also an expert in compiling and interpreting accident data, translating data of passenger ridership projections, smoothing corridor volumes/turning movements, and forecasting those volumes, and designing and drafting roadway improvements, details, cross-sections, as-built plans, construction phasing, signing/stripping, and signalization plans. Tiffany led GIS analysis and graphics for the 2040 and 2045 PACOG travel model updates and LRTPs and applied her comprehensive graphics leadership on plan documentation and public outreach collateral materials for both LRTP plan cycles. She also led GIS analysis and graphics development for the Colorado Springs MPO 2035 LRTP and 2035 LRTP Update and prepared the full set of traffic control maps (170 sheets) for the City Colorado Springs/PPACG Wildfire Evacuation Plan.

Matthew Long | Transit Planning Lead Specialist (WSP)

Matthew will serve as Lead Technical Specialist for Transit Planning. Matthew is a public transit lead expert, project manager, and urban planner with more than 15 years in the transit industry. He brings national experience working with agencies and DOTs across the United States and is a passionate transit advocate and user who has dedicated his career to transit planning, funding, and operations. Prior to joining WSP, Matthew spent many years working as a strategic planner assisting transit agencies efficiently operate fixed route, demand response, and streetcar systems. His on-the-ground service planning interests led him to serve as the Public Transit Manager for the State of Tennessee. At TDOT, he built a culture of communication and collaboration assisting transit agency grantees on FTA and state transit program administration, strategic planning, and compliance review. Matthew continues to expand his transit skills and expertise at WSP with consultative leadership and focus on transit operational studies, BRT corridor and alternative analysis, capital grant programming, and FTA compliance.

Paul Nelson | Transit Planning Technical Specialist (WSP)

Paul will serve as a Transit Planning Technical Specialist. Paul is a certified community transportation manager with 10 years of experience managing diverse and complex business divisions and identifying, implementing, and proactively addressing the strategic needs of a small urban transit agency. He has worked with agencies such as the Tennessee Department of Transportation and the Federal Transit Administration. Paul possesses an understanding of federal, state, and local laws and regulations related to the operation of a public transit system. Paul is experienced in route design, implementation, and data collection, and in managing successful projects including facilities, technology, and equipment.

Myron Hora | Transit Planning Technical Specialist (WSP)

Myron will serve as a Transit Planning Technical Specialist. Myron has over 35 years of experience in transportation program and project management, including a nearly 30-year career with CDOT where he retired as a Regional Planning and Environmental Manager. He collaborated with local agency partners to advance CDOT's and the Region's goals and policies and provide leadership on long- and short-range planning activities and plans. Over the last six years with WSP, Myron has continued collaborating with inter-disciplinary staff, demonstrated through his work on Relmagine RTD and the NFR MPO Premium Transit Analysis, and management of various on-call and "as needed" contracts and their multiple, concurrent task orders. His knowledge in project and program implementation, regional and statewide transportation planning, policy, stakeholder engagement, alternatives analysis, and coordinating with planning regions provides him with a multi-faceted viewpoint and superior understanding of transportation planning and implementation.

Mark Sawyer | Land Use Planning/Modeling and RTA Planning and Implementation Technical Specialist (Wilson & Company)

Mark will serve as a Technical Specialist for Land Use Planning and Modeling and RTA Planning and Implementation task assignments. Mark is a senior planner with broad experience supporting both private and public clients with compliance, infrastructure finance, and development entitlement support. Mark was the developer of the City of Fountain Transportation Impact Fee framework and supported the adoption of the program by the City in February 2022.

Sabrina Williams | GHG Standards/Reduction Programs Lead Specialist (Wilson & Company)

Sabrina will serve as Lead Technical Specialist for GHG Standards and Reduction Programs task assignments. Sabrina is an environmental project manager with over 19 years of air quality experience. She was employed for more than five years with the CDOT and served in the environmental programs branch where she took a lead technical role for air quality for projects and programs across the state. During her time at CDOT, Sabrina led a wide variety of projects designed to quantify and reduce greenhouse gas and ozone precursor emissions from the transportation sector. This included a Department of Energy-funded grant with more than 50 public and private stakeholders, including the City of Colorado Springs and the Fort Carson Army Base, that sought to assess and reduce barriers to electric vehicle adoption in Colorado in addition to assessing the total life cycle benefits of electric vehicle adoption in the region that incorporated upstream emissions from the utility sector. She also performed technical research on a pilot program for Federal Highway Administration's Energy and Emissions Reduction Policy Analysis Tool that assessed potential greenhouse gas benefits from multimodal policies and other emissions reduction strategy adoption.

In her time with the private sector, she participated in contracts for state and local agencies in regions across the western states that included developing local conformity determinations for transportation projects that relied on data inputs that are consistent with regional planning assumptions for the appropriate future design year. She is familiar with travel demand modeling and well versed in using regional conformity data for project-level and emissions reduction strategy analysis. She has more than 15 years of experience using EPA's MOVES and AERMOD programs calculating emissions associated with transportation sources and is considered an advanced user of emissions modeling software.

AJ West | Public Outreach and Website Development and Maintenance Lead Specialist (Chickenango)

AJ will serve as Lead Technical Specialist for Public Outreach and Website Development and Maintenance task assignments. AJ has 25 years of award-winning graphic and web design, branding, strategic marketing, and public relations experience in the architectural, construction, civil engineering, education, and hospitality industries. She has a special focus on areas of inclusive community outreach for a variety of infrastructure projects and corporate initiatives.

She is diligent in her communication with her team and her clients. AJ obtains informed consent by helping clients and key stakeholders craft inclusive, strategic key messaging for their communication outreach plans through a series of stakeholder workshops and purpose-and-need assessments. Her most recent experience includes working with the City of Colorado Springs, City and County of Broomfield, and Adams County providing high-end collateral for engagement and bilingual websites for inclusive outreach.

Wendy Schlosberg | RTA Planning/Implementation, Regional Transportation Planning/Implementation, and Public Outreach Specialist (Wilson & Company)

Wendy will serve as a Technical Specialist for RTA Planning and Implementation, Regional Transportation Planning and Implementation, and Public Outreach and Website Maintenance. Wendy is an accomplished writer, copy editor, and technical editor with 22 years of experience in engineering/transportation, marketing, and various academic disciplines. A skilled manager with a broad range of business experience, Wendy values clear and concise communication, collaboration, and shared ownership. She has provided technical editing and assistance writing proposals, state department of transportation manuals, transportation planning and engineering studies and reports, award applications, and company newsletters. She is equally skilled in the writing and editing of client deliverables, including the management of input from various team members, consolidating concepts, and translating technical terminology to clearly communicate ideas.

Wendy's value to the PACOG On-Call Transportation Planning Technical Assistance contract is three-fold: (1) to draft RTA and grant application documentation, (2) to assist in data and document control including all elements needed to establish the communications plan, travel demand model inputs and final LRTP documents, and (3) to assemble and edit the client deliverables including the website, outreach materials, and final reports.

Jacob Naumann, PE | Traffic Engineering and Planning and Roadway Safety Planning Specialist (Wilson & Company)

Jacob will serve as a Technical Specialist for Traffic Engineering and Planning and Roadway Safety Planning task assignments. He is a traffic engineer with experience conducting traffic operations and safety analysis for clients including CDOT and the National Park Service. Jacob is a seasoned traffic and safety analyst and microsimulation modeler and is proficient in TransModeler, VISSIM, Synchro, HSM and IHSDM, Cap-X, MicroStation V8i, OpenRoads Designer, Sidra, SignCAD, and Power BI.

Kristen Manthei | Non-Motorized Planning, Complete Streets and Graphics Specialist (Wilson & Company)

Kristen will serve as a Technical Specialist for Non-Motorized Planning, Complete Streets and Graphics task assignments. Kristen is an urban and transportation planner and graphic artist with experience in supporting non-motorized planning and complete streets, main street revitalization, and roadway safety planning projects.

SAMPLE WORK ORDER

NOTE: This form shall be completed at time of award for each individual project as applicable.

This Work Order is entered pursuant to and subject to the terms and conditions of the MASTER CONTRACT for Bid 22-069 RFQ Pueblo Regional On-Call Transportation Technical Assistance, including Appendix A – Agreement for Professional Services incorporated therein, dated _____, 20__ between the City of Pueblo, a Municipal Corporation ("City"), and Wilson & Company, Inc., Engineers & Architects ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by:

City of Pueblo, Director of
Planning _____ Date _____

City of Pueblo, Director of
Finance _____ Date _____

City of Pueblo, Director of
Purchasing _____ Date _____

Consultant Authorized
Representative _____ Date _____

ADDITIONAL INFORMATION FOR MASTER CONTRACT

Required Bid Submittal Forms for Funding

System for Award Management (SAM) Information

Certificate of Good Standing

Colorado PERA Questionnaire

Affirmative Action Plan

Insurance Certificates

THE FOLLOWING PAGES INCLUDE REQUIRED FORMS FOR THE RFO.

**BIDDER'S CERTIFICATION FOR DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION**

Only applicable for projects exceeding \$25,000.

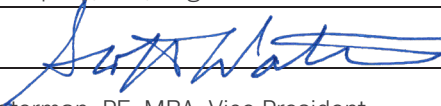
The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the US Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by a Federal and/or State entity official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Company Wilson & Company, Inc., Engineers & Architects Date 9/7/2022

Authorized Signature 

Name/Title Scott Waterman, PE, MBA, Vice President

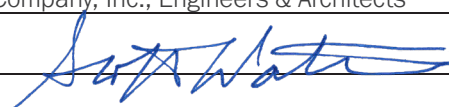
LOBBYING RESTRICTIONS FORM

Only applicable for projects exceeding \$100,000.

The Contractor certifies, 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 an 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 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.
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

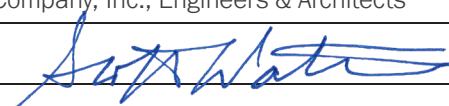
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Company Wilson & Company, Inc., Engineers & Architects Date 9/7/2022
Authorized Signature 
Name/Title Scott Waterman, PE, MBA, Vice President

CERTIFICATION OF INTENT TO MEET FUTURE PROJECT DBE REQUIREMENTS

Only applicable for CDOT, FHWA, FTA, and FAA projects.

The Contractor certifies, to the best of his or her knowledge and belief, that they shall be able to meet or intend to meet all future funding DBE project requirements as shown in Appendix C.

Company Wilson & Company, Inc., Engineers & Architects Date 9/7/2022
Authorized Signature 
Name/Title Scott Waterman, PE, MBA, Vice President

BIDDER QUESTIONNAIRE

Business Name: Wilson & Company, Inc., Engineers & Architects

Business Classification – Please indicate if your firm meets any of the following categories.

☐ Small Business ☐ Disadvantaged/Minority Business ☐ Woman Owned Business

☐ Veteran Owned Business ☐ Other _____

Please mark Yes or No for the following questions. A clear and concise explanation must be provided on a separate sheet(s) attached to this form for any affirmative responses.

Has/is this firm or any officer or partner of this firm:

- | | Yes | No |
|---|-----|----|
| 1. Been convicted of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract? | | X |
| 2. Been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or honesty which directly affects responsibility as a City contractor? | | X |
| 3. Been convicted under state or federal antitrust statutes arising out of the submission of bids or proposals? | | X |
| 4. Failed to perform or unsatisfactorily performed in accordance with the terms of one (1) or more contracts with public or private entities within the previous five (5) years? | | X |
| 5. Currently under suspension or debarment by the City or any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a federal, state, or local governmental entity? | | X |
| 6. Unqualified or financially unable to timely perform the work? | | X |
| 7. Unlicensed or unable to be duly licensed to perform the work on the date of the contract award? | | X |
| 8. Delinquent in making payment of any City taxes for which the tax liability has been finally determined and no further right of appeal exists? | | X |

By signing below Bidder affirms that all answers to the above questions are true and binding. If the City finds verifiable information from another source that conflicts with the responses provided, Bidder's submittal will be rejected.

Company Wilson & Company, Inc., Engineers & Architects

Date 9/7/2022

Authorized Signature _____

Name/Title Scott Waterman, PE, MBA, Vice President



WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS

Unique Entity ID PJCACLP83N9	CAGE / NCAGE 3C9Z0	Purpose of Registration All Awards
Registration Status Active Registration	Expiration Date Aug 24, 2023	
Physical Address 800 E 101ST TER STE 200 Kansas City, Missouri 64131-3355 United States	Mailing Address 800 East 101ST TERRACE, Suite 200 Kansas City, Missouri 64131-3355 United States	

Business Information

Doing Business as Hanson-Wilson	Division Name Wilson & Company Engineers & Architects	Division Number (blank)
Congressional District Missouri 05	State / Country of Incorporation Kansas / United States	URL http://www.wilsonco.com

Registration Dates

Activation Date Aug 26, 2022	Submission Date Aug 24, 2022	Initial Registration Date Jan 21, 2003
--	--	--

Entity Dates

Entity Start Date Dec 26, 1995	Fiscal Year End Close Date Dec 31
--	---

Immediate Owner

CAGE (blank)	Legal Business Name (blank)
------------------------	---------------------------------------

Highest Level Owner

CAGE (blank)	Legal Business Name (blank)
------------------------	---------------------------------------

Executive Compensation

Registrants in the System for Award Management (SAM) respond to the Executive Compensation questions in accordance with Section 6202 of P.L. 110-252, amending the Federal Funding Accountability and Transparency Act (P.L. 109-282). This information is not displayed in SAM. It is sent to USAspending.gov for display in association with an eligible award. Maintaining an active registration in SAM demonstrates the registrant responded to the questions.

Proceedings Questions

Registrants in the System for Award Management (SAM.gov) respond to proceedings questions in accordance with FAR 52.209-7, FAR 52.209-9, or 2. C.F.R. 200 Appendix XII. Their responses are displayed in the responsibility/qualification section of SAM.gov. Maintaining an active registration in SAM.gov demonstrates the registrant responded to the proceedings questions.

Exclusion Summary

Active Exclusions Records?

No

SAM Search Authorization

I authorize my entity's non-sensitive information to be displayed in SAM public search results:

Yes

Entity Types

Business Types

Entity Structure Corporate Entity (Not Tax Exempt)	Entity Type Business or Organization	Organization Factors Subchapter S Corporation
Profit Structure For Profit Organization		

Socio-Economic Types

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic Small Business Search if the entity completed the SBA supplemental pages during registration.

Financial Information

Accepts Credit Card Payments Yes	Debt Subject To Offset No
EFT Indicator 0000	CAGE Code 3C9Z0

Points of Contact

Electronic Business

 BRENDA BEVINGTON	4401 Masthead Street NE STE 150 Albuquerque, New Mexico 87109 United States
Catherine Cochrane	4401 Masthead Street NE STE 150 Albuquerque, New Mexico 87109 United States

Government Business

 BRENDA BEVINGTON	4401 Masthead Street NE STE 150 Albuquerque, New Mexico 87109 United States
Catherine Cochrane	4401 Masthead Street NE STE 150 Albuquerque, New Mexico 87109 United States

Service Classifications

NAICS Codes

Primary	NAICS Codes	NAICS Title
Yes	541330	Engineering Services
	482112	Short Line Railroads
	485112	Commuter Rail Systems
	485113	Bus And Other Motor Vehicle Transit Systems
	485119	Other Urban Transit Systems
	531390	Other Activities Related To Real Estate
	541310	Architectural Services
	541340	Drafting Services
	541360	Geophysical Surveying And Mapping Services
	541370	Surveying And Mapping (Except Geophysical) Services
	541430	Graphic Design Services
	541490	Other Specialized Design Services

Disaster Response

This entity does not appear in the disaster response registry.



For this Record...

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Unsubscribe from text notification

Business Home
Business Information
Business Search

FAQs, Glossary and Information

Summary

Details			
Name	WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS		
Status	Good Standing	Formation date	12/31/2002
ID number	20021362544	Form	Foreign Corporation
Periodic report month	December	Jurisdiction	Kansas
Principal office street address	4401 Masthead Street NE, STE 150, ALBUQUERQUE, NM 87109, United States		
Principal office mailing address	P.O. Box 94000, Albuquerque, NM 87199, United States		

Registered Agent	
Name	James Brady
Street address	Northcreek II, 5755 Mark Dabling Blvd, Suite 220, Colorado Springs, CO 80919, United States
Mailing address	Northcreek II, 5755 Mark Dabling Blvd, Suite 220, Colorado Springs, CO 80919, United States

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OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that,
according to the records of this office,

WILSON & COMPANY, INC., ENGINEERS & ARCHITECTS

is an entity formed or registered under the law of Kansas , has complied with all
applicable requirements of this office, and is in good standing with this office. This entity has
been assigned entity identification number 20021362544 .

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 01/06/2023 that have been posted, and by documents delivered to this office
electronically through 01/09/2023 @ 10:01:32 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this
official certificate at Denver, Colorado on 01/09/2023 @ 10:01:32 in accordance with applicable law.
This certificate is assigned Confirmation Number 14592905 .



Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



**MASTER CONTRACT
BY AND BETWEEN CITY OF PUEBLO AND
BOHANNAN-HUSTON, INC.**

22-069

PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL
ASSISTANCE

MASTER CONTRACT BY AND BETWEEN CITY OF PUEBLO AND BOHANNAN-HUSTON, INC.

THIS MASTER CONTRACT ("Contract") is made and entered this _____ day of _____, 2023 by and between the City of Pueblo, a Municipal Corporation, located at 1 City Hall Place, Pueblo, Colorado 81003 (hereinafter referred to as "City") and Bohannon-Huston, Inc., a New Mexico Corporation registered to do business in the State of Colorado, located at 9785 Maroon Circle, Suite 140, Englewood, Colorado 80112 (hereinafter referred to as "Consultant").

WITNESSETH:

1. RECITALS

- A. The City solicited competitive proposals for Bid 22-069 RFQ Pueblo Regional On-Call Transportation Technical Assistance to provide services to include professional transportation planning and related services for future PACOG/MPO and City of Pueblo projects (hereinafter referred to as the "RFQ").
- B. In response to the RFQ, Consultant submitted its proposal (hereinafter referred to as "Response").
- C. City has evaluated all Responses submitted and selected Consultant to perform transportation planning services for various anticipated projects.

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual covenants, City and Consultant agree as follows:

2. ENGAGEMENT

- A. City engages Consultant and Consultant accepts such engagement to perform the services set forth in this Contract and the standard form Agreement for Professional Services ("Consultant Agreement"), attached hereto and incorporated herein as Appendix A, execution of which will be required for each Project as directed by the City.
- B. Anticipated Projects (hereinafter referred to as the "Projects") may include a scope of services ("Scope of Services") for each Consultant Agreement for any Project and shall be consistent with and at least meet the following requirements:
 - Assist the City and PACOG/MPO (Pueblo Area Council of Governments/Metropolitan Planning Organization) staff with the Implementation of the MPO Long Range Transportation Plan
 - Aid City MPO staff in the development and ongoing monitoring and updating of the PACOG Transportation Improvement Program

- Assist the City MPO staff with development of an Area-Wide Highway Safety Plan
 - Provide area-wide local roadway safety plan
 - Provide traffic model for MPO
 - Perform project scenarios based on projects identified in the 2045 LRTP
 - Refine travel demand model developed in 2015 as new social/economic such as the 2020 census data becomes available
 - Develop the 2050 regional population forecast
 - Update local transportation system data to reflect changes to the future transportation network as modified by local or county government actions
 - Review functional classification and update (may utilize 2020 census data)
 - Update TAZ with 2020 census data and reconfigure traffic model
 - Collaborate with CDOT and MPO to establish baseline and mitigation plan
 - Assist MPO and CDOT with Green House Mitigation Plan and Carbon Reduction Plan
 - Facilitate MPO with administrative process for establishing, tracking, and verifying mitigation & performance measures
 - Provide updated GIS data (shape files) and update PACOG GIS maps:
 - New roadways
 - Proposed roadways
 - New trails, bike routes, and/or 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
- C. City may, or may not, in its sole and absolute discretion undertake any of the Projects. Upon written direction from City requesting Consultant to undertake a project, the Consultant shall prepare a specific Scope of Service, fee schedule (based upon Schedule 2 to this Contract,

attached hereto and incorporated herein) ("Fee Schedule"), and work schedule ("Work Schedule") necessary to complete the project.

- D. After mutual approval of the Scope of Service, Fee Schedule and maximum compensation, and Work Schedule, the City will incorporate such agreed upon terms into the applicable Consultant Agreement, which shall be executed by Consultant.
- E. After execution of such agreement by Consultant, City will submit same to City Council of City for approval and any such agreement shall be subject to and conditioned upon City Council approval.
- F. In addition to the Scope of Work set forth above and to be performed in accordance with a Consultant Agreement, City may request services on an as needed basis. Requests for such services shall be initiated and documented by a written work order agreement ("Work Order") signed by the City's Planning Director, and approved by the City's Director of Finance and Director of Purchasing. A Work Order shall set forth the work to be performed, the time for completion, and the compensation, including that the maximum compensation is not to exceed \$10,000.00 for performance of such work, and shall otherwise be in substantially the same form as Schedule 4 attached hereto and incorporated herein. Said compensation shall be approved as provided in Section 2.G of this Contract. The work to be performed under any Work Order shall be detailed in such order and shall be subject to all terms and conditions of this Contract and the Consultant Agreement attached as Appendix A, as if the latter had been fully executed by the parties for such work to be performed. The maximum sum under Section 5 of the Consultant Agreement shall, for the purposes of the work to be performed, be the maximum compensation set forth in the Work Order and approved pursuant to Section 2.G of this Contract. All such services shall include all usual and customary professional services necessary for such work to be performed.
- G. When requested by City, Consultant shall prepare without charge to City a bid amount for any proposed Work Order ("Work Order Compensation") requested under Section 2.F, which shall be based upon the fee schedule set forth in Schedule 2 and shall itemize compensation amounts and include the maximum compensation amount necessary for completion and performance of all work set forth in the Work Order. Should City have any dispute, question, required clarification, or other issue with respect to the Work Order Compensation, Consultant shall meet and confer in good faith with City to resolve such issue. No Work Order shall be signed and issued by the City's Planning Director unless and until City approves the Work Order Compensation. No Work Order shall be approved for which the maximum compensation exceeds \$10,000.00.
- H. No minimum amount of work is guaranteed under this Contract. City reserves the right to engage and/or contract with other parties to perform services which otherwise might be requested under this Contract.

3. TERM

- A. This Contract is for a term of three (3) years commencing January 30, 2023 and ending January 29, 2026. The term of this Contract may be extended for two (2) additional one (1) year terms upon mutual written agreement of City and Consultant.
- B. In the event the City exercises the provision to extend the agreement after the initial term, requests for price increases may not exceed 1) three percent (3%), or 2) the prior year's United States Bureau of Labor Statistics Consumer Price Index (CPI), whichever of the two options is lower.
- C. This Contract may be terminated by the City at any time, without cause or liability, upon thirty (30) days prior written notice to the Consultant specifying the date of termination, provided, however, that the termination of this Contract shall not terminate or be deemed to terminate any existing agreements or Work Orders executed by and between the parties pursuant to Section 1 of this Contract.

4. GENERAL COVENANTS

Consultant covenants that it is:

- A. Competent and qualified to perform, and will perform the services and work contemplated by this Contract and its underlying agreement(s) in a professional manner to the satisfaction of the City.
- B. Familiar with the requirements stated in the RFQ, Scope of Service, with respect to the services and work contemplated by this Contract and its underlying agreement(s) and will perform such services and work in compliance therewith.

5. SPECIFIC COVENANTS

Consultant covenants that, during the performance of this Contract and any other agreements for a specified Project, Consultant will:

- A. Comply with all federal statutes and regulations relating to nondiscrimination in federally assisted programs.
- B. Comply with the State of Colorado's requirements for State Revolving Fund Loan Projects.
- C. Comply with all other laws, regulations, and requirements for applicable Federal, State, local, and grant funded Projects.

6. RECORDS AND DATABASE

Consultant shall maintain a cost accounting system acceptable to City. The City shall have access to any books, documents, papers, and records of the Consultant that are directly pertinent or relate to this

Contract or any agreements for a specified Project, for audit purposes, examination, inspection, excerpts, and transcription. The Consultant shall maintain such records for three (3) years after City makes final payments to Consultant and all pending matters are closed. Consultant shall prepare and maintain an electronic database (compatible with AutoCAD) that accurately represents all existing and future civil infrastructure for all Projects completed under this Contract and any agreements for a specified Project.

7. RIGHTS TO INVENTIONS

Plans, drawings, designs, specifications, inventions, reports, and all other documents and materials generated under this Contract or any agreements for a specified Project shall become the sole property of City, subject to applicable federal grant requirements, and City shall be vested with all rights therein of whatever kind and however created, whether by common law, statute, or equity. Consultant shall retain sole ownership of pre-existing proprietary property, including but not limited to, computer programs, software, diagrams, and models.

8. INSURANCE AND INDEMNITY

- A. Consultant agrees that it has procured and will maintain during the term of this Contract, such insurance as will protect it and City from claims under workers' compensation acts, claims for damages because of personal injury including bodily injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth in subparagraph 8.B.
- B. The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:
 - 1. Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.
 - 2. Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this Contract and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by it and all its subcontractors under the Contract, to be written on a comprehensive policy form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury, including death and bodily injury, and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers, and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual

liability assumed by Consultant under the provisions of the Contract, and “Completed Operations and Projects Liability” coverage.

3. Professional Liability Insurance with coverage of not less than \$1,000,000 and in a form and with a deductible acceptable to City.
 4. Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the Contract and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes, and similar equipment whether owned, leased, hired, or used by Consultant.
- C. Consultant shall furnish to City a certificate or certificates of insurance showing compliance with this Section. Consultant shall obtain a special endorsement from its insurance carrier that provides that the insurance shall not be changed or cancelled until ten (10) days after written notice has been given to City and provide a copy of such endorsement to City. Consultant shall immediately notify City of any substantial change in, or cancellation, or non-renewal of any such insurance.
- D. Consultant agrees to hold harmless, defend and indemnify City from and against any liability to third parties, arising out of negligent acts, errors, or omissions of Consultant, its employees, subcontractors, and consultants.

9. CERTIFICATIONS

- A. Neither Consultant nor any of its principals are presently, or at the time of execution of any agreements for a specified Project, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract or in any such subsequent agreements for a specified Project by any entity or agency. Consultant will include this clause in all lower tier transactions, solicitations, proposals, contracts, subcontracts, and agreements.
- B. Consultant is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representatives and that it will comply with the Department of Transportation trade restriction regulations of 49 CFR Part 30. Consultant will include this clause and other clauses required by said trade restriction regulations in all lower tier transactions, solicitations, proposals, contracts, subcontracts, and agreements.

10. NOTICES

Any notice required or permitted by this Contract shall be in writing and may be served personally or mailed by first-class mail, postage prepaid, addressed to the party at its address shown on the first page hereof, and if to the City, a copy of thereof shall be given to City of Pueblo, Planning Department, Attn: Scott Hobson, Director, 211 E. D Street, Pueblo, CO, 81003. Either party may change addresses upon written notice given to the other party specifying the changed address.

11. FINANCIAL OBLIGATIONS OF CITY

All financial obligations of the City under this Contract and any agreements for a specified Project in any subsequent fiscal year of the City are subject to, and contingent upon, funds being specifically budgeted and appropriated for such purposes. This Contract and its underlying agreements are 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 of Pueblo, contrary to Article X, § 20 Colorado Constitution or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract and any agreements for a specified Project, with respect to any financial obligation of the City which may arise under this Contract in any fiscal year after 2023, 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 Contract or any agreements for a specified Project by the City, and the City may terminate this Contract or any agreements for a specified Project without liability.

12. REQUIRED FEDERAL, STATE, AND/OR GRANT PROVISIONS

- A. Consultant understands that City may be funding the Project in whole or part with funds provided by the State of Colorado Department of Transportation (CDOT). Consultant agrees it is subject to and shall comply with all applicable provisions and regulations of any CDOT funding (or Intergovernmental Agreements between CDOT and City of Pueblo) that may be applicable to future PACOG and City of Pueblo projects.
- B. Consultant shall comply and any/all other Federal, State, and local laws applicable to its activities.
- C. All records with respect to any matters covered by this Contract and any subsequent agreements shall be available for inspection by City and or CDOT at any time during normal business hours and as often as agencies deem necessary, to audit, examine and make excerpts or transcripts of relevant information, and otherwise to perform its official functions or duties.

13. MISCELLANEOUS

- A. This Contract and any other agreements contemplated herein shall be governed and interpreted in accordance with the laws of the State of Colorado. In the event of any litigation arising out of

this Contract or other agreements, the court shall award to the prevailing party its costs and reasonable attorney fees. Venue for any such litigation shall be Pueblo County, Colorado.

- B. This Contract contains the entire agreement between the City and Consultant and incorporates all prior written and oral understandings and agreements between the parties.
- C. This Contract may only be modified or amended by written instrument signed by both City and Consultant.
- D. This Contract shall be binding upon and inure to the benefit of City and Consultant and their respective successors and assigns, provided, however, Consultant shall not assign this Contract, agreements for a specific Project, or any interest herein without the prior written consent of City.

14. IMMIGRATION REFORM AND CONTROL ACT OF 1986

Consultant certifies that it has complied with the United States Immigration Reform and Control Act of 1986. Consultant represents and warrants that to the extent required by said Act, all persons employed by Consultant for performance of this Contract have completed and signed Form I-9 verifying their identities and authorization for employment.

15. PERA LIABILITY

The Consultant 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 contracted services for the City under this Contract. The Consultant shall fill out the Colorado PERA Questionnaire and submit the completed form to City as part of the signed Contract.

16. LIST OF ATTACHEMENTS

The following attachments are attached hereto and incorporated herein:

- Appendix A - Agreement for Professional Services
- Appendix B - Professional Services Local Agency Contract Requirements
- Schedule 1 – Scope of Services
- Schedule 2 – Fee Schedule
- Schedule 3 – Identification of Personnel, Subcontractors, and Task Responsibility
- Schedule 4 – Work Order Form
- Additional Information for Agreement

17. ELECTRONIC SIGNATURE

This Contract and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email,

or by other electronic means and in one or more counterparts, each of which shall be: (i) an original, and all of which taken together shall constitute one and the same contract, (ii) a valid and binding contract and fully admissible under state and federal law, and (iii) enforceable in accordance with its terms.

This Contract, together with all Project Documents incorporated by reference, constitutes the entire agreement between City and Contractor with respect to their subject matter, and may not be amended or modified except by written document signed by both parties.

IN WITNESS WHEREOF the parties hereto have made and executed this Contract as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

BOHANNAN-HUSTON, INC.

By _____
Naomi Hedden, Director of Purchasing

By _____
Denise, Aten, Senior Vice President

Attest _____
Marisa Stoller, City Clerk

[SEAL]

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

Alexandria Romero, Finance Director

APPROVED AS TO FORM

Dan Kogovsek, City Attorney



**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN CITY OF PUEBLO AND
BOHANNAN-HUSTON, INC.**

22-069

PUEBLO REGIONAL ON-CALL TRANSPORTATION TECHNICAL
ASSISTANCE

NOTE: This form shall be completed at time of award for each individual project as applicable.

AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN CITY OF PUEBLO AND BOHANNAN-HUSTON, INC.

THIS AGREEMENT ("Agreement") made and entered this ____ day of _____, 20__ by and between the City of Pueblo, a Municipal Corporation (hereinafter referred to as "City") and Bohannan-Huston, Inc., a New Mexico Corporation registered to do business in the State of Colorado (hereinafter referred to as "Consultant") a professional transportation planning firm, for Consultant to render certain professional planning, design, architectural, and related services for Owner in connection with Bid 22-069 Pueblo Regional On-Call Transportation Technical Assistance, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

1. GENERAL

- A. Consultant shall satisfactorily perform the professional planning and consulting services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Scope of Services"). Such services shall include all usual and customary professional transportation planning and related ancillary services including any required drafting or design services incidental to its work on the Project. In the event this Agreement follows the selection of Consultant by Client pursuant to a Request for Qualification (RFQ) or Master Contract ("Master Contract"), all of the requirements of the RFQ and Master Contract are incorporated herein by reference, unless any requirement is expressly excluded in Schedule 1.
- B. To the extent Consultant performs any of the Project work through subcontractors or subconsultants, Consultant shall be and remain as fully responsible for the full performance and quality of services performed by such subcontractors or subconsultants as it is for services performed directly by Consultant or Consultant's employees.
- C. To the extent Consultant requires access to private property to perform its services hereunder, Consultant shall be required to make arrangements to obtain such access. However, in the event Client has already secured access for Consultant to any such property through a right of entry agreement, access agreement, letter of consent or other instrument, Consultant shall fully comply with and be subject to the terms and conditions set forth therein. A copy of any such instrument will be provided to Consultant upon request.

2. CONSULTANT'S RESPONSIBILITIES

- A. Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same. Consultant shall be responsible, in accordance with

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

- B. Consultant shall be completely responsible for the safety of Consultant's employees in the execution of work under this Agreement and shall provide all necessary safety and protective equipment for said employees.
- C. Consultant acknowledges that time is of the essence with respect to the completion of its services under this Agreement. Consultant represents that Schedule 3 attached hereto and incorporated herein is the schedule by which Consultant proposes to accomplish its work, with time periods for which it will commence and complete each major work item. Except to the extent the parties agree to time extensions for delays beyond the control of Consultant, Consultant shall adhere to this schedule and perform its work in a timely manner so as not to delay Client's timetable for achievement of interim tasks and final completion of Project work. Consultant further acknowledges that its schedule has accounted for all reasonably anticipated delays, including those inherent in the availability of tools, supplies, labor and utilities required for the work, the availability of information which must be obtained from any third parties, and all conditions to access to public and private facilities.
- D. Before undertaking any work or incurring any expense which Consultant considers beyond or in addition to the Scope of Work described in Schedule 1 or otherwise contemplated by the terms of this Agreement, Consultant shall advise Client in writing that (i) Consultant considers the work beyond the scope of this Agreement, (ii) the reasons that Consultant believes the out of scope or additional work should be performed, and (iii) a reasonable estimate of the cost of such work. Consultant shall not proceed with any out of scope or additional work until authorized in writing by Client. The compensation for such authorized work shall be negotiated, but in the event the parties fail to negotiate or are unable to agree as to compensation, then Consultant shall be compensated for its direct costs and professional time at the rates set forth in Schedule 2 attached hereto and incorporated herein.

3. CITY'S RESPONSIBILITIES

- A. Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require.
- B. Client shall designate a Project Representative to whom all communications from Consultant shall be directed and who shall have limited administrative authority on behalf of Client to receive and transmit information and make decisions with respect to the Project. Said representative shall not, however, have authority to bind Client as to matters of governmental

policy or fiscal policy, nor to contract for additions or obligations exceeding a value which is the lesser of \$5000 or 5% of the maximum contract price.

- C. Client shall examine all documents presented by Consultant and render decisions pertaining thereto within a reasonable time. The Client's approval of any drawings, specifications, reports, documents or other materials or product furnished hereunder shall not in any way relieve Consultant of responsibility for the professional adequacy of its work.
- D. Client shall perform its obligations and render decisions within a reasonable time under the circumstances presented. Based upon the nature of Client and its requirements, a period of 14 days shall be presumed reasonable for any decision not involving policy decision or significant financial impact, when all information reasonably necessary for Client to responsibly render a decision has been furnished. A period of 46 days shall be presumed reasonable for Client to act with respect to any matter involving policy or significant financial impact. The above periods of presumed reasonableness shall be extended where information reasonably required is not within the custody or control of Client but must be procured from others.

4. TIME FOR PERFORMANCE

Consultant's obligation to render services shall continue for such period of time as may reasonably be required for completion of the work contemplated in Schedule 1 – “Scope of Services” and Section 2 of this Agreement. The proposed work schedule attached as Schedule 3 may be adjusted by mutual agreement of all parties.

5. PAYMENT

City will pay to Consultant as full compensation for all services required to be performed by Consultant under this Agreement, except for services for additional work or work beyond the scope of this Agreement, an amount not to exceed _____ in the aggregate as set forth in Schedule 2 - "Fee Schedule" and computed in accordance with this Section. In the event compensation for services is set forth in Schedule 2 as to each phase of work indicated in Section 1.1 of this Agreement, the maximum amount of compensation for any phase shall not exceed the amount specified in Schedule 2 for such phase.

- A. Consultant shall submit periodic, but not more frequently than monthly, applications for payment, aggregating to not more than the maximum amount set forth above, for actual professional services rendered and reimbursable expenses incurred. Such applications shall be submitted based upon the hourly rates and expense reimbursement provisions set forth in Schedule 2 attached hereto and shall contain appropriate documentation that such services have been performed and expenses incurred. Thereafter, City shall pay Consultant for the amount of the application within 45 days of the date of such application is received, provided that sufficient documentation has been furnished, and further provided that City will not be required to pay more than 90% of the maximum amount unless the Consultant's services on the

Project phases for which this Agreement is applicable have been completed to City's reasonable satisfaction and all required Consultant submittals have been provided.

- B. No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, secretarial or clerical time or similar expenses unless otherwise provided and listed in Schedule 2 - "Fee Schedule."
- C. No compensation shall be paid to Consultant for services required and expenditures incurred in correcting Consultant's mistakes or negligence.
- D. Compensation for authorized work beyond the scope of this Agreement shall be governed by Section 2.

6. TERMINATION

- A. City reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work, stop incurring expenses, and shall promptly deliver to City all data, drawings, specifications, reports, plans, calculations, summaries and all other information, documents, work product and materials as Consultant may have accumulated in performing this Agreement, together with all finished work and work in progress.
- B. Upon termination of this Agreement for events or reasons not the fault of Consultant, Consultant shall be paid at the rates specified in Schedule 2 for all services rendered and reasonable costs incurred to the date of termination, together with any reasonable costs incurred within 10 days of termination provided such latter costs could not be avoided or were incurred in mitigating loss or expenses to Consultant or City. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 5.
- C. In the event termination of this Agreement or Consultant's services is for breach of this Agreement by Consultant, or for other fault of Consultant including but not limited to any failure to timely proceed with work, or to pay its employees and Consultants, or to perform work according to the highest professional standards, or to perform work in a manner deemed satisfactory by City's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to the lesser of: (a) the reasonable value of completed work to City, or (b) payment at the rates specified in Schedule 2 for services satisfactorily performed and reimbursable expenses reasonably incurred, prior to date of termination.
- D. Consultant's responsibility for its completed work and services shall survive any termination.

7. GENERAL PROVISIONS

7.1. Ownership of Documents

All designs, drawings, specifications, technical data, and other documents or instruments procured or produced by the Consultant in the performance of this Agreement shall be the sole property of the City and the City is vested with all rights therein of whatever kind and however created, whether created by common law, statutory law, or by equity. The Consultant agrees that the City shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and all other technical data pertaining to the work to be performed under this Agreement. In the event City uses the designs, drawings or specifications provided hereunder for another project independent from Project, without adaptation by Consultant, City shall hold harmless Consultant from all loss, claims, injury, and judgments arising from the use of such designs, drawings, or specifications for such other project.

7.2. Advertising

Unless specifically approved in advance in writing by City, Consultant shall not include representations of the Project in any advertising or promotional materials, except for accurate statements contained in resumes or curriculum vitae of Consultant's employees. If Consultant wishes to include representations in advertising or promotional materials, it shall submit a draft of same and printer's proof of the proposed advertising or promotional materials to the City for prior review and shall not publish or distribute same unless written approval of the materials is first obtained.

7.3. Equal Employment Opportunity

In connection with the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, disability, or age. Consultant shall endeavor to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, national origin, disability, or age.

7.4. Access to Property Not Under City's Control

Consultant acknowledges that the Project may require access to property not under the control of City at the time of execution of this Agreement. Consultant and Consultant's employees and consultants shall, at Consultant's expense, obtain all additional necessary approvals and clearances required for access to such property. City shall assist Consultant in obtaining access to such property at reasonable times but make no warranty or representation whatsoever regarding access to such property. Consultant understands and agrees that entry to properties not under City's control may require Consultant to comply with the terms of separate access agreements to be negotiated hereafter with owners of such property.

7.5. Notices

Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either the City or the Consultant by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid,

addressed: to the City of Pueblo, Planning Department, Attn: Scott Hobson, Director, 211 E. D Street, Pueblo, CO, 81003; or to the Consultant, Bohannon-Huston, Inc., Attn: Denise Aten, Senior Vice President, 9785 Maroon Circle, Suite 140, Englewood, CO, 80112. Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

7.6. Entire Agreement

This instrument contains the entire agreement between the City and the Consultant respecting the Project, and any other written or oral agreement or representation respecting the Project or the duties of either the City or the Consultant in relation thereto not expressly set forth in this instrument are null and void. Notwithstanding the foregoing, the terms of Bid 22-069 Pueblo On-Call Transportation Technical Assistance and the Master Contract are hereby incorporated herein, and Consultant agrees to abide by and comply with the same. In the event of any conflict between any provision of this Agreement and a provision of any Schedule or attachment to this Agreement, the provision in this Agreement shall control and supersede the conflicting provision in the Schedule or attachment. Any inconsistent resolution provision in any attachment to this Agreement shall be void.

7.7. Subcontracts

- A. Client acknowledges that Consultant is the prime contractor and the only party with whom Client has a contractual relationship under this Agreement. To the extent Consultant performs any Project activities through subconsultants or subcontractors, Consultant shall contractually bind each of its subconsultants and subcontractors by subcontract agreement to all of the terms of this Agreement which are for the benefit of Client, and Client shall be a third-party beneficiary of those subcontract provisions.
- B. Consultant shall indemnify and defend Client from all claims and demands for payment for services provided by subcontractors of Consultant.
- C. Consultant acknowledges that, due to the nature of the services to be provided under this Agreement, the Client has a substantial interest in the personnel and consultants to whom Consultant assigns principal responsibility for services performed under this Agreement. Consequently, Consultant represents that it has selected and intends to employ or assign the key personnel and consultants identified in its proposal submitted to Client prior to execution of this Agreement to induce Client to enter this Agreement. A list of said key personnel and consultants will be attached hereto and incorporated herein as Schedule 4 - "Identification of Personnel, Subcontractors, and Task Responsibility". Consultant shall not change such consultants or key personnel except after giving notice of a proposed change to Client and receiving Client's consent thereto. Consultant shall not assign or reassign Project work to any person to whom Client has reasonable objection.

7.8. Successors and Assigns

This Agreement shall be binding on the parties hereto and on their partners, heirs, executors, administrators, successors, and assigns; provided, however, that neither this Agreement, nor any part

thereof, nor any moneys due or to become due hereunder to the Consultant may be assigned by it without the written consent of the City. 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 hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement. It is the express intention of the parties hereto that any person or entity, other than the parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

7.9. Amendments

No amendment to this Agreement shall be made nor be enforceable unless made by written Amendment signed by an authorized representatives of both Consultant and City.

7.10. Choice of Law and Venue

This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.

7.11. Severability

If any provision of this Agreement, except for Section 2.6, is determined to be directly contrary to and prohibited by law or the requirements of any federal grant or other Project funding source, then such provision shall be deemed void and the remainder of the Agreement enforced. However, it is the intent of the parties that Section 2.6 of this Agreement not be severable, and that if any provision of said section be determined to be contrary to law or the terms of any federal grant, then this entire Agreement shall be void.

7.12. Appropriations

Subject to execution of this Agreement by the Director of Finance certifying that a balance of appropriation exists and funds are available, the amount of money appropriated for this Agreement is equal to or in excess of the maximum compensation payable hereunder; provided, however, that if work is phased and subject to annual appropriation, funds only in the amount of initial appropriation are available and Consultant shall confirm availability of funds before proceeding with work exceeding initial and subsequent annual appropriations.

8. DISPUTES

- A. Any dispute or disagreement between Consultant and City arising from or relating to this Agreement or Consultant's services or right to payment hereunder shall be determined and decided by the City's Director of Planning and Zoning whose written decision shall be final and binding unless judicial review is sought in a Colorado Court of competent jurisdiction located in Pueblo County, Colorado, pursuant to Rule 106, C.R.C.P.
- B. Pending resolution of any dispute or disagreement, or judicial review, Consultant shall proceed diligently with performance of its work under this Agreement.

9. REQUIRED FEDERAL, STATE, AND/OR GRANT PROVISIONS

- A. Consultant understands that City may be funding the Project in whole or part with funds provided by the State of Colorado Department of Transportation (CDOT). Consultant agrees it is subject to and shall comply with all applicable provisions and regulations of any CDOT funding (or Intergovernmental Agreements between CDOT and City of Pueblo) that may be applicable to future PACOG and City of Pueblo projects.
- B. Consultant shall comply and any/all other Federal, State, and local laws applicable to its activities.
- C. All records with respect to any matters covered by this Contract and any subsequent Agreements shall be available for inspection by City and or CDOT at any time during normal business hours and as often as agencies deem necessary, to audit, examine and make excerpts or transcripts of relevant information, and otherwise to perform its official functions or duties.
- D. If any of the work to be performed by Consultant under this Agreement is funded in whole or in part with federal or state funds, then this Agreement shall be construed to include all applicable terms required by the federal or state assistance agreement and integrated federal or state regulations. By executing this Agreement, Consultant agrees to be bound by all such mandatory federal or state requirements, irrespective of Consultant's actual knowledge or lack of knowledge of such requirements prior to execution of this Agreement.

10. INSURANCE

10.1. Conditions

- A. Consultant agrees that it has procured and will maintain during the term of this Agreement, such insurance as will protect it from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any of its employees or of any person other than its employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom; and such insurance will provide for coverage in such amounts as set forth below.
- B. Consultant agrees to hold harmless, defend and indemnify City from and against any liability to third parties, arising out of negligent acts, errors or omissions of Consultant, his employees, subcontractors, and consultants.

10.2. Minimum Requirements

- A. Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this agreement and for such additional time as work on the project is being performed, Commercial General Liability Insurance issued to and covering the liability of the Consultant with respect to all work performed by it and all its subcontractors under the agreement, to be

written on a comprehensive policy form. This insurance shall be written in amounts not less than \$1,000,000 for each occurrence and aggregate for personal injury, including death and bodily injury, and \$1,000,000 for each occurrence and aggregate for property damage. This policy of insurance shall name the City of Pueblo, its agents, officers and employees as additional insureds. This policy shall have all necessary endorsements to provide coverage without exclusion for explosion and collapse hazards, underground property damage hazard, blanket contractual coverage, as well as Owner's and Contractor's Protective Liability (OCP) coverage. The policy shall also provide coverage for contractual liability assumed by Consultant under the provisions of the agreement, and "Completed Operations and Projects Liability" coverage.

- B. Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the agreement and for such additional time as work on the project is being performed, Comprehensive Automobile Liability Insurance. This insurance shall be written with limits of liability for and injury to one person in any single occurrence of not less than \$350,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This insurance shall include uninsured/underinsured motorist coverage and shall protect the Consultant from any and all claims arising from the use both on and off the site of the project of automobiles, trucks, tractors, backhoes and similar equipment whether owned, leased, hired or used by Consultant.
- C. Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.
- D. Professional Liability Insurance with coverage of not less than \$1,000,000 in a form and with a deductible acceptable to City.

11. ACCESSIBILITY

The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. The Consultant therefore, will use its best reasonable professional efforts to implement applicable ADA requirements and other federal, state, and local laws, rules codes, ordinances and regulations as they apply to the Project.

12. IMMIGRATION REFORM AND CONTROL ACT OF 1986

Consultant certifies that it has complied with the United States Immigration Reform and Control Act of 1986. Consultant represents and warrants that to the extent required by said Act, all persons employed by Consultant for performance of this Agreement have completed and signed Form I-9 verifying their identities and authorization for employment.

13. PERA LIABILITY

The Consultant 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 contracted services for the City under this Agreement. The Consultant shall fill out the Colorado PERA Questionnaire and submit the completed form to City as part of the signed Agreement.

14. SCHEDULES

The following Schedules are attached to and made a part of this Agreement:

- Schedule 1 - "Scope of Services" consisting of _____ pages.
- Schedule 2 - "Fee Schedule" consisting of ____ pages.
- Schedule 3 – "Project Schedule" consisting of ____ pages.
- Schedule 4 - "Identification of Personnel, Subcontractors, and Task Responsibility" consisting of ____ pages.
- Additional Information for Agreement

15. ELECTRONIC SIGNATURE

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

(Signature section on following page.)

This Agreement, together with all Project Documents incorporated by reference, constitutes the entire agreement between City and Contractor with respect to their subject matter, and may not be amended or modified except by written document signed by both parties.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION

BOHANNAN-HUSTON, INC.

By _____
Naomi Hedden, Director of Purchasing

By _____
Denise Aten, Senior Vice President

Attest _____
Marisa Stoller, City Clerk

[SEAL]

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

Alexandria Romero, Finance Director

APPROVED AS TO FORM

Dan Kogovsek, City Attorney

Attachments: Schedule 1 - Scope of Services
Schedule 2 - Fee Schedule
Schedule 3 - Project Schedule
Schedule 4 - Identification of Personnel, Subcontractors, and Task Responsibility
Additional Information for Agreement

CDOT PROFESSIONAL SERVICES LOCAL AGENCY CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT REQUIREMENTS

Please refer to CDOT's Local Agency Civil Rights Guidelines for more information:
<https://www.codot.gov/business/civilrights/compliance/prof-services/overview>

The following requirements shall be applied to FHWA-assisted contracts.

I. DEFINITIONS

B2GNow. Web based platform utilized by CDOT to track Civil Rights compliance (DBE/ESB participation) and prompt payment requirements on its contracts. The Consultant will use this platform to submit Utilization Plan(s), Subconsultant and Supplier/Vendor information on the Contract.

CDOT Civil Rights. The CDOT Civil Rights office that assist with the contract and prompt payment requirements on contracts. This can be in either the region or headquarters.

Civil Rights and Business Resource Center (CRBRC). CDOT's Civil Rights office at Headquarters.

Commercially Useful Function (CUF). Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR Part 26.

Commitment. A portion of the Contract designated by the Consultant for participation by DBE firms. The DBE firm(s) are included in the proposal team for participation to meet the Contract Goal. Commitments must identify the work to be performed by the DBE and include the percentage of the contract committed to each DBE firm. Commitments are measured at the end of the contract and are calculated by the actual payments to a DBE firm divided by the total payments made under the Contract.

Contract. Agreement between the Local Agency and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services. For purposes of this document, the term "Contract" refers to an individual, executed Task Order for an On-Call Agreement or a Master Contract (overarching agreement) for Project-Specific and Program-Specific Agreements.

Contract Goal Percentage. The percentage of the Contract established by CDOT for reasonable participation by DBEs and stated in the invitation for consultant services.

Consultant. An individual, firm, corporation, or other legal entity with a direct contractual relationship with the Local Agency's solicitation to render Professional Services and ancillary services.

Disadvantaged Business Enterprise (DBE). A Colorado certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.

Emerging Small Business (ESB). A CDOT certified Emerging Small Business firm listed on the ESB Directory at www.coloradoesb.org.

Good Faith Efforts (GFE). All necessary and reasonable steps to secure the necessary Commitments to meet the Contract Goal or other requirements of this contract, which by their scope, intensity, and

appropriateness to the objective could reasonably be expected to fulfill the contract requirement. Guidance on Good Faith Efforts to meet the Contract Goal is provided in 49 CFR Part 26, Appendix A.

Local Agency. The City of Pueblo.

Professional Services. The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colorado Revised Statutes (CRS) 24-30-1402 and 48CFR Part 2.

Reduction. Reduction occurs when the Consultant reduces a Commitment to a DBE. A Reduction is a partial Termination.

Subconsultant. An individual, firm, corporation or other legal entity to whom the Consultant sublets part of the contract. For purposes of these requirements, the term Subconsultant includes Suppliers/Vendors.

Substitution. Substitution occurs when a Consultant seeks to find another certified DBE firm to perform work on the contract as a result of a Reduction or Termination.

Termination. Termination occurs when a Consultant no longer intends to use a DBE firm for fulfillment of a Commitment. This includes, but is not limited to, instances in which a Consultant seeks to perform work originally designated for a DBE Subconsultant with its own forces or those of an affiliate, a nonDBE firm, or with another DBE firm.

Utilization Plan (UP). The documentation of Subconsultant and Supplier/Vendor participation on the awarded Contract. The Utilization Plan details all Subconsultants and Suppliers/Vendors included as part of the proposal team and Commitments by percentage made by the Consultant. The Consultant must submit the Utilization Plan within five (5) calendar days of receiving notice from CDOT's B2GNow system.

Vendor. Participant on a CDOT contract that is providing services not considered to be a Professional Services as defined in Colorado Revised Statute 24-30-1402 and 48 CFR Part 2. A vendor would provide Non- Engineering Services (i.e. Geotechnical drilling, Public Information/Relations, traffic control, etc.) and would not be overseen by a licensed engineer.

Work Code. A code to identify the work that a DBE is certified to perform. A work code includes a six (6) digit North American Industry Classifications System (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory at <https://coucp.dbesystem.com/>. The Local Agency may include CDOT in discussions for clarification. The consultant may contact the Civil Rights and Business Resource Center to receive guidance on whether a work code covers the work to be performed.

II. NONDISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

The following requirements apply to all contracts and subcontracts on FHWA federally assisted contracts.

A. *Non-discrimination.* The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either 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.

B. *Civil Rights Act of 1964 Title VI.* CDOT, 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 for any contract entered into pursuant to this advertisement, disadvantaged business

enterprises 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 an award.

C. *Consultant Assurance.* By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract. Such other remedy as deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments
- Assessing sanctions
- Liquidated damages
- Disqualifying the consultant from future bidding as non-responsible

D. *Prompt Payment.* Payments to all Subconsultants shall be made within seven (7) calendar days of receipt of payment from the Local Agency, or no later than ninety (90) calendar days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. The Local Agency will assist in enforcing the Civil Rights Requirements outlined above as well as prompt payment as outlined in 49 CFR, Part 26. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify the Subconsultant 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 failure to timely submit an invoice or to deposit payments made. The Consultant shall electronically submit prompt payment audit reports in B2GNow by the fifteenth (15th) of each month through the B2GNow software. If no payment has been made, the Consultant shall document this in the prompt payment audit reporting.

E. *Subcontract Terms.* Parts A-D of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

III. CONTRACT COMMITMENT

At the time of initial proposal, the Consultant must make a contractually binding guarantee to meet the Contract Goal in accordance with 49 CFR 26.53.

A. *Affidavit of Small Business Participation.* The Affidavit of Small Business Participation is the Consultant's contractually binding guarantee to meet the Contract Goal or make Good Faith Efforts to do so. CDOT's *Affidavit of Small Business Participation* form must be submitted with the Consultant's

statement of interest proposal. Failure to submit the CDOT *Affidavit of Small Business Participation* form will result in the Consultant being deemed non-responsive and ineligible for award. The Local Agency will copy the top preferred proposals to CDOT's Civil Rights and Business Resource Center (CRBRC) for approval of CDOT's *Affidavit of Small Business Participation* form. This form includes the commitments to meet the DBE goal.

B. *Contract Utilization Plan (UP)*. Once the contract is awarded and the Local Agency receives a signed contract, the Local Agency will submit the *Local Agency Professional Services B2GNow Contract Information* form for CDOT to set up the contract in the B2GNow system. Once the contract is setup in the system, the Consultant will receive a notice from CDOT within five (5) calendar days of selection, to complete and submit a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Consultant shall list all DBE, ESB, and nonDBE/ESB Subconsultants and Suppliers/Vendors included as part of its "most qualified" team. The Utilization Plan shall also include all Commitments by percentage.

C. *Consultant Responsibility*. The Consultant is solely responsible for ensuring that the Contract Goal is achieved upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever occurs first. The Local Agency and CDOT assists in the monitoring as oversight agencies.

D. *Contract Good Faith Effort Requirement*. The UP will not be approved by CDOT until the Consultant documents sufficient Commitments to meet the Contract Goal or demonstrates Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining sufficient Commitments to do so.

1. Good Faith Efforts mean that the Consultant:
 - a. Documents it has obtained enough DBE participation to meet the Contract Goal, or
 - b. Documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so
2. If the Consultant has not documented sufficient Commitments to meet the Contract Goal, the Consultant shall provide an explanation of its efforts to obtain Commitments by submitting the CDOT's *Professional Services Good Faith Efforts Report* form and supporting documentation to CRBRC.
 - a. The CRBRC will conduct a review to determine whether the Consultant has demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The CRBRC will approve the Contract Utilization Plan if it determines that the Consultant has made Good Faith Efforts to meet the Contract Goal
3. In conducting Good Faith Effort reviews, the CRBRC will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The CRBRC may also consider, but is not limited to, the following factors in evaluating the Consultant's Good Faith Efforts:
 - a. Performance of other consultants in meeting DBE goals on contracts that have a similar scope of work, contract amount, location, and time frame
 - b. Reason(s) for choosing a nonDBE subconsultant over an interested DBE
 - c. Documentation of DBEs solicited by the Consultant and verification from the DBEs that they were actually contacted by the Consultant

- d. Past performance by the Consultant on contracts that have a similar scope of work, contract amount, location and time frame
- e. Any other factors that may be pertinent to the factual circumstances

If the CRBRC determines the Consultant has made Good Faith Efforts to meet the Contract Goal, the Master Contract Utilization Plan will be approved and all documentation of the determination will be uploaded into B2GNow.

E. *Administrative Reconsideration.* If the CRBRC determines that the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal, the Consultant will be provided a written notice of its determination and an opportunity for administrative reconsideration by the CDOT Chief Engineer or a designee.

1. The Chief Engineer or a designee will conduct administrative reconsideration.
 - a. The Consultant will have five (5) calendar days from the written notice to request administrative reconsideration of an adverse Good Faith Efforts determination
 - b. The request shall include the basis for reconsideration and any supporting documentation that the Consultant would like to be considered as part of the reconsideration
 - c. The reconsideration should also specify whether the Consultant is requesting an informal, in person or telephonic hearing with CDOT to address the issues in the Good Faith Efforts determination
 - d. If a request for an informal hearing is not made, the Consultant will be deemed to have waived this opportunity
2. Upon a hearing request, the Civil Rights and Business Resource Center will establish a date and time for the hearing and send written notice via email to the Consultant, the Local Agency and Civil Rights at least two (2) business days in advance of the hearing.
 - a. If schedules permit, the parties may waive the two (2) business day requirement
 - b. The CDOT Chief Engineer or designee may request additional documentation from the Consultant and/or the Local Agency
 - c. A copy of all requests and responses should be provided to the other party and the other party shall be given an opportunity to respond
3. The CDOT Chief Engineer or a designee shall issue the final determination as to whether the Consultant made Good Faith Efforts to meet the Contract Goal.
 - a. The determination will be in writing and explain the basis for the CDOT Chief Engineer's or designee decision regarding whether or not the Consultant demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The Good Faith Efforts determination of the CDOT Chief Engineer or designee is not appealable

IV. ELIGIBLE DBE PARTICIPATION

In order to count towards the Contract Goal, (1) the work performed by the DBE Consultant, Subconsultant, or Supplier/Vendor must be identified in an approved Commitment, and (2) the Consultant, Subconsultant, or Supplier/Vendor must be DBE certified in the committed work upon submission of the Commitment. The Local Agency will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Consultant, Subconsultant, or Supplier/Vendor is certified. The Local Agency may request assistance from CDOT if needed.

A. If a Consultant, Subconsultant, or Supplier/Vendor is decertified as a DBE following the approval of a Contract, its participation on that Contract may continue to count as DBE participation.

B. DBE participation will be tracked through the B2GNow.

C. Only work actually performed by the DBE will count towards the Contract Goal.

1. The Consultant may count the entire amount of fees or commissions charged by a DBE firm for:

- a. Providing a bona fide service, such as professional, technical, consultant, or managerial services; and/or
- b. Providing assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of work, provided that the fee or commission is determined by the Local Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services

2. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subcontractor is also a DBE certified firm.

- a. Work that a DBE subcontracts out to a non-certified firm will not count toward the goal
- b. DBE firms may use an employee leasing company for the work
 - i. The participation of the leased employees will count only if the certified DBE firm maintains an employer-employee relationship with the leased employees
 - ii. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees

c. Unless certified in the work to be performed, staffing agencies only count toward the Contract Goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay

3. When a DBE performs as a participant in a joint venture:

- a. Only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces may count toward the Goal
- b. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2GNow for review and approval by CDOT

D. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.

1. To perform a Commercially Useful Function:
 - a. The DBE must be responsible for the execution of the work to be performed and
 - b. Actually performing, managing, and supervising the work
2. In evaluating whether a DBE is performing a Commercially Useful Function, the Local Agency will consider factors, including but not limited to:
 - a. The amount of subcontracted work
 - b. Industry practices, and
 - c. Whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors
3. DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation.
4. A DBE is presumed as not performing a Commercially Useful Function:
 - a. When it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce; or
 - b. When the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved.
 - c. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption.
5. In order to finalize the Contract, the Consultant must have submitted a *Professional Services Commercially Useful Function Questionnaire* form for each DBE firm that performed work or provided supplies toward meeting the contract goal. The DBE, Consultant and Engineer must sign the *Professional Services Commercially Useful Function Questionnaire* form.
6. The Local Agency's determinations regarding Commercially Useful Function matters are not appealable.

V. UTILIZATION PLAN MODIFICATIONS

A. *Reduction, Substitution, Termination.* Reduction, Substitution, or Termination during the life of the Contract shall only be permitted at the discretion of the Local Agency based upon a demonstration of Good Cause by the Consultant. The Consultant may not Reduce, Substitute, Terminate, or add Commitments without the Local Agency's approval. Consultants may request modification approval to the Local agency. The Local Agency may request for CDOT's assistance and/or use CDOT's Professional Services DBE Participation Plan Modification Request form.

1. *Notice to Subconsultant.* Before requesting the Local Agency approval, the Consultant must give the DBE Subconsultant notice in writing of the Consultant's intent to Reduce, Substitute or Terminate the Subconsultant's work. Unless otherwise waived in writing by the DBE, the Consultant must give the DBE five (5) calendar days to respond to the Consultant's notice and advise the Local Agency of objections, if any, that it objects to the proposed Reduction, Termination and/or Substitution and why the Consultant's proposed action should not be approved. If required as a matter of public necessity (e.g., safety), the Local Agency may waive or reduce the period to respond. The DBE firm may also voluntarily waive the response period.

2. *Good Cause Requirement.* A Consultant must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by the Local Agency. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Consultant can self perform the work for which the DBE was engaged or so that the Consultant can substitute another firm to perform the work. In evaluating whether Good Cause exists, the Local Agency will consider, but is not limited to, the following factors:

- a. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE
- b. Failure or refusal by the DBE to execute a written contract
- c. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal the industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Consultant or one of its Subconsultants
- d. The DBE fails to meet reasonable, nondiscriminatory insurance requirement
- e. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
- f. The DBE is ineligible to work because of suspension or debarment proceedings or other state law
- g. The DBE is not a responsible Consultant
- h. The listed DBE voluntarily withdraws from the project and provides to the Consultant written notice of its withdrawal
- i. The listed DBE is ineligible to receive credit for its participation
- j. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform
- k. The DBE ceases business operations or otherwise dissolves; and/or
- l. Other documented good cause reasons determined by the Local Agency to compel the termination of the DBE Subconsultant

3. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Consultant shall make Good Faith Efforts to find a Substitution up

to the Contract Goal for the DBE whose Commitment has been Terminated or Reduced, Substitutions do not have to be in the same type of work that was Terminated or Reduced.

- a. Prior to making a Substitution, the Consultant must receive the Local Agency's approval for the Substitution.
- b. An approval of the modification constitutes a modification of the Utilization Plan through CDOT. Each substitute DBE approved by the Local Agency must have documentation. Documentation similar to a Project Cost Worksheet for Subconsultants or Letter of Intent for a Supplier/Vendor that shows commitments to the firm on the contract are required. Once approved, the Local Agency will work with the CRBRC to modify the UP in B2GNow.

VI. ENFORCEMENT

It is the responsibility of the Local Agency and Consultant to ensure that Commitments are fulfilled or to request Utilization Plan modifications in a timely manner as described in Section VI. Approvals under the Contract are not an explicit or implicit approval by the Local Agency or CDOT of any Commitment Terminations, Reductions, Substitutions, or any other waiver of the Contract Civil Rights requirements.

A. The Local Agency may conduct reviews or investigations of participants as necessary. All participants on the Contract, including, but not limited to, DBE Subconsultants or Suppliers/Vendors are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information. This also includes applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the Contract Goal.

B. If the Local Agency determines that a Consultant, Subconsultant or Supplier/Vendor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Local Agency to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, the Local Agency may:

1. Refuse to count any fraudulent or misrepresented DBE/ESB participation
2. Withhold progress payments to the Consultant commensurate with the violation
3. Reduce the Consultant's prequalification status
4. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
5. Seek any other available contractual remedy

VII. CONTRACT CLOSEOUT

The Local Agency will collect a completed CDOT *Professional Services Closeout Report* form upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever comes first. This form will report the final actual DBE participation on the Contract and any amounts for which CDOT will be seeking reimbursement due to the Consultant not meeting Commitments. The Local Agency will submit the form to CDOT Civil Rights with submission of the final invoice.

FEDERAL HIGHWAY ADMINISTRATION (FHWA) CONTRACT CLAUSES FOR CITY OF PUEBLO (NON CONSTRUCTION)

Updated July 2022

PART 1. ADDITIONAL FEDERAL REQUIREMENTS (IGA at Exhibit J)

A. 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 Agency and their contractors or the Local Agency).

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 Agency and the Local Agency 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.

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".

B. Nondiscrimination.

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:

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.

C. Incorporation of Provisions.

The Contractor will include the provisions of the foregoing ADDITIONAL FEDERAL REQUIREMENTS (IGA at 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.

PART 2. OMB UNIFORM GUIDANCE FOR FEDERAL PROJECTS (IGA at Exhibit M and related OMB Guidance).

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:

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.”

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 City must report all suspected or reported violations to the Federal awarding agency.

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. **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). If applicable, Contractor agrees to the following:

Clean Air Act:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the federal, state, or other grant funding agency and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract meeting or exceeding \$150,000.

Federal Water Pollution Control Act:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the federal, state, or other grant funding agency and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract meeting or exceeding \$150,000.

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. If applicable, Contractor shall be bound by it's Bidder's Certification for Debarment, Suspension, Ineligibility and Voluntary Exclusion throughout the period of the Contract.
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. **Domestic Preference for Procurement (C.F.R. § 200.322).** To the extent consistent with law and in accordance with 2 C.F.R. § 200.322, Contractor and all of its subcontractors will to the greatest extent practicable under the Contract, 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 that Contractor may enter into.

8. **Procurement of Recovered Material (C.F.R. § 200.323).** In the performance of this contract/agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items in accordance with 40 C.F.R. Part 247, unless the product cannot be acquired:

Competitively within a timeframe providing for compliance with the contract performance schedule.

Meeting contract performance requirements.

At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor 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.

9. **Additional Provisions.**

Access to Records. The Contractor agrees to provide the federal fund and/or grant provider, the City, the Comptroller General of the United States, and/or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the federal fund and/or grant provider or authorized representatives access to construction or other work sites pertaining to the work being completed under the Project.

In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the federal fund and/or grant provider or the Comptroller General of the United States.

Changes. The cost of changes, modifications, change orders, or constructive changes must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of the project scope.

Changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract as long as the City and Contractor agree to change in writing and change still meets any funding submittal and expiration dates.

No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims or Statements) applies to the Contractor's actions pertaining to this contract.

PART 3. CDOT PROFESSIONAL SERVICES CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS (IGA to be attached to agreement as needed).

Please refer to CDOT's Local Agency Civil Rights Guidelines for more information:

<https://www.codot.gov/business/civilrights/compliance/prof-services/overview>

Contractor agrees to be bound by and subject to this PART III. CDOT PROFESSIONAL SERVICES CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.

I. DEFINITIONS

B2GNow. Web based platform utilized by CDOT to track Civil Rights compliance (DBE/ESB participation) and prompt payment requirements on its contracts. The Consultant will use this platform to submit Utilization Plan(s), Subconsultant and Supplier/Vendor information on the Contract.

CDOT Civil Rights. The CDOT Civil Rights office that assist with the contract and prompt payment requirements on contracts. This can be in either the region or headquarters.

Civil Rights and Business Resource Center (CRBRC). CDOT's Civil Rights office at Headquarters.

Commercially Useful Function (CUF). Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR Part 26.

Commitment. A portion of the Contract designated by the Consultant for participation by DBE firms. The DBE firm(s) are included in the proposal team for participation to meet the Contract Goal. Commitments must identify the work to be performed by the DBE and include the percentage of the contract committed to each DBE firm. Commitments are measured at the end of the contract and are calculated by the actual payments to a DBE firm divided by the total payments made under the Contract.

Contract. Agreement between the Local Agency and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services. For purposes of this document, the term "Contract" refers to an individual, executed Task Order for an On-Call Agreement or a Master Contract (overarching agreement) for Project-Specific and Program-Specific Agreements.

Contract Goal Percentage. The percentage of the Contract established by CDOT for reasonable participation by DBEs and stated in the invitation for consultant services.

Consultant. Contractor whether designated as engineer, consultant or otherwise who has entered an agreement with Local Agency pursuant to which mandatory federal and state contract provisions have become applicable including the requirements of this Part III.

Disadvantaged Business Enterprise (DBE). A Colorado certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.

Emerging Small Business (ESB). A CDOT certified Emerging Small Business firm listed on the ESB Directory at www.coloradoesb.org.

Good Faith Efforts (GFE). All necessary and reasonable steps to secure the necessary Commitments to meet the Contract Goal or other requirements of this contract, which by their scope, intensity, and appropriateness to the objective could reasonably be expected to fulfill the contract requirement. Guidance on Good Faith Efforts to meet the Contract Goal is provided in 49 CFR Part 26, Appendix A.

Local Agency. Pueblo, a municipal corporation.

Professional Services. The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colorado Revised Statutes (CRS) 24-30-1402 and 48CFR Part 2.

Reduction. Reduction occurs when the Consultant reduces a Commitment to a DBE. A Reduction is a partial Termination.

Subconsultant. An individual, firm, corporation or other legal entity to whom the Consultant sublets part of the contract. For purposes of these requirements, the term Subconsultant includes Suppliers/Vendors.

Substitution. Substitution occurs when a Consultant seeks to find another certified DBE firm to perform work on the contract as a result of a Reduction or Termination.

Termination. Termination occurs when a Consultant no longer intends to use a DBE firm for fulfillment of a Commitment. This includes, but is not limited to, instances in which a Consultant seeks to perform work originally designated for a DBE Subconsultant with its own forces or those of an affiliate, a nonDBE firm, or with another DBE firm.

Utilization Plan (UP). The documentation of Subconsultant and Supplier/Vendor participation on the awarded Contract. The Utilization Plan details all Subconsultants and Suppliers/Vendors included as part of the proposal team and Commitments by percentage made by the Consultant. The Consultant must submit the Utilization Plan within five (5) calendar days of receiving notice from CDOT's B2GNow system.

Vendor. Participant on a CDOT contract that is providing services not considered to be a Professional Services as defined in Colorado Revised Statute 24-30-1402 and 48 CFR Part 2. A vendor would provide Non- Engineering Services (i.e. Geotechnical drilling, Public Information/Relations, traffic control, etc.) and would not be overseen by a licensed engineer.

Work Code. A code to identify the work that a DBE is certified to perform. A work code includes a six (6) digit North American Industry Classifications System (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory at <https://coucp.dbesystem.com/>. The Local Agency may include CDOT in discussions for clarification. The consultant may contact the Civil Rights and Business Resource Center to receive guidance on whether a work code covers the work to be performed.

II. NONDISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

The following requirements apply to all contracts and subcontracts on FHWA federally-assisted contracts.

- A. *Non-discrimination.* The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either 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.
- B. *Civil Rights Act of 1964 Title VI.* CDOT, 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 for any contract entered into pursuant to this advertisement, disadvantaged business enterprises 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 an award.
- C. *Consultant Assurance.* By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract. Such other remedy as deems appropriate, which may include, but is not limited to:
- Withholding monthly progress payments
 - Assessing sanctions
 - Liquidated damages
 - Disqualifying the consultant from future bidding as non responsible
- D. *Prompt Payment.* Payments to all Subconsultants shall be made within seven (7) calendar days of receipt of payment from the Local Agency, or no later than ninety (90) calendar days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. The Local Agency will assist in enforcing the Civil Rights Requirements outlined above as well as prompt payment as outlined in 49 CFR, Part 26. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify the Subconsultant 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 failure to timely submit an invoice or to deposit payments made. The Consultant shall electronically submit prompt payment audit reports in B2GNow by the fifteenth (15th) of each month through the B2GNow software. If no payment has been made, the Consultant shall document this in the prompt payment audit reporting.
- E. *Subcontract Terms.* Parts A-D of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

III. CONTRACT COMMITMENT

At the time of initial proposal, the Consultant must make a contractually binding guarantee to meet the Contract Goal in accordance with 49 CFR 26.53.

- A. *Affidavit of Small Business Participation*. The Affidavit of Small Business Participation is the Consultant's contractually binding guarantee to meet the Contract Goal or make Good Faith Efforts to do so. CDOT's *Affidavit of Small Business Participation* form must be submitted with the Consultant's statement of interest proposal. Failure to submit the CDOT *Affidavit of Small Business Participation* form will result in the Consultant being deemed non responsive and ineligible for award. The Local Agency will copy the top preferred proposals to CDOT's Civil Rights and Business Resource Center (CRBRC) for approval of CDOT's *Affidavit of Small Business Participation* form. This form includes the commitments to meet the DBE goal.
- B. *Contract Utilization Plan (UP)*. Once the contract is awarded and the Local Agency receives a signed contract, the Local Agency will submit the *Local Agency Professional Services B2GNow Contract Information* form for CDOT to set up the contract in the B2GNow system. Once the contract is setup in the system, the Consultant will receive a notice from CDOT within five (5) calendar days of selection, to complete and submit a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Consultant shall list all DBE, ESB, and nonDBE/ESB Subconsultants and Suppliers/Vendors included as part of its "most qualified" team. The Utilization Plan shall also include all Commitments by percentage.
- C. *Consultant Responsibility*. The Consultant is solely responsible for ensuring that the Contract Goal is achieved upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever occurs first. The Local Agency and CDOT assists in the monitoring as oversight agencies.
- D. *Contract Good Faith Effort Requirement*. The UP will not be approved by CDOT until the Consultant documents sufficient Commitments to meet the Contract Goal or demonstrates Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining sufficient Commitments to do so.
 - 1. Good Faith Efforts mean that the Consultant:
 - a. Documents it has obtained enough DBE participation to meet the Contract Goal, or
 - b. Documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so
 - 2. If the Consultant has not documented sufficient Commitments to meet the Contract Goal, the Consultant shall provide an explanation of its efforts to obtain Commitments by submitting the CDOT's *Professional Services Good Faith Efforts Report* form and supporting documentation to CRBRC.
 - a. The CRBRC will conduct a review to determine whether the Consultant has demonstrated Good Faith Efforts to meet the Contract Goal
 - b. The CRBRC will approve the Contract Utilization Plan if it determines that the Consultant has made Good Faith Efforts to meet the Contract Goal

3. In conducting Good Faith Effort reviews, the CRBRC will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The CRBRC may also consider, but is not limited to, the following factors in evaluating the Consultant's Good Faith Efforts:
 - a. Performance of other consultants in meeting DBE goals on contracts that have a similar scope of work, contract amount, location, and time frame
 - b. Reason(s) for choosing a nonDBE subconsultant over an interested DBE
 - c. Documentation of DBEs solicited by the Consultant and verification from the DBEs that they were actually contacted by the Consultant
 - d. Past performance by the Consultant on contracts that have a similar scope of work, contract amount, location and time frame
 - e. Any other factors that may be pertinent to the factual circumstances

If the CRBRC determines the Consultant has made Good Faith Efforts to meet the Contract Goal, the Master Contract Utilization Plan will be approved and all documentation of the determination will be uploaded into B2GNow.

E. Administrative Reconsideration. If the CRBRC determines that the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal, the Consultant will be provided a written notice of its determination and an opportunity for administrative reconsideration by the CDOT Chief Engineer or a designee.

1. The Chief Engineer or a designee will conduct administrative reconsideration.
 - a. The Consultant will have five (5) calendar days from the written notice to request administrative reconsideration of an adverse Good Faith Efforts determination
 - b. The request shall include the basis for reconsideration and any supporting documentation that the Consultant would like to be considered as part of the reconsideration
 - c. The reconsideration should also specify whether the Consultant is requesting an informal, in person or telephonic hearing with CDOT to address the issues in the Good Faith Efforts determination
 - d. If a request for an informal hearing is not made, the Consultant will be deemed to have waived this opportunity
2. Upon a hearing request, the Civil Rights and Business Resource Center will establish a date and time for the hearing and send written notice via email to the Consultant, the Local Agency and Civil Rights at least two (2) business days in advance of the hearing.
 - a. If schedules permit, the parties may waive the two (2) business day requirement
 - b. The CDOT Chief Engineer or designee may request additional documentation from the Consultant and/or the Local Agency
 - c. A copy of all requests and responses should be provided to the other party and the other party shall be given an opportunity to respond
3. The CDOT Chief Engineer or a designee shall issue the final determination as to whether the Consultant made Good Faith Efforts to meet the Contract Goal.

- a. The determination will be in writing and explain the basis for the CDOT Chief Engineer's or designee decision regarding whether or not the Consultant demonstrated Good Faith Efforts to meet the Contract Goal
- b. The Good Faith Efforts determination of the CDOT Chief Engineer or designee is not appealable

IV. ELIGIBLE DBE PARTICIPATION

In order to count towards the Contract Goal, (1) the work performed by the DBE Consultant, Subconsultant, or Supplier/Vendor must be identified in an approved Commitment, and (2) the Consultant, Subconsultant, or Supplier/Vendor must be DBE certified in the committed work upon submission of the Commitment. The Local Agency will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Consultant, Subconsultant, or Supplier/Vendor is certified. The Local Agency may request assistance from CDOT if needed.

- A. If a Consultant, Subconsultant, or Supplier/Vendor is decertified as a DBE following the approval of a Contract, its participation on that Contract may continue to count as DBE participation.
- B. DBE participation will be tracked through the B2GNow.
- C. Only work actually performed by the DBE will count towards the Contract Goal.
 - 1. The Consultant may count the entire amount of fees or commissions charged by a DBE firm for:
 - a. Providing a bona fide service, such as professional, technical, consultant, or managerial services; and/or
 - b. Providing assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of work, provided that the fee or commission is determined by the Local Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services
 - 2. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subcontractor is also a DBE certified firm.
 - a. Work that a DBE subcontracts out to a non-certified firm will not count toward the goal
 - b. DBE firms may use an employee leasing company for the work
 - i. The participation of the leased employees will count only if the certified DBE firm maintains an employer-employee relationship with the leased employees
 - ii. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees

- c. Unless certified in the work to be performed, staffing agencies only count toward the Contract Goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay
- 3. When a DBE performs as a participant in a joint venture:
 - a. Only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces may count toward the Goal
 - b. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2GNow for review and approval by CDOT

C. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.

- 1. To perform a Commercially Useful Function:
 - a. The DBE must be responsible for the execution of the work to be performed and
 - b. Actually performing, managing, and supervising the work
- 2. In evaluating whether a DBE is performing a Commercially Useful Function, the Local Agency will consider factors, including but not limited to:
 - a. The amount of subcontracted work
 - b. Industry practices, and
 - c. Whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors
- 3. DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation.
- 4. A DBE is presumed as not performing a Commercially Useful Function:
 - a. When it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce; or
 - b. When the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved.
 - c. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption.
- 5. In order to finalize the Contract, the Consultant must have submitted a *Professional Services Commercially Useful Function Questionnaire* form for each DBE firm that performed work or provided supplies toward meeting the contract goal. The DBE, Consultant and Engineer must sign the *Professional Services Commercially Useful Function Questionnaire* form.

6. The Local Agency's determinations regarding Commercially Useful Function matters are not appealable.

V. UTILIZATION PLAN MODIFICATIONS

A. *Reduction, Substitution, Termination.* Reduction, Substitution, or Termination during the life of the Contract shall only be permitted at the discretion of the Local Agency based upon a demonstration of Good Cause by the Consultant. The Consultant may not Reduce, Substitute, Terminate, or add Commitments without the Local Agency's approval. Consultants may request modification approval to the Local agency. The Local Agency may request for CDOT's assistance and/or use CDOT's Professional Services DBE Participation Plan Modification Request form.

1. *Notice to Subconsultant.* Before requesting the Local Agency approval, the Consultant must give the DBE Subconsultant notice in writing of the Consultant's intent to Reduce, Substitute or Terminate the Subconsultant's work. Unless otherwise waived in writing by the DBE, the Consultant must give the DBE five (5) calendar days to respond to the Consultant's notice and advise the Local Agency of objections, if any, that it objects to the proposed Reduction, Termination and/or Substitution and why the Consultant's proposed action should not be approved. If required as a matter of public necessity (e.g., safety), the Local Agency may waive or reduce the period to respond. The DBE firm may also voluntarily waive the response period.
2. *Good Cause Requirement.* A Consultant must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by the Local Agency. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Consultant can self perform the work for which the DBE was engaged or so that the Consultant can substitute another firm to perform the work. In evaluating whether Good Cause exists, the Local Agency will consider, but is not limited to, the following factors:
 - a. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE
 - b. Failure or refusal by the DBE to execute a written contract
 - c. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal the industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Consultant or one of its Subconsultants
 - d. The DBE fails to meet reasonable, nondiscriminatory insurance requirement
 - e. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
 - f. The DBE is ineligible to work because of suspension or debarment proceedings or other state law
 - g. The DBE is not a responsible Consultant
 - h. The listed DBE voluntarily withdraws from the project and provides to the Consultant written notice of its withdrawal
 - i. The listed DBE is ineligible to receive credit for its participation
 - j. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform
 - k. The DBE ceases business operations or otherwise dissolves; and/or
 - l. Other documented good cause reasons determined by the Local Agency to compel the termination of the DBE Subconsultant

3. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Consultant shall make Good Faith Efforts to find a Substitution up to the Contract Goal for the DBE whose Commitment has been Terminated or Reduced, Substitutions do not have to be in the same type of work that was Terminated or Reduced.
 - a. Prior to making a Substitution, the Consultant must receive the Local Agency's approval for the Substitution.
 - b. An approval of the modification constitutes a modification of the Utilization Plan through CDOT. Each substitute DBE approved by the Local Agency must have documentation. Documentation similar to a Project Cost Worksheet for Subconsultants or Letter of Intent for a Supplier/Vendor that shows commitments to the firm on the contract are required. Once approved, the Local Agency will work with the CRBRC to modify the UP in B2GNow.

VI. ENFORCEMENT

It is the responsibility of the Local Agency and Consultant to ensure that Commitments are fulfilled or to request Utilization Plan modifications in a timely manner as described in Section VI. Approvals under the Contract are not an explicit or implicit approval by the Local Agency or CDOT of any Commitment Terminations, Reductions, Substitutions, or any other waiver of the Contract Civil Rights requirements.

- A. The Local Agency may conduct reviews or investigations of participants as necessary. All participants on the Contract, including, but not limited to, DBE Subconsultants or Suppliers/Vendors are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information. This also includes applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the Contract Goal.
- B. If the Local Agency determines that a Consultant, Subconsultant or Supplier/Vendor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Local Agency to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, the Local Agency may:
 1. Refuse to count any fraudulent or misrepresented DBE/ESB participation
 2. Withhold progress payments to the Consultant commensurate with the violation
 3. Reduce the Consultant's prequalification status
 4. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
 5. Seek any other available contractual remedy

VII. CONTRACT CLOSEOUT

The Local Agency will collect a completed CDOT *Professional Services Closeout Report* form upon completion of the work, expenditure of funds, and/or expiration of the Contract, whichever comes first. This form will report the final actual DBE participation on the Contract and any amounts for which CDOT will be seeking reimbursement due to the Consultant not meeting Commitments. The Local Agency will submit the form to CDOT Civil Rights with submission of the final invoice.

(Continue to next page.)

**Colorado Department of Transportation
AFFIDAVIT OF SMALL BUSINESS PARTICIPATION**

Project Description		Contract NTE \$ DBE Contract Goal %	
SECTION 1. CONSULTANT INFORMATION			
Prime Consultant		Consultant is an ESB ☐	
Compliance Contact Name		Consultant is a DBE ☐	
Email	Address	Phone	B2GNow Vendor #
SECTION 2. DBE PARTICIPATION PLAN			
Fill in All Lines: * The consultant is committing to _____ # _____ firm(s) not teamed with in the past 2 years (as of ad date of RFP, firms with successful bids allowed, each firm must be listed in this section). * The consultant is committing to _____ % of DBE participation based on NTE \$. * The consultant is committing to approximately _____ % DBE goal based on the NTE \$.			
The Prime Consultant shall submit _____ Professional Services Commercially Useful Function Questionnaire for every DBE on this contract that provides work or provides supplies whose participation counts toward the DBE contract goal for this contract.			
All DBE firms (Subconsultants, Supplier/Vendors, Prime if self performing)	Work Descriptor (i.e. survey, testing)	NEW DBE Teaming Partner?	ONLY for Project/Program Specific RFP/SOs Approximate % of Participation
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	

If more DBE subs/suppliers vendors, add additional sheet

**Colorado Department of Transportation
AFFIDAVIT OF SMALL BUSINESS PARTICIPATION**

SECTION 3. ESB PARTICIPATION PLAN

Fill in All Lines:

- * The consultant is committing to _____ # of ESB firm(s) not teamed with in the next 2 years (as of ad date of RFP, firms with unsuccessful bids allowed, each firm must be listed in this section).
- * The consultant is committing to approximately \$ _____ of ESB participation on this RFP/SOI.
- * The consultant is committing to approximately _____ % ESB goal set in the NTE S.

All ESB firms (Subconsultants, Suppliers/Vendors, Prime if self performing) and Level	Work (if subconsultant, teaming)	New ESB Teaming Partner?	ONLY for Project/Program Specific RFP/SOIs Approximate % of Participation
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	
☐ Vendor		☐ Yes ☐ No	

If more ESB subs/suppliers/vendors, add additional sheet

SECTION 4. DECLARATION OF AFFIDAVIT

By signing below the Consultant affirms the statements made in this document are true and complete:

The Consultant shall make good faith efforts to meet the contract goal for each task order under the overall contract. The Consultant understands that making good faith efforts to achieve the contract goal is a condition of contract award. The Consultant understands that promised participation is a binding obligation of the contract if awarded. The Consultant attests that the information above is true and understands that a fraudulent misrepresentation or failure to make good faith efforts to meet the contract commitments or promised participation may result in the withholding of progress payments, reduction of prequalification status, referral of the matter to the Office of Inspector General of the USDOT and/or other contractual remedies.

I, _____ of _____
(Owner or Executive Officer Name AND Title) (Consultant Company Name)

(Tracked Signature Accepted)

(Date)

Attached with proposal (RFP) and small business plan (for scoring)

Jul-22

THE FOLLOWING PAGES INCLUDE REQUIRED FORMS FOR EACH AGREEMENT.

**BIDDER'S CERTIFICATION FOR DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION**

Only applicable for projects exceeding \$25,000.

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the US Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by a Federal and/or State entity official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Company_____ Date_____

Authorized Signature_____

Name/Title_____

LOBBYING RESTRICTIONS FORM

Only applicable for projects exceeding \$100,000.

The Contractor certifies, 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 an 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 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.
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Company_____ Date_____

Authorized Signature_____

Name/Title_____

CERTIFICATION OF INTENT TO MEET FUTURE PROJECT DBE REQUIREMENTS

Only applicable for CDOT, FHWA, FTA, and FAA projects.

The Contractor certifies, to the best of his or her knowledge and belief, that they shall be able to meet or intend to meet all future funding DBE project requirements as shown in Appendix C.

Company_____ Date_____

Authorized Signature_____

Name/Title_____

SCHEDULE 1
SCOPE OF SERVICES
EXCERPT FROM RFQ SECTION 3

3.4 Scope of Service

3.4.1 General.

- Work/tasks will be assigned on an as needed basis
- The project details, deliverables, format, cost, timing, and completion dates will be negotiated at the time of task assignment
- Consultant shall be responsible for actively managing the project and for providing complete services for each project/task
- All deliverables must be submitted in electronic format as agreed upon at time of task assignment
- All work completed shall be available for use by MPO staff in planning-related documents and for public review
- Consultant shall provide aid on plans, reports, and/or studies that require computer simulation/visualization of corridors, projects, systems, and road networks as needed
- At a minimum, Consultant shall provide project updates monthly

3.4.2 Multimodal Transportation Data Collection and Analysis.

Collect, organize, and analyze transportation data of all different modes from a range of sources including asset management and traffic data, freight transportation data, mobility, public health, transportation data, information from the PACOG Transportation Improvement Program (TIP), and other City and County sources.

3.4.3 Planning Data Analysis.

Analyze and report related transportation planning for Colorado by using available data from multiple sources (mostly web-based) including census, labor statistics, state, and national data sources.

3.4.4 Disproportionately Impacted Community Analysis.

Analyze and identify strategies for increased public engagement and improved decision-making for Disproportionately Impacted Communities.

3.4.5 General Planning Support.

Perform tasks that support multiple planning efforts ongoing at PACOG. Tasks may include, but are not limited to, data collection, analysis, research, meeting coordination, technical support, and quality checks on deliverables. Additional tasks may include the following:

- Freight planning
- Use of alternative fuels and alternative fuel vehicles
- Revitalizing Main Street program
- Complete streets
- Land use considerations and coordination

- Bicycle, pedestrian, and other non-motorized modal planning
- GHG emissions reduction programs
- Disproportionality impacted communities transportation programs
- Environmental justice and equity analysis
- Economic analysis
- Risk and resilience
- Transportation planning policy
- Environmental planning considerations
- Transportation technology
- Transportation travel demand modeling
- Traffic engineering and planning
- Public health and transportation
- Public, shareholder, and stakeholder involvement and engagement
- Regional transportation authority planning/implementation
- Note: All work items and deliverables will require compliance with the federal Infrastructure Investment and Jobs Act (IIJA), Colorado SB 21-260, 2 CCR 601-22, and all other applicable federal and state laws.

3.4.6 Anticipated Tasks.

Although task will be assigned on an as needed basis; it is anticipated that Consultant may assist or perform the following tasks:

- Assist the City and PACOG/MPO staff with the Implementation of the MPO Long Range Transportation Plan
- Aid City MPO staff in the development and ongoing monitoring and updating of the PACOG Transportation Improvement Program
- Assist the City MPO staff with development of an Area-Wide Highway Safety Plan
- Provide area-wide local roadway safety plan
- Provide traffic model for MPO
 - Perform project scenarios based on projects identified in the 2045 LRTP
 - Refine travel demand model developed in 2015 as new social/economic such as the 2020 census data becomes available
 - Develop the 2050 regional population forecast
 - Update local transportation system data to reflect changes to the future transportation network as modified by local or county government actions
 - Review functional classification and update (may utilize 2020 census data)
 - Update TAZ with 2020 census data and reconfigure traffic model
 - Collaborate with CDOT and MPO to establish baseline and mitigation plan

- Assist MPO and CDOT with Green House Mitigation Plan and Carbon Reduction Plan
- Facilitate MPO with administrative process for establishing, tracking, and verifying mitigation & performance measures
- Provide updated GIS data (shape files) and update PACOG GIS maps:
 - New roadways
 - Proposed roadways
 - New trails, bike routes, and/or bike lanes
 - Create regional bike plan with updated information
 - Roadway classifications
- Provide Pueblo Transit
 - Route expansion studies and analysis
 - Increased ridership modeling and analysis
 - National Transit Database (NTD) data collection for federal reporting
- Route consolidation and expansion planning

SCHEDULE 2

FEE SCHEDULE

EXCERPT FROM BIDDER'S PROPOSAL, PART 2

BOHANNAN HUSTON, INC. FEE SCHEDULE HOURLY RATES September 3, 2022

	1	2	3	4	5	6	7
ENGINEER Civil, Structural, Mechanical, Electrical	\$115	\$130	\$150	\$170	\$195	\$230	\$255
SURVEYOR	\$115	\$130	\$150	\$170	\$195	\$230	\$255
TECHNICAL MANAGER IT, GIS, Spatial Data, Construction, Project Manager	\$115	\$130	\$150	\$170	\$195	\$230	\$255
PLANNER Community, Transportation	\$100	\$110	\$130	\$150	\$170	\$200	\$255
GIS PROFESSIONAL Geographic Information Systems	\$95	\$105	\$120	\$135	\$155	\$185	\$215
PROJECT ADMINISTRATOR	\$90	\$110	\$130	\$150	\$170	\$195	\$215
CONSTRUCTION OBSERVER	\$85	\$90	\$95	\$100	\$115	\$135	\$175
TECHNICAL SPECIALIST Engineering Tech, Survey Tech, Geospatial Analyst, Graphics Specialist	\$75	\$80	\$90	\$100	\$115	\$130	\$145
MATERIALS TECHNICIAN Field and Laboratory Materials Testing	\$60	\$70	\$80	\$90	\$100	\$130	\$150
ADMINISTRATIVE PROFESSIONAL Clerical Support	\$60	\$70	\$80	\$90	\$100	\$110	\$125

MATERIALS AND REIMBURSABLE EXPENSES

Plotting, Printing and Binding - As invoiced at cost of labor and materials

Courier / Delivery Service - As invoiced by provider

Mileage - As published for the IRS Standard Mileage Rate

Per Diem/Travel - Field personnel in accordance with the latest GSA Schedule based on location of service

Office/Professional staff travel costs, meals and lodging will be billed at cost

Survey Equipment Charge - \$28.00/Hour

Survey Material Charge - \$3.00/Hour

GIS Equipment Charge - Rates shall be negotiated based on the requirements of the contract

sUAS Usage Charge - Rates shall be negotiated based on the requirements of the contract

Other Direct Project Expenses - At Cost

Overtime - Performed upon request of the client; will be invoiced at 1.30 times the standard hourly rate

Expert Witness - Rates shall be negotiated based on the requirements of the contract with a minimum of four hours while in court

Applicable Gross Receipts or Sales and Use Tax - Added to all fees charged for professional services unless they are exempt and official documentation is on file with Bohannon Huston, Inc.

Pueblo Regional On-Call Transportation Technical Assistance (RFO - Bid: 22-069)

Olsson 2022 Rate Schedule
22-069 Pueblo Regional On-call Transportation Technical Assistance

Title	2022 Rate
Region Leader	\$300
Practice Leader	\$289
Office Leader	\$273
Senior Business Consultant	\$273
Business Development Senior Specialist	\$218
Senior Project Manager	\$262
Team Leader	\$250
Industry Expert	\$250
Technical Leader - Engineer	\$238
Technical Leader - Scientist	\$218
Senior Engineer	\$227
Senior Project Engineer	\$187
Project Engineer	\$170
Associate Engineer	\$147
Assistant Engineer	\$124
Commissioning Manager	\$226
Commissioning Agent	\$207
Commissioning Senior Technician	\$182
Commissioning Associate Technician	\$164
Commissioning Assistant Technician	\$150
Senior Scientist	\$187
Senior Project Scientist	\$170
Project Scientist	\$153
Associate Scientist	\$113
Assistant Scientist	\$90
Senior Landscape Architect	\$170
Senior Project Landscape Architect	\$159
Project Landscape Architect	\$147
Associate Landscape Architect	\$119
Assistant Landscape Architect	\$102
Senior Surveyor	\$170
Surveyor	\$136
Associate Surveyor	\$113
Assistant Surveyor	\$90
2-Person Survey Crew	\$218
1-Person Survey Crew	\$153
Drone Pilot	\$170
1-Person LiDAR Crew	\$218

Title	2022 Rates
Senior Planner	\$181
Senior Project Planner	\$165
Project Planner	\$142
Associate Planner	\$108
Assistant Planner	\$85
CAD Manager	\$159
Design Manager	\$153
Senior Technician	\$119
Design Technician	\$113
Associate Technician	\$90
Assistant Technician	\$80
Administrative Office Manager	\$120
Administrative Office Coordinator	\$85
Administrative Team Coordinator	\$85
Student Intern	\$68
Earthwork Observation	\$60
Foundation Observation	\$82
Deep Foundation Observation	\$93
Retaining Wall Observation	\$93
Concrete Observation	\$60
Masonry Observation	\$82
Structural Steel Observation	\$104
NDT Technician	\$125
Post-Tension Observation	\$104
Asphalt Observation	\$60
Building Inspector	\$104
CMT Manager	\$164
CMT Field Manager	\$131
Assistant Construction Manager	\$109
Associate Construction Manager	\$125
Project Construction Manager	\$136
Senior Construction Manager	\$164

Pueblo Regional On-Call Transportation Technical Assistance (RFO - Bid: 22-069)



Consultant Team

The matrix below highlights the structure of the BHI team and identifies the expertise areas they can provide support with under this contract. The Project Manager for the overall team is Derrick Webb whose work experience includes previous employment with two regional transportation agencies. Prior to joining BHI, Derrick worked for both the Denver Regional Council of Governments (DRCOG) and the Mid-Region Council of Governments (MRCOG) in Albuquerque. While at DRCOG, Derrick helped lead and support a variety of regional efforts such as the development of Metro Vision (the Denver region's long-range vision for growth and development), the 2040 Metro Vision Regional Transportation Plan, and Transportation Improvement Program set-asides such as the Urban Center/Station Area Master Plan program and the Community Mobility Planning & Implementation Program. In addition to his work on regionally focused land use and transportation plans, he also supported the development, tracking and reporting of a variety of regionally focused and significant performance measures. Derrick's time at DRCOG allowed him to not only build strong relationships with a variety of regional stakeholders, but also develop an understanding of the connection between regional transportation agencies, state agencies, and the federal government, which will allow him to provide substantial support to the Pueblo region.

Providing client service, contractual management, and technical oversight of the team, Denise Aten will operate as the Principal-in-Charge supporting Derrick. Denise has been providing a range of regional planning services for the last 30 years, including transportation, land use, and environmental planning as well as public outreach and coordination. She also brings experience with allocation, implementation, and reimbursement requirements around local, state, and federal funding and has direct experience with CDOT and FHWA monies. Through her recent project endeavors, she has built solid professional relationships with the staff and leadership at the City of Pueblo and Pueblo County.

	• MPO PROGRAMS & REQUIREMENTS	• LONG-RANGE TRANSPORTATION PLANS	• PUBLIC & STAKEHOLDER INVOLVEMENT	• MULTI-MODAL PLANNING	• TRAFFIC IMPACT STUDIES	• TRAFFIC ENGINEERING	• TRAVEL DEMAND MODELING (TRANS CAD)	• TRANSIT	• LAND USE	• PUBLIC HEALTH	• ECONOMIC ANALYSIS	• ENVIRONMENTAL JUSTICE	• ALTERNATIVE FUELS	• GHG STANDARDS & STRATEGIES	• GIS MAPPING	• WEBSITES (HTML AND CSS)	• CDOT, FHWA, & FTA EXPERIENCE
PRINCIPAL-IN-CHARGE Denise Aten, AICP																	
PROJECT MANAGER Derrick Webb, AICP																	
BHI PERSONNEL																	
Clare Haley																	
Curtis Sanders																	
Gabe Etengoff																	
Jared Lee, PE																	
Adji Witjaksono, EI																	
OLSSON PERSONNEL																	
Karen Aspelin, PE, PTOE																	
Neetu Choubey																	
Kyle McLaughlin, ENV SP																	
Tim Plander																	
Andy Brewer, PE, PTOE																	

Our team staff have availability to complete a range of task orders under this on-call contract.

Key Individuals



 Key Contact

Denise Aten, AICP Principal-in-Charge

32 years' experience | American Institute of Certified Planners #023292 | MS Environmental Planning; BA Mathematics and Economics

Denise brings more than 30 years of experience with transportation planning for a variety of planning initiatives in Colorado and New Mexico, starting her career at the Mesilla Valley Metropolitan Planning Organization in New Mexico. Her specialties include transportation planning, land use planning, public involvement, socio-economic evaluations, and environmental planning. She works closely with public agencies (local, regional, and state) and project teams to develop creative solutions for transportation initiatives, responding to all users and considering context for current and future land uses, while proactively minimizing environmental, social, and economic impacts. With years of experience on state and federally-funded transportation projects, she brings knowledge of the various sources of funds and the numerous opportunities available as well as the requirements associated with them.

Relevant Project Experience:

- NMDOT Prioritized Statewide Bicycle Network Plan
- Farmington MPO 2045 Metropolitan Transportation Plan
- Pueblo Union Ave and Main St Master Plan
- Pueblo Eastside Streetscape
- Firestone Transportation Master Plan
- Bennett Master Transportation Plan
- Brighton Transportation Master Plan Update
- NMDOT Transportation Asset Management Plan On-Call Support
- Sandoval County Transportation Asset Management Plan
- Town of Monument Roadway Design Standards Update
- Rio Rancho Development Process Manual Update
- Manitou Avenue, Park to Serpentine (MAPS)



 Key Contact

Derrick Webb, AICP Project Manager

12 years' experience | American Institute of Certified Planners #027364 | Masters Urban and Regional Planning; MS Information/Communication Technology; BA Architecture

Derrick is a Senior Planner who has worked on and managed a variety of planning projects, including transportation plans, land use code and design standard development/updates, and corridor studies. He is skilled in long- and short-range planning with specific experience coordinating federal funding with planning and infrastructure implementation at both the regional and local level. His experience includes data collection and analysis, socioeconomic research and evaluation, professional writing and document preparation, public outreach, and meeting facilitation. He also has substantial experience coordinating with state and federal agencies and has supported a variety of grant funded projects throughout his professional experience.

Relevant Project Experience:

- Bennett Master Transportation Plan
- Brighton Transportation Master Plan Update
- DRCOG Metro Vision (previous employment)
- DRCOG 2040 Metro Vision RTP (previous employment)
- DRCOG TIP Set-Asides (STAMP/UC and CMPI) (previous employment)
- MRCOG Local Planning Assistance (previous employment)
- Town of Monument Roadway Design Standards Update
- Rio Rancho Development Process Manual Update
- South Central Council of Governments (SCCOG) Regional Resiliency & Recovery Roadmap
- Clear Creek Regional Resiliency & Recovery Roadmap

Support Staff:



Clare Haley
Planner

1 year experience | Masters Community and Regional Planning; BA International Studies
Clare is a transportation planner with experience in multi-modal (pedestrian and bicycle), micro mobility, and active transportation planning and analysis. She has deep knowledge of transportation research in the field of mode choice behavior and transportation barriers. Her outreach skills include facilitating focus groups, conducting one-on-one interviews, and developing engaging presentations. She also brings comprehensive skills in data analysis and written/visual communication. She is involved in community bicycle advocacy and mobility justice work and recently presented on bicycle crossing facilities at the Association of Pedestrian and Bicycle Professionals (APBP) national conference.

Relevant Project Experience:

- Firestone Transportation Master Plan
- City of Albuquerque Bicycle and Trail Crossing Guide
- ABQRide Transportation Network Study
- City of Albuquerque Louisiana Blvd. Vision Zero Improvements
- City of Albuquerque Irving Blvd. Traffic Calming Study
- Bennett Master Transportation Plan
- Sandoval County Transportation Asset Management Plan
- Valencia County Comprehensive Plan



Curtis Sanders
Planner

4 years' experience | Masters Community and Regional Planning; BA History
Curtis is an integral team member in many transportation planning initiatives. He brings a collection of skills including the ability to create engaging graphics, research on best management practices, and data analysis and manipulation. Curtis has been involved in the creation of an online web tool for asset management planning, the technical analysis of traffic calming measures, parking studies for private developments, as well as assisting in various other transportation and infrastructure planning elements for local communities. Curtis uses his graphic skills to improve the visual appeal of BHI's planning products, design standards manuals, public outreach materials, project websites, and educational tools.

Relevant Project Experience:

- NMDOT Prioritized Statewide Bicycle Network Plan
- Farmington MPO 2045 Metropolitan Transportation Plan
- Pueblo Union Ave and Main St Master Plan
- NMDOT Transportation Asset Management Plan On-Call Support
- Ruidoso Traffic Calming Guide
- Gallup American with Disabilities Act (ADA) Transition Plan



Gabriel Etengoff
Planner

<1 years' experience | BA Political Science; M. Urban & Regional Planning (in progress)
As a planner at BHI, Gabe completes much of our ArcGIS analysis and map making. He is skilled at developing the analysis methodology around travel patterns, gaps, and future opportunities within the comprehensive transportation networks (for all modes) we work on for our clients. Gabe also brings experience working in the trails and conservation world, where he helped coordinate trail work projects for the U.S. Forest Service, National Parks Service, and Bureau of Land Management along the Continental Divide Trail. Gabe's graduate studies focus on GIS and environmental planning; he is expected to graduate in spring of 2023.

Relevant Project Experience:

- Bennett Master Transportation Plan
- Brighton Transportation Master Plan Update
- Town of Monument Roadway Design Standards Update
- South Central Council of Governments (SCCOG) Regional Resiliency & Recovery Roadmap
- Clear Creek Regional Resiliency & Recovery Roadmap



Jared M. Lee, PE, LEED AP
Senior Engineer

20 years' experience | Professional Engineer: CO #51313 | LEED Accredited Professional | BS Civil Engineering

As an experienced project manager, Jared leads BHI design teams in a wide range of civil engineering projects—from roadway facilities to full site development projects—while maintaining an active role in the design process. Throughout his career, Jared has gained valuable experience on several transportation planning and corridor design projects that provide safe, functional, resilient streetscape for communities throughout Colorado. Jared's experience includes new roadway and reconstruction projects involving master planning; roadway, utility, and drainage design; multi-modal and pedestrian facilities; drainage reports; stormwater management and erosion control plans; cost estimation; and bid document preparation. He brings experience with design features for all modes and helps to design complete streets within available right-of-way. Jared works closely with the project team to help develop creative transportation designs with associated realistic cost estimates to support feasibility and constructability in the future. Jared Lee has also been the project manager on numerous Local Agency Agreement projects, requiring knowledge of CDOT's processes, gaining the requisite approvals, and implementing improvements that both meet client needs and agency requirements.

Relevant Project Experience:

- Pueblo Union Ave and Main St Master Plan
- Pueblo Eastside Streetscape
- Firestone Transportation Master Plan
- Brighton Transportation Master Plan Update
- City of Castle Pines Master Transportation Plan
- Manitou Avenue, Park to Serpentine (MAPS)
- Firestone Traffic Signal Warrants Study
- Grand Junction 4th-5th One-Way to Two-Way Feasibility Study



Adji Witjaksono, EI
Traffic Engineer

3 years' experience | Engineer Intern: CO #0077270 | BS Civil Engineering

Adji's traffic engineering experience includes designing and detailing signal, striping, lighting, and Intelligent Transportation Systems (ITS) plans for infrastructure projects. His experience also includes conducting traffic signal coordination and traffic impact analyses; creating and running traffic demand models; creating travel demand forecasts and turn movement counts; determining performance measures and analyzing freeway segments for highway expansion; looking at commodity flow and truck traffic flow in the development of Statewide Freight Plans; analyzing and simulating traffic volume resiliency; analyzing parking demand; conducting queue and traffic delay sensitivity analysis; analyzing crash data numbers and patterns; assisting in the development of Strategic Transportation Safety Plans; and designing an intersection to accommodate the implementation of micro-mobility vehicles in urban areas.

Relevant Project Experience:

- Pueblo Master Plan Design for Union Ave/Main St
- Firestone Traffic Development Review
- Firestone Colorado Boulevard Signals
- Harvard Drive Streetscape Study
- Bridge Boulevard Bikeways
- Monte Vista Median Study



Karen Aspelin, PE, PTOE
Senior Traffic Engineer

30 years' experience | Professional Engineer: CO, AZ, HI, ID, NM, TX
| Professional Traffic Operations Engineer | MS Civil Engineering |
BS Civil Engineering

Karen's experience covers transportation design, traffic analysis, and studies including traffic impact studies, corridor studies, safety, traffic calming, and speed studies. She specializes in traffic signal system, signing and striping, lighting plans, and pedestrian and bicyclist facilities. Karen has worked on several local agency projects involving CDOT oversight, including the I-25 ramp modifications at Nevada Avenue and Tejon Street and the installation of raised crosswalks along US 24 for the City of Colorado Springs. She has served in several positions for ITE, including International Director, President for the Western District, President of the New Mexico Section, and Chair of the STEM Committee.

Relevant Project Experience:

- Pueblo Master Plan Design for Union Ave/Main St
- Colorado Springs Platte Avenue Corridor Study
- Colorado Springs ConnectCOS Project Support
- Colorado Springs Traffic Impact Analysis for Redevelopment Project*
- Colorado Springs Ivywild Neighborhood Traffic Study*
- Colorado Springs Traffic Engineering Services
- Manitou Avenue, Park to Serpentine (MAPS)*
- Broomfield, 136th Avenue at Legacy High School Safety Improvements*
- Albuquerque Transportation On-Call*

*PERFORMED AT PREVIOUS FIRM



Neetu Choubey
Transp. Planner & Modeler

2 years' experience | MS Transportation Engineering, Master of Technology, Transportation Planning; BS Civil Engineering

Neetu has a dual background in transportation engineering and planning, which provides her an in-depth understanding of transportation solutions. She has had experience working with multiple states' DOTs in the field of Transportation Big Data and visualization. She is proficient in GIS tools like ArcGIS and QGIS, has worked with Biogeme and Kenpave, used software like SiMTraM and SUMo for traffic modeling, Python and MapD for Data Visualization, and AutoCAD and ViSim.

Relevant Project Experience:

- Kansas City Area Transportation Authority IDIQ Transit Customer Info Systems
- Des Moines Traffic System Operation Improvements Phase 2
- Lawrence Signal Timing and Optimization
- Iowa DOT 2020-2023 On-Call Traffic Operations
- Joplin Area Transportation Study Organization, Metro Transportation Plan Update
- Des Moines 2021 BUILD Grant Benefit Cost Analysis
- Ozarks Transportation Organization, On-Call Modeling Services
- Pittsburg (KS) Highway 126 Traffic Study



Kyle McLaughlin, ENV SP Transit Planning and EVs

6 years' experience | Envision Sustainability Professional, Institute for Sustainable Infrastructure | MS Community and Regional Planning, BS Civil Engineering

Kyle is a regional planner who has experience with transportation, mobility, and corridor planning projects for diverse communities ranging from metropolitan areas to tribal groups. He has completed small area plans as well as city-wide multimodal plans. He incorporates connectivity, resource allocation, and climate awareness and resilience into all his plans, which is why they are more than blueprints on paper. When Kyle manages a planning project, it's an investment in green infrastructure and the future. In addition to planning, Kyle is well-versed in performing traffic studies, roadway design, and cost/benefit analysis. He also has valuable field experience including surveying and overseeing construction for roadway projects.

Relevant Project Experience:

- Colorado Springs North Nevada Ave. Transit Connectivity Study*
- Southeast Metropolitan Planning Organization (SEMPO) EV Readiness Plan
- Lincoln Climate Smart Collaborative EV Readiness Planning
- Colorado Springs ConnectCOS Project Support
- Kansas DOT On-site review for Public Transit Providers

*PERFORMED AT PREVIOUS FIRM



Tim Plander Senior Scientist

26 years' experience | Method 9 Opacity Certification, Advanced New Source Review, New Source Review Permitting | MBA, BS Meteorology and Climatology

Tim is a scientist with air quality modeling and permitting experience, including 15 years with AERMOD software and 21 years with CALPUFF software. Tim uses the air models to demonstrate compliance with ambient air quality standards and odor requirements. Before joining Olsson, Tim was an air quality specialist for the Nebraska Department of Environment and Energy (NDEE) and a meteorologist for the Florida Department of Environmental Protection. Tim works with a wide spectrum of industries including concrete production, fly ash handling, rare metals mining, oil and gas, bio-diesel, ethanol, electrical generation facilities, grain handling facilities, and fertilizer handling facilities.

Relevant Project Experience:

- Front Range Energy Ethanol Production Facility and Air Quality Modeling NAAQS Compliance Demonstration
- KAAPA Ethanol, Ethanol Facility Air Quality Title V Permitting, Air Quality Construction Permitting and Emission Inventory
- Lincoln Premium Poultry Processing Plant, Chicken Hatchery, and Animal Feed Mill Air Quality Title V Permitting and Air Quality Construction Permitting



Andy Brewer, PE, PTOE Rail Engineer

17 years' experience | Professional Engineer: AR | Professional Traffic Operations Engineer | MS Civil Engineering, BS Civil Engineering

Andy offers a wealth of hands-on experience in transportation planning and team management and provides senior leadership for all facets of transportation planning and traffic engineering. With years of hand-on experience, his leadership is invaluable for transportation planning, corridor studies, traffic engineering studies, public transportation, multi-modal studies, traffic safety, work zone management, incident management, and other aspects of transportation systems management and operations. Having spent 15 years specializing in transportation planning with the Arkansas Department of Transportation (ARDOT) Andy brings a valuable level of technical understanding to every project.

Relevant Project Experience:

- ARDOT: Assistant Division Engineer, Staff Planning Engineer, Transportation Planning and Policy Division, Railroad Crossing Safety Program*
- ARDOT Multimodal Planning activities such as State Rail Plan, State Bike/Ped Plan, and State Freight Plan
- Railroad Crossing Safety Program
- State Rail Plan, State Bike/Ped Plan, and State Freight Plan

*PERFORMED AT PREVIOUS FIRM

SAMPLE WORK ORDER

NOTE: This form shall be completed at time of award for each individual project as applicable.

This Work Order is entered pursuant to and subject to the terms and conditions of the MASTER CONTRACT for Bid 22-069 RFQ Pueblo Regional On-Call Transportation Technical Assistance, including Appendix A – Agreement for Professional Services incorporated therein, dated _____, 20__ between the City of Pueblo, a Municipal Corporation ("City"), and Bohannon-Huston, Inc. ("Consultant").

Scope of Work:

Time for Completion:

Work Order Compensation:

Approved by:

City of Pueblo, Director of
Planning _____ Date _____

City of Pueblo, Director of
Finance _____ Date _____

City of Pueblo, Director of
Purchasing _____ Date _____

Consultant Authorized
Representative _____ Date _____



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Nicholas Gradisar, Mayor

SUBJECT: A RESOLUTION CONFIRMING THE APPOINTMENT OF COUNCIL MEMBERS TO VARIOUS BOARDS AND COMMISSIONS FOR THE YEAR 2023

SUMMARY:

This Resolution will appoint a City Council representative to the Boards and Commissions where it is either required that a Council Member be a member or it has been the policy to have a Council Member serve on the Board or Commission.

These Boards and Commissions include the following:

- City/County Library District Board of Trustees Appointment Committee - 2 Council Members
- Committee on Disposition of Forfeited Property
- Community Commission on Housing & Homelessness
- Fountain Creek Watershed Flood Control Governing Board
 - Alternate for Fountain Creek Watershed Flood Control Governing Board
- HARP Authority Board of Directors
- PACOG Budget Committee
- Planning and Zoning Commission
- Pueblo Economic Development Corporation Board of Directors - 2 Council Members
- Pueblo Regional Building Commission
- Pueblo Urban Renewal Authority
 - Ex-Officio Member of the Pueblo Urban Renewal Authority
- Pueblo Memorial Airport Advisory Committee
- Pueblo Development Foundation Board of Directors
- Pueblo Depot Activity Development Authority Board of Directors

- Latino Chamber Foundation Board of Directors
- Pueblo Energy Advisory Commission

PREVIOUS COUNCIL ACTION:

These appointments are confirmed on an annual basis.

BACKGROUND:

Annual appointments are made assigning a City Council representative to serve on Boards and Commissions where it is either required by legislation that a Council Member be a member, or it has been the policy to have a Council Member serve on a particular Board or Commission. The new terms will expire January 31, 2024.

FINANCIAL IMPLICATIONS:

None

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

None

RECOMMENDATION:

Approval of the Resolution

ATTACHMENTS:

None

RESOLUTION NO. 15129

A RESOLUTION CONFIRMING THE APPOINTMENT OF
COUNCIL MEMBERS TO VARIOUS BOARDS AND
COMMISSIONS FOR THE YEAR 2023

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Larry Atencio and Sarah Martinez to serve as the Council representatives on the ***City/County Library District Board of Trustees Appointment Committee*** for one-year terms expiring January 31, 2024.

SECTION 2.

Regina Maestri to serve as the Council Representative on the ***Committee on Disposition of Forfeited Property*** for a one-year term expiring January 31, 2024.

SECTION 3.

Sarah Martinez to serve as the Council Representative on the ***Community Commission on Housing & Homelessness*** for a one-year term expiring January 31, 2024.

SECTION 4.

Larry Atencio to serve as the City Council Representative and Dennis Flores to serve as the Alternate City Council Representative to serve on the ***Fountain Creek Watershed Flood Control & Greenway District Governing Board*** for one-year terms expiring January 31, 2024.

SECTION 5.

Heather Graham to serve as the Council Representative on the ***HARP Authority Board of Directors*** for a one-year term expiring January 31, 2024.

SECTION 6.

Larry Atencio to serve as the Council Representative on the ***Pueblo Area Council of Governments (PACOG) Budget Committee*** for a one-year term expiring January 31, 2024.

SECTION 7.

Sarah Martinez to serve as the Council Representative on the ***Planning and Zoning Commission*** for a one-year term expiring January 31, 2024.

SECTION 8.

Heather Graham and Dennis Flores to serve as the Council Representatives on the ***Pueblo Economic Development Corporation Board of Directors*** for one-year terms expiring January 31, 2024.

SECTION 9.

Larry Atencio to serve as the Council Representative on the ***Pueblo Regional Building Commission*** for a one-year term expiring January 31, 2024.

SECTION 10.

Dennis Flores to serve as the Council Representative on the ***Pueblo Urban Renewal Authority*** for a one-year term expiring January 31, 2024.

SECTION 11.

Heather Graham to serve as the Council Representative on the ***Ex-Officio Member of the Pueblo Urban Renewal Authority*** for a one-year term expiring January 31, 2024.

SECTION 12.

Vicente Martinez Ortega and Heather Graham to serve as the Council Representatives on the ***Pueblo Memorial Airport Advisory Committee*** for one-year terms expiring January 31, 2024.

SECTION 13.

Larry Atencio to serve as the Council Representative on the ***Pueblo Development Foundation Board of Directors*** for a one-year term expiring January 31, 2024.

SECTION 14.

Heather Graham to serve as the ex-officio on the ***Latino Chamber Foundation Board of Directors*** for a one-year term expiring January 31, 2024.

SECTION 15.

Larry Atencio to serve as the Council Representative on the ***Pueblo Energy Advisory Commission*** for a one-year term expiring January 31, 2024.

SECTION 16.

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

SECTION 17.

This Resolution shall become effective immediately upon final passage.

INTRODUCED January 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 23, 2023

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 MELISSA NERESON AND JON WALKER TO THE PUEBLO URBAN
RENEWAL AUTHORITY

SUMMARY:

This Resolution appoints members to the Pueblo Urban Renewal Authority to serve a five-year term expiring on February 1, 2028.

PREVIOUS COUNCIL ACTION:

Council has confirmed appointments made by the Mayor to the Pueblo Urban Renewal Authority selecting individuals to serve terms which expire during a particular calendar year

BACKGROUND:

Due to the term expirations of incumbents David Abeyta and Patrick Avalos, there are two appointments available to serve a five-year term expiring February 1, 2028 on the Pueblo Urban Renewal Authority.

Following an advertisement in the *Pueblo Chieftain* and an announcement on the City's webpage seeking volunteers to serve on this committee, five applications were received from Anthony Colarelli, Melissa Nereson, Roxanne Pignanelli, Justin Richardson, and Jon Walker.

The applicants were interviewed by Mayor Gradisar and his recommendation is to appoint Melissa Nereson and Jon Walker.

FINANCIAL IMPLICATIONS:

This a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

Remove from agenda and re-advertise for additional applications.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. PURA - Nereson Packet
2. PURA - Walker Packet

RESOLUTION NO. 15130

A RESOLUTION CONFIRMING THE APPOINTMENT BY
THE MAYOR OF MELISSA NERESON AND JON WALKER
TO THE PUEBLO URBAN RENEWAL AUTHORITY

WHEREAS, Mayor Nicholas A. Gradisar has requested confirmation by the City Council of his appointment of Melissa Nereson and Jon Walker to the Pueblo Urban Renewal Authority to serve a five-year term expiring February 1, 2028; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The appointment by the Mayor of Melissa Nereson and Jon Walker to serve a five-year term expiring February 1, 2028 on the Pueblo Urban Renewal Authority shall be and is hereby confirmed by the City Council.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective immediately upon final passage.

INTRODUCED January 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: BOARDS & COMMISSIONS Application
Date: Thursday, December 1, 2022 8:08:22 PM

External email. Please use caution.

BOARDS & COMMISSIONS Application

BOARDS & COMMISSIONS Application for Appointment

(Section Break)

DATE	12/1/2022
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BOARD OR COMMISSION	Pueblo Urban Renewal Authority
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Contact Information

FIRST NAME	Melissa
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LAST NAME	Nereson
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HOME ADDRESS	8 Tamar Court
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CITY	Pueblo
------	--------

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

ZIP	81005
-----	-------

OFFICE ADDRESS	1313 Sherman
----------------	--------------

CITY	Pueblo
------	--------

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

ZIP	80203
-----	-------

DAYTIME PHONE	7194068670
---------------	------------

E-MAIL ADDRESS	melissanereson@gmail.com
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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)

Office of Housing Recovery Manager, Department of Local
Affairs

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.

My focus for over 15 years has been the housing industry, housing authority management, affordable housing development and housing program management. I currently manage the Office of Housing Recovery with the Colorado Department of Local Affairs, administering over \$640 million in federal grants for emergency assistance to help struggling renters and homeowners. I've successfully implemented and managed the largest rental assistance program in Colorado history and am currently overseeing the launch of the Emergency Mortgage Assistance Program (EMAP).

Previous to my current role, I served as the Housing Development Specialist for southeast Colorado at the Department of Local Affairs. During this time, I assisted housing developers, nonprofits and governmental agencies/municipalities increase affordable housing stock by providing both technical assistance and state-funded grants and loans. My expertise and guidance helped several affordable housing projects explore creative layered financing options to make viable developments.

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

As a Pueblo native, I want Pueblo to be a town everyone wants to live in. I am committed to the long-term success of this great city and think I can become an asset to the Pueblo Urban Renewal Authority with my knowledge of the housing industry.

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

I believe housing is the backbone for economic growth. The City of Pueblo has seen a significant increase in housing prices and diminished availability over the last decade. In order to continue economic growth, the housing crisis must be addressed. Without housing opportunities, economic growth becomes very difficult. The main goal I would like to achieve is creating additional housing opportunities throughout the city.

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

While I work for the Department of Local Affairs based in Denver, I reside in Pueblo city limits.

Board or Commission.

(Section Break)

Upload résumé,
references and/or other
pertinent information

[Resume for Board PURA.docx](#)

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

Melissa Nereson

8 Tamar Court
Pueblo, CO 81005
(719) 406-8670
melissanereson@gmail.com

EXPERIENCE

Colorado Department of Local Affairs – Division of Housing, Pueblo, CO

March 2020 – Current

Office of Housing Recovery Manager

Ensure Coloradoans remain stably housed during the COVID-19 Pandemic and beyond by providing assistance to those in need.

Manage day-to-day operations of both the Emergency Rental Assistance and Emergency Mortgage Assistance Programs, totaling over \$640 million in Federal grants.

Ensure program compliance from both contractor and subgrantee partners throughout the state.

Manage media campaigns that ensure Coloradoans that are most at-risk of housing instability are aware of the available funding.

Complete required reporting as required by the United States Treasury and other state entities.

Housing Development Specialist

Increase Colorado's affordable housing stock by providing technical assistance and funding to stakeholders including housing authorities, governmental entities, non-profit and for-profit developers in Southeast Colorado.

Provide grant funding and/or loan products to applicants for new construction, preservation, acquisition or rehabilitation of affordable housing developments.

Underwrite complex affordable housing projects.

Housing Authority of the City of Pueblo, Pueblo, CO

March 2013 – February 2020

Director of Operations

Manage day to day operations for the Housing Authority of the City of Pueblo.

Supervise the Planning and Development Department, Property Management Departments, Leasing Department, Inspection Department and other various positions.

Property Manager

Manage all day-to-day activities of 901 Public Housing units and make managerial decisions accordingly.

Professional

Housing Colorado

Professional Member

Pueblo Association of Realtors – Pueblo, CO

Professional Member

Colorado Association of Realtors – Pueblo Association of Realtors – Pueblo, CO

Professional Member

National Association of Housing and Redevelopment Officials (NAHRO)

Professional Member

Colorado Commission on Housing and Homeless (CCCH) – Pueblo, CO

Appointed member by the Pueblo County Board of County Commissioners. Term expires December 2022.

Active member in CCCH's Rehabilitation/Revitalization and Resource Identification work groups.

Pueblo Affordable Housing Cohort – Pueblo, CO

Co-chair of the Pueblo Affordable Housing Cohort, appointed by the Mayor of the City of Pueblo. No expiration date.

Community Service Block Grant Advisory Committee – Pueblo, CO

Previously appointed member by the Pueblo County Board of County Commissioners.

Additional Duties:

Supervising Manager for the Family Self Sufficiency (FSS) Program. Ensure compliance with the FSS Program and apply for annual grants.

Oversee a fully functional job training/GED facility.

Section 3 Coordinator for the Housing Authority of the City of Pueblo.

Industry Licenses/Certifications

Colorado Independent Broker Real Estate License #II100011064

Certified Tax Credit Specialist – National Center for Housing Management

Certified Blended Occupancy Specialist – National Center for Housing Management

Certified Public Housing Occupancy Specialist – The Nelrod Company

Certified Family Self Sufficiency Specialist – National Association of Housing and Redevelopment Officials

Certified Public Housing Manager – National Association of Housing and Redevelopment Officials

Southern Colorado Community Lending — Pueblo, CO

September 2017 – March 2020
Previous board member for Southern Colorado Community Lending, a NeighborWorks Organization. Resigned from the board in March, 2020, due to my employment with DOH and potential conflicts of interest.

EDUCATION

Colorado State University – Global Campus — *Bachelor of Science in Business Management*

January 2019 – July 2020

Obtained Bachelor's degree in Business Management.

Pueblo Community College, Pueblo, CO — *Associates in Business Management*

June 2015 – June 2016

Obtained Associates degree in Business Management.

Colorado Real Estate College, Pueblo, CO — *Independent Broker's License*

August 2005 – October 2005

Obtained Colorado Real Estate License #II100011064.

South High School, Pueblo, CO — *High School Diploma*

Obtained High School Diploma.

From: noreply@civicplus.com
To: [CityAdmin](#)
Subject: [External] Online Form Submittal: BOARDS & COMMISSIONS Application
Date: Monday, November 14, 2022 10:09:16 AM

External email. Please use caution.

BOARDS & COMMISSIONS Application

BOARDS & COMMISSIONS Application for Appointment

(Section Break)

DATE	11/14/2022
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BOARD OR COMMISSION	Pueblo Urban Renewal Authority
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Contact Information

FIRST NAME	Jon
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LAST NAME	Walker
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HOME ADDRESS	4216 Muirfield Road
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CITY	Pueblo
------	--------

STATE	Colorado
-------	----------

ZIP	81001
-----	-------

OFFICE ADDRESS	<i>Field not completed.</i>
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CITY	<i>Field not completed.</i>
------	-----------------------------

STATE	<i>Field not completed.</i>
-------	-----------------------------

ZIP	<i>Field not completed.</i>
-----	-----------------------------

DAYTIME PHONE	719-251-0041
---------------	--------------

E-MAIL ADDRESS	jonkwalker@comcast.net
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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)

Retired. Formerly served as Executive Director, Pueblo City-County Library District

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 successfully led the Pueblo City-County Library District for nineteen years prior to retiring earlier this year in October. The library district achieved a number of awards and accomplishments during my tenure there, including, but not limited to, the addition of several new branch libraries, significant increase of library use, and a super majority ballot measure win to increase library tax revenue. I also worked ongoing on projects with both the Pueblo Urban Renewal Authority and the City of Pueblo during this time, and, as a result, became familiar with how the urban renewal process works in our community under the laws of the State of Colorado.

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

I have been an unwavering supporter of Pueblo's sustained growth and success, and I am interested in remaining involved in our community's growth and attainment, and continuing to put my skills and abilities to good use. I understand the value of the urban renewal authority's tools to assist with this, and I would like to help.

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

PURA has several recent successful projects, including the RTA, Vestas, Evraz, and more. There are important projects unfolding now before it such as the smelter revitalization project area and the west Pueblo development area. I would like to help see these and other goals achieved.

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

I have a successful track record working collaboratively with public and private institutions throughout our community, and I want to leverage my resume to help Pueblo continue to grow and prosper.

(Section Break)

Upload résumé,
references and/or other
pertinent information

[resume2022.doc](#)

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

Resume: Jon Walker



- An experienced librarian for whom excellent customer service is top priority and who possesses “can-do” enthusiasm, the willingness to take on new challenges plus the wisdom and maturity to listen and understand, build effective teams, and lead success.
- Hands-on in a broad-range of library positions including reference, technical services, information technology, and administration. I have performed nearly every library job from page to executive director.
- Recently retired after nearly twenty years as Executive Director of the Pueblo City-County Library District (PCCLD). PCCLD consists of twelve locations throughout Pueblo County, Colorado. The District operates with annual

revenue over \$15 million, employs more than 150 staff members, and serves a population of approximately 175,000. The organization operates as an independent local government in Colorado with important support from two not-for-profit corporations, the Friends of the Pueblo Library and the Pueblo Library Foundation.

- PCCLD earned several honors during my tenure including Library Journal Five Star Library, “people’s choice” as *American’s Best Public Library*, and the Institute of Museum and Library Services *National Medal for Museum and Library Service*.
- PCCLD is renowned for its high-achieving team, and great morale and a work culture based upon trust and accountability.
- Built three new libraries and remodeled/expanded four libraries.
- Led successful 2019 ballot initiative to increase library funding with super-majority voter support and several successful library fundraising campaigns.

Personal: 4216 Muirfield Road
Pueblo, CO 81001
(719) 251-0041
jonkwalker@comcast.net

Jon Walker
2022

Employment:

Pueblo City-County Library District

- ❖ Executive Director, 2004-2022

Tulsa City-County Library System

- ❖ 1982-2003

Family:

Stacy (wife) and two sons, Ian and Sean

Education:

Master of Library and Information Studies

- ❖ University of Oklahoma
- ❖ 4.0 GPA
- ❖ Friends of the Tulsa City-County Library Scholarship

Master of Arts

- ❖ University of Tulsa
- ❖ 4.0 GPA
- ❖ Graduate and Research Fellow

Bachelor of Arts with Honors

- ❖ Oklahoma State University
- ❖ 3.9 GPA
- ❖ Member of Phi Kappa Phi, Phi Eta Sigma, and Phi Alpha Theta honors societies

Professional Memberships:

- ❖ American Library Association
- ❖ Public Library Association
- ❖ Mountain Plains Library Association
- ❖ Colorado Association of Libraries

Professional Activities:

- ❖ Alliance of Information and Referral Services of Oklahoma, Chair
- ❖ American Library Association, Awards Committee
- ❖ American Library Association, Financial Development Award Committee
- ❖ AMIGOS Institutional Representative
- ❖ Arkansas Valley Regional Library Services System, Board of Directors
- ❖ Colorado Association of Libraries Leadership Institute
- ❖ Colorado Library Advisory Board
- ❖ Colorado Library Consortium, Chairman, Board of Directors
- ❖ Colorado Library Consortium, Leadership Coaching Certification (Interaction Associates)
- ❖ Colorado Public Library Association
- ❖ Colorado Public Library Directors

Jon Walker
2022

- ❖ Colorado State Library LSTA Committee, Chair
- ❖ Computers in Libraries
- ❖ EBSCO Public Library Advisory Board
- ❖ El Pomar/Center for Creative Leadership
- ❖ Front Range Library Directors
- ❖ Innovative Interfaces Users Group
- ❖ Front Range Public Library Directors
- ❖ Lyrasis
- ❖ Mountain Plains Library Association
- ❖ Mountain States Employers Council/Colorado Library Consortium Supervisory Management Certification
- ❖ National Endowment for the Humanities, Peer Review Awards Panelist
- ❖ NetLibrary E-Book and E-Audiobook Advisory Council
- ❖ NOTIS Users Group
- ❖ OCLC Global Council, Representative
- ❖ Oklahoma Library Technology Network, Board of Directors
- ❖ Oklahoma Library Association, Interlibrary Cooperation Committee, Chairman
- ❖ Oklahoma Library Association, Automation Roundtable
- ❖ OneNet Advisory Council
- ❖ Public Library Association, Leadership Mentor
- ❖ Public Library Association, Technology in Libraries Committee
- ❖ Oklahoma Department of Libraries LSCA Advisory Council
- ❖ Oklahoma Research and Community Library Network
- ❖ Oklahoma NOTIS Users Group, Chairman
- ❖ Public Library Association, Planning for Results
- ❖ Snowbird Leadership Institute
- ❖ Stanford University Institute on 21st-Century Librarianship
- ❖ Sirsi/Dynix Users Group
- ❖ Tulsa City-County Library Staff Association, President
- ❖ Urban Libraries Council/White House, ConnectED

Community Activities:

- ❖ 2013 Pueblo Poverty Foundation Community Leader of the Year
- ❖ 2019 Greater Pueblo Chamber of Commerce Business Leader of the Year
- ❖ All Pueblo Reads
- ❖ American Cancer Society, Tulsa Chapter
- ❖ Arthritis Foundation, Eastern Oklahoma Chapter
- ❖ Call Rape, Tulsa, Board of Directors
- ❖ Citizens for Libraries Political Action Committee
- ❖ Colorado Small Business Development Center Network—Southern Colorado Advisory Council
- ❖ Community Health Education Network
- ❖ Colorado Humanities
- ❖ El Pomar Foundation Emerging Leaders Advisory Council
- ❖ El Pueblo Adolescent Treatment Community, Board of Directors
- ❖ El Pueblo History Museum Advisory Council

Jon Walker
2022

- ❖ Friends of the Pueblo Library
- ❖ Friends of the Tulsa Library
- ❖ Governor of the State of Colorado “Pueblo City-County Library District Day”
March 16, 2018
- ❖ Healy Center for Business and Economic Studies, Hasan School of Business,
Colorado State University-Pueblo, Advisory Board
- ❖ Leadership Tulsa
- ❖ Metropolitan Tulsa Chamber of Commerce, Goals for Tomorrow Task Force
- ❖ Metropolitan Tulsa Electronic Network
- ❖ Mountain Park Environmental Center, Board of Directors
- ❖ Parent-Teacher Association, Tulsa and Pueblo
- ❖ Pearl M. and Julia J. Harmon Foundation
- ❖ Pueblo City Council “Jon Walker Day,” November 30, 2013
- ❖ Pueblo City Schools Realignment Project Committee
- ❖ Pueblo City Schools Strategic Planning Community Committee
- ❖ Pueblo Library Foundation, Board of Directors
- ❖ Pueblo Library Proud Political Action Committee
- ❖ Pueblo School for Arts & Sciences, Board of Directors
- ❖ Rocky Mountain Council Boy Scouts
- ❖ Rotary Club of Pueblo, President and Paul Harris Fellow
- ❖ Rotary Club of Tulsa
- ❖ Save Your Library Political Action Committee
- ❖ Tulsa Interagency Task Force
- ❖ United Way of Pueblo, Campaign Cabinet

Professional and Community Presentations:

- ❖ All Pueblo Reads
- ❖ American Association of University Women
- ❖ AMIGOS Bibliographic Council
- ❖ Arkansas Valley Regional Library Services System (AVRLSS)
- ❖ Anne Arundel County Public Library
- ❖ Avondale School
- ❖ Avondale-Vineland Lions Club
- ❖ Baca School
- ❖ Barkman Library
- ❖ Belmont School
- ❖ Beulah School
- ❖ Boston Avenue Methodist Church, School of Continuing Education
- ❖ Carlile School
- ❖ Cesar Chavez Academy
- ❖ Central High School
- ❖ Chamberlain Foundation
- ❖ Champaign (IL) Public Library
- ❖ Chandler (AZ) Public Library
- ❖ Cherokee School
- ❖ City of Tulsa Board of Adjustment

Jon Walker
2022

- ❖ Colorado Association of Libraries Annual Conference
- ❖ Colorado City Metropolitan District, Board of Directors
- ❖ Colorado General Assembly
- ❖ Colorado Governor's Energy Office
- ❖ Colorado State Library, "Laptop Circulation and Security - Keep It and Keep It Clean," webinar panel
- ❖ Colorado State Senate, State Affairs Committee
- ❖ Colorado State University-Pueblo
- ❖ Columbian School
- ❖ Craver Middle School
- ❖ David & Lucille Packard Foundation
- ❖ Des Moines Public Library
- ❖ East High School
- ❖ East Side Neighborhood Association
- ❖ Eastwood Heights Community Association
- ❖ El Centro Quinto del Sol
- ❖ El Pomar Foundation
- ❖ El Pueblo Adolescent Community
- ❖ ENT YES Foundation
- ❖ Fairfield (CT) Public Library
- ❖ Frank I. Lamb Foundation
- ❖ Friends of the Pueblo Library
- ❖ Friends of the Tulsa Library
- ❖ Gay & Lesbian Fund for Colorado
- ❖ Giodone Library
- ❖ Glenpool Chamber of Commerce
- ❖ Greater Pueblo Chamber of Commerce
- ❖ Greenhorn Valley Library
- ❖ Grissom School
- ❖ Haaff School
- ❖ Hasan Family Foundation
- ❖ Heaton Middle School
- ❖ Hellbeck School
- ❖ Indianapolis Marion County Public Library
- ❖ Innovative (III) Users Group
- ❖ InfoZone News Museum
- ❖ Institute for Museum and Library Services
- ❖ Irving School
- ❖ Jenks Chamber of Commerce
- ❖ St. John Neumann School
- ❖ Kelly-Ducy Foundation
- ❖ Kent (MI) Library District
- ❖ Kiwanis Club of Southeast Tulsa
- ❖ La Gente
- ❖ Lamb Library
- ❖ Las Vegas Clark County Library District

Jon Walker
2022

- ❖ Leadership Tulsa
- ❖ League of Women Voters
- ❖ Pueblo Legislative Breakfast
- ❖ Library @ the Y
- ❖ Lions Club of Downtown Tulsa
- ❖ League of Women Voters
- ❖ Lucero Library
- ❖ Mahlon Thatcher White Foundation
- ❖ McClelland School
- ❖ Metropolitan (OK) Library System
- ❖ Metropolitan Tulsa Chamber of Commerce
- ❖ Minnequa Rotary
- ❖ Mountain Plains Library Association Annual Conference
- ❖ Nick Garone Foundation
- ❖ North Mesa School
- ❖ NOTIS Users' Group
- ❖ OCLC Global Council
- ❖ Oklahoma Department of Libraries
- ❖ Oklahoma Health Sciences Library Association
- ❖ Oklahoma Library Association Annual Conference
- ❖ Oklahoma Academic Library Directors
- ❖ Oklahoma Institute of Public Librarianship
- ❖ Oklahoma Public Library Directors
- ❖ Omaha (NE) Public Library
- ❖ Owasso Chamber of Commerce
- ❖ Packard Foundation
- ❖ PEO Sisterhood, Pueblo Chapter
- ❖ Philanthropic Educational Organization Sisterhood (Pueblo)
- ❖ Pikes Peak Library District (CO)
- ❖ Public Library Association Conference
- ❖ Pueblo 2030 Commission
- ❖ Pueblo Community College Foundation
- ❖ Public Library Association Conference
- ❖ Pueblo Area Libraries (PALS)
- ❖ Pueblo Centennial High School
- ❖ Pueblo City Council
- ❖ Pueblo City-County Library District Board of Trustees
- ❖ Pueblo City-County Library District Staff Development Day
- ❖ Pueblo Board of County Commissioners
- ❖ Pueblo East High School
- ❖ Pueblo Kiwanis
- ❖ Pueblo League of Women Voters
- ❖ Pueblo Latino Chamber of Commerce
- ❖ Pueblo School for Arts & Sciences
- ❖ Pueblo Town Hall
- ❖ Pueblo Urban Renewal Authority

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2022

- ❖ Pueblo West Chamber of Commerce
- ❖ Pueblo West High School
- ❖ Pueblo West Library
- ❖ Pueblo West Metropolitan District Board of Directors
- ❖ Pueblo West Rotary
- ❖ Pueblo West Women's League
- ❖ R.M. Watts Foundation
- ❖ Rawlings Library
- ❖ Risley Middle School
- ❖ Robert Hoag Rawlings Foundation
- ❖ Rosemount Auxiliary
- ❖ Rotary of Pueblo
- ❖ Rotary of Tulsa
- ❖ Ryalls Foundation
- ❖ Rye Elementary School
- ❖ Rye High School
- ❖ Sangre de Cristo Arts & Conference Center
- ❖ South Mesa Elementary School
- ❖ Southern Colorado Community Foundation
- ❖ Southminster Presbyterian Church, Continuing Education
- ❖ Southside Rotary Club
- ❖ Southwestern Bell Foundation
- ❖ Swallows Academy
- ❖ Thirty Club Community Foundation
- ❖ Tulsa City-County Library Staff Development Day
- ❖ Tulsa Area Library Cooperative
- ❖ Tulsa City-County Library System Commission
- ❖ Tulsa Computer Society
- ❖ Tulsa Economics Club
- ❖ TIPS Club
- ❖ University of Oklahoma School of Library & Information Sciences
- ❖ Unix Users of Tulsa
- ❖ Vectra Bank
- ❖ Voices of the Valley Chautauqua
- ❖ Vineland School
- ❖ Wells Fargo Foundation
- ❖ Numerous newspaper, television and radio interviews in Oklahoma, Colorado, and nationally

Selected Publications:

- ❖ "Automation of Community Information and Referral Services," Information Technology and Libraries December 1989
- ❖ "Building a Winning Workplace: Gain Ground, Rebound, Resound!" program presentation, 2008 Public Library Association Conference
- ❖ "Easing that Taxing Season," American Libraries April 1990

Jon Walker
2022

- ❖ “It All Adds Up: A Case Study on Making Performance Measures Count for Public Libraries,” Colorado Association of Public Libraries, 2011
- ❖ Monthly column for Pueblo City-County Library News & Events
- ❖ “Moving Ahead: Strategic Plan for the Pueblo City-County Library District: Building a Community of Readers,” (December 10, 2009)
(www.pueblolibrary.org/pld_docs/2009_Strategic_Plan.pdf)
- ❖ “Record-Setting Results: Creating a Culture of Accountability to Ensure Long-Term Success,” Mountain Plains Association (2016)

References:

Provided upon request.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 23, 2023

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 SOUTHERN COLORADO HARM REDUCTION ASSOCIATION, 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 NINE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$975,000) 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 Southern Colorado Harm Reduction Association, a Colorado nonprofit corporation ("SCHRA") to rehabilitate 219 W. Northern Ave., Pueblo, CO 81004 (the "Premises") for use as a behavioral health and community center (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 \$975,000 will be paid out of Project No. CI2113, the American Rescue Plan Act. The use of said funds shall be limited to expenditures to offset the costs for the rehabilitation, construction, development, engineering and architectural work for the Premises to operate as a behavioral health and community center.

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:

219 W. Northern Ave., Pueblo, CO 81004 is located in a Qualified Census Tract (QCT") in the City's Bessemer neighborhood. The building located on the Premises is currently vacant and abandoned and requires significant rehabilitation. Pursuant to U.S. Treasury ARPA Final Rule p. 134, ARPA funds may be spent to pay for "rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact."

The work of revitalizing 219 W. Northern Ave. shall proceed as follows:

- Phase I. Property renovation. Includes; entire flooring repair, electrical and plumbing installation, roof repair, window replacements, installation of refrigeration system, commercial kitchen set up, security systems, heating and cooling systems repair. Purchase of the insurance needed for the facility.
- Phase II. Purchase technology, food storage systems, academic resources. Contract and lease spaces to other organizations.
- Phase III. Open facility with a minimum of 8 services, programs and classes with food access for the Bessemer community.

Client data shall be collected by all participating organizations in the Unite Us platform.

The community center shall operate as a health, wellness, education, resource, and cultural hub for the Bessemer area with SCHRA acting as the coordinator of services brought into the community. SCHRA shall work toward developing place-based systems of care by leveraging partnerships to bring those systems to the Bessemer neighborhood. General service categories include:

- comprehensive supports around substance use prevention and recovery
- telehealth medicine
- crisis intervention
- life skills and job training for youth and adults
- wellness services such as yoga and meditation
- social resources such as transportation, food, and a space for community engagement

31 CFR 35.6 provides that capital expenditures has the same meaning given in 2 CFR 200.1. Under 31 CFR 35.3, capital assets means:

(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

- i. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
- ii. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially

increase their value or useful life (not ordinary repairs and maintenance).

31 CFR 35.6(b)(3)(ii)(C) authorizes grants to nonprofits for construction and land acquisition purposes. 31 C.F.R. Part 35 implements section 9901 of ARPA and its amendments to the Social Security Act. Per 31 C.F.R. § 35.6(b)(3)(ii)(C), a recipient may use funds to respond to the public health emergency for certain enumerated eligible uses, including “Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance” (emphasis added). The definition of capital expenditures includes construction and improvements and land acquisition.

FINANCIAL IMPLICATIONS:

SCHRA will receive \$975,000 in ARPA funds from Project No.CI2113. The grant funds shall not be distributed in a lump sum. SCHRA shall provide the City with draw packages for the costs and expenses to rehabilitate the Premises, including construction materials, labor costs, payments to a general contractor and subcontractors and all other construction-related expenses.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to support SCHRA’s proposed community center.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. ARPA - Subrecipient Agreement between City and SCHRA

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE SOUTHERN COLORADO HARM REDUCTION ASSOCIATION, 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 NINE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$975,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

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

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

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

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

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

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

SECTION 1.

The Subrecipient Agreement ("Agreement") dated February 13, 2023, between the City of Pueblo, a Colorado municipal corporation and the Southern Colorado Harm Reduction Association, a Colorado nonprofit corporation, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

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

SECTION 3.

Funds in the amount of \$975,000 are hereby authorized to be paid from Project No. CI2113 – American Rescue Plan Act, for purposes of rehabilitating 219 W. Northern Ave., Pueblo, CO 81004 for use as a behavioral health and community center.

SECTION 4.

The officers and staff of the City are authorized to perform any and all acts consistent

with this Ordinance and the attached Agreement to implement the policies and procedures described herein.

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

SUBRECIPIENT AGREEMENT

THIS SUBRECIPIENT AGREEMENT ("Agreement") is made and entered into this 13th day of February, 2023 (hereinafter "Effective Date") by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the "City" and the Southern Colorado Harm Reduction Association, a Colorado nonprofit corporation, hereinafter referred to as the "Subrecipient" or "SCHRA." City and Subrecipient/SCHRA 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 to rehabilitate 219 W. Northern Ave., Pueblo, CO 81004 for use as a behavioral health and community center (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 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. FACTUAL BASIS FOR THE GRANT AWARD

- (a) 219 W. Northern Ave., Pueblo, CO 81004 (the “Premises”) is located in a Qualified Census Tract (QCT”) in the City’s Bessemer neighborhood. The building located on the Premises is currently vacant and abandoned and requires significant rehabilitation.
- (b) Pursuant to U.S. Treasury ARPA Final Rule p. 134, ARPA funds may be spent to pay for “rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact.”
- (c) The pandemic has devastated an already vulnerable neighborhood in the Bessemer area. In addition to the virus, health disparities have significantly grown for adults and children. Problematic drug use is heavily influenced by social issues, such as poverty, low education attainment, chronic unemployment, homelessness, and mental and emotional responses to these social conditions and the Covid-19 pandemic. Social and structural determinants of health conducive to drug abuse play out in physical spaces of neighborhoods where drug abuse and fatalities are high and where historically oppressed people reside, specifically, people of color (POC). The drug abuse emerging from this type of environment impacts young people at alarming rates, leading to intergenerational health disparities. Ranking well within the top ten states, Colorado teens are 37.4% more likely to have used drugs in the last month than the average American teen due to poverty, unemployment, addiction, and lack of healthcare resources.
- (d) Experiences that arise from factors such as poverty, unemployment, and lack of access to food and quality education produce intergenerational trauma that manifests in psychological, emotional, and substance use disorders resulting in lower life expectancy. SCHRA’s vision is to change this environment using a Harm Reduction lens which will build upon and expand its scope of work to include a broader community approach. Co-founders, Judy Solano and Mike Nerenberg, M.D. have collectively led Pueblo toward an inclusive Harm Reduction vision, resulting in major expansion of treatment availability and resources for recovery, wellness and functionality.
- (e) Subrecipient envisions a safe, compassionate, clean environment for the Pueblo community, restored social and professional opportunities, a thriving space for people of color to share their culture and arts, and a life-changing place for youth. SCHRA will scale its Harm Reduction approach to offer services to the entire Bessemer neighborhood with a continued focus on health equity and racial justice. SCHRA’s work will address the need for a community voice from POC, social and health resources, convening partnerships to develop place-based systems, and professional/economic development.
- (f) SCHRA began operations in July, 2017. Subrecipient is a nonprofit in Pueblo providing services, support, and advocacy for people experiencing life disruptions due to substance use, mental health disorders, and incarceration. SCHRA also

provides support for clients' loved ones and the communities affected by this epidemic.

(g) Since its creation, SCHRA has provided unique benefits to Pueblo's marginalized communities through the following harm reduction programs:

- Free Public Health Services, HIV/Hep C Testing, Vaccinations
- Housing, food access, employment and education opportunities
- Criminal Justice involved supports
- Overdose Prevention, Naloxone and Fentanyl Testing Strips, Syringe Service Programs
- Acudetox (Ear Acupuncture to decrease withdrawal symptoms)
- Peer Support Services to coordinate needed resources
- Direct pathways to healthcare partners, Urgent Care and MAT
- Family and youth support and education

(h) During the current fiscal year, SCHRA has provided:

- 1,000 Pieces of cold weather supplies; coats, gloves, hats, hand warmers, tents, sleeping bags, blankets
- 300 Hygiene kits
- 1,000 + Food packages
- 3,000 pieces of clothing from its clothing bank
- Financial assistance with utilities, hotel stays and housing rental deposits
- 1,500 bus passes
- Naloxone kits and training to schools, businesses and health care providers
- 3,000 Naloxone kits, 1,700 Fentanyl test strips
- Narcan kits and training to schools, businesses and health care providers
- Since 2017, 190,000 syringes disposed properly.

(i) Subrecipient has recently purchased a 14,000 sq. ft. property in the heart of the Bessemer neighborhood located at 219 W. Northern Avenue near 1-25. This location will be the start of a revitalization of this once thriving community. This location will house some of the following programs,

- Life skills training for youth and re-entering citizens. Telehealth urgent care services
- Adult education
- Coordinated Entry System Access Point and yoga, meditation for youth and adults.
- CRAFT (Community Reinforcement and Family Training); fresh food and a commodities access site
- Case management services
- Pro-Social education and activities for youth
- Peer support

- (j) The work of revitalizing 219 W. Northern Ave., will be led by SCHRA Founder/CEO Judy Solano, supported by SCHRA's board of directors. Current staff and community partners already providing services at SCHRA's current location will expand and allow other agencies and organizations to be onsite at the new community center. The revitalization effort will proceed as follows:
- Phase I. Property renovation. Includes; entire flooring repair, electrical and plumbing installation, roof repair, window replacements, installation of refrigeration system, commercial kitchen set up, security systems, heating and cooling systems repair. Purchase of the insurance needed for the facility.
 - Phase II. Purchase technology, food storage systems, academic resources. Contract and lease spaces to other organizations.
 - Phase III. Open facility with a minimum of 8 services, programs and classes with food access for the Bessemer community.
- (k) Client data will be collected by all participating organizations in the Unite Us platform. Unite Us standardizes how health and social care providers communicate and track outcomes together. It aligns all stakeholders from healthcare, government, and the community around a shared goal to improve health. It is a proven infrastructure which provides both a person-centered care coordination platform and a hands-on community engagement process; it works hand-in-hand with the community to ensure services are seamlessly delivered to the people who need them most. This system is currently being utilized by SCHRA and several community-based organizations to communicate client needs to one another.
- (l) The proposed community center can be viewed as a health, wellness, education, resource, and cultural hub for the Bessemer area with SCHRA acting as the coordinator of services brought into the community. SCHRA continues to work toward developing place-based systems of care by leveraging partnerships to bring those systems to the Bessemer neighborhood. General service categories include:
- comprehensive supports around substance use prevention and recovery
 - telehealth medicine
 - crisis intervention
 - life skills and job training for youth and adults
 - wellness services such as yoga and meditation
 - social resources such as transportation, food, and a space for community engagement
- (m) This Subrecipient Agreement presents an opportunity to use ARPA funds to address the negative economic impacts caused by COVID-19 that consequentially impact basic needs and the ability to access health resources. Prior to the pandemic, Bessemer was a struggling neighborhood. The effects of COVID-19 on this community, whether directly or indirectly, places it at greater need for support.
- (n) SCHRA continues its work as a trusted community leader to bring COVID-19 vaccinations to communities and people in Pueblo who have experienced

difficulties with accessing the vaccine. One of the pillars of SCHRA's Harm Reduction approach is trust as evidenced in the power of grassroots campaigns to reach all community members. To date, SCHRA has partnered with several Pueblo agencies, including the Pueblo City-County Library District, to administer 5,127 COVID-19 vaccines. Recently, Health Colorado, Inc. contributed significant funding for SCHRA to continue this work. SCHRA's response to the pandemic is indicative of how SCHRA views its responsibilities to the Pueblo community as it continues to battle COVID-19 and its impacts that will unfold over many years. Creating a community center that provides comprehensive social and health solutions in Bessemer will counter the identified and yet to be identified impacts of COVID-19 in one of Pueblo's most under-resourced neighborhoods.

- (o) SCHRA leadership has purposefully developed a model of operation that collaborates with local and statewide entities. In many instances, SCHRA serves as the coordinator of services, bringing valuable supports to the people and neighborhoods that most need them. For example, SCHRA collaborates with Front Range Clinic to place a qualified staff at SCHRA's location within the Bessemer neighborhood to deliver Medication Assisted Treatment. SCHRA closely partners with Vivent Health, a Denver nonprofit experienced in prevention services, to offer HIV/HEP C testing and education, leading to the prevention and treatment of communicable diseases in Pueblo. SCHRA is the lead agency for the Pueblo Harm Reduction Project, a partnership between SCHRA, the Pueblo County Sheriff's Office, and the Pueblo Department of Public Health and Environment to deliver professional/personal development curriculum in the criminal justice system, transitional community wellness, harm reduction, and prevention supports. Under this project is a community-based component supported by the Colorado Health Foundation that focuses on job and personal skills development with underserved youth. The underserved youth SCHRA is impacting with the launch of the Neighborhood Harm Reduction Project is inspirational. Within this first cohort of 12 participants for the first part of 2021, Subrecipient is seeing young people go from not communicating with staff to talking about their hopes, dreams, and career goals. The opportunities this program brings to underserved youth will aid Pueblo's economic recovery from the COVID-19 pandemic.
- (p) Most recently, and as a result of Subrecipient's relationship with Health Colorado, Inc. (Pueblo's Regional Accountability Entity), SCHRA has welcomed the on-site and telemedicine services of Care on Location to its clients, connecting individuals and families who face barriers or stigma around accessing vital health and mental health support to these services. Care on Location provides a skilled clinician during SCHRA's Saturday safe syringe access and resource Saturdays to address physical health and mental health needs.
- (q) SCHRA continues to grow rapidly each year because of its many partnerships and diverse funding streams. Approximately 10% of SCHRA's resources come from individual contributions, including volunteer time and donations. Some of Subrecipient's funders include:
 - Caring for Colorado
 - Colorado Department of Human Services (Office of Behavioral Health)

- Colorado Department of Public Health and Environment
 - Colorado Health Foundation
 - Community Services Advisory Commission
 - Health Colorado, Inc.
 - Packard Foundation
 - United Way of Pueblo
- (r) The foundation and staff infrastructure for the proposed community center in Bessemer is strong. Many of the services that will be provided at the center are already happening on a smaller scale and for a specific population. SCHRA's plan to enhance and expand these services to the entire community is a goal which can be reached. SCHRA has doubled in capacity over the past two years. As the recipient of several grant funds, Subrecipient will continue to move toward a community-wide Harm Reduction model.
- (s) Harm Reduction recognizes addiction can be heavily influenced by social systems and environment and works to bring equitable health access and racial justice to those impacted by drug use. The pandemic has added another layer of obstacles that has increased drug use, the need for mental health supports, and other health and social service needs. The sustainability of these services is important to SCHRA, and Subrecipient will continue to leverage partnerships and funding resources to support the impact ARPA funds will bring to the Pueblo community.
- (t) 31 CFR 35.6 provides that capital expenditures has the same meaning given in 2 CFR 200.1. Under 31 CFR 35.3, capital assets means:
- (1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
 - (i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
 - (ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).
- (u) 31 CFR 35.6(b)(3)(ii)(C) authorizes grants to nonprofits for construction and land acquisition purposes. 31 C.F.R. Part 35 implements section 9901 of ARPA and its amendments to the Social Security Act. Per 31 C.F.R. § 35.6(b)(3)(ii)(C), a recipient may use funds to respond to the public health emergency for certain enumerated eligible uses, including "Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or

technical assistance,” (emphasis added). The definition of capital expenditures includes construction and improvements and

- (v) This ARPA grant award is modeled after the State of Iowa’s “vertical infrastructure” program which provided up to \$3 million in ARPA funds, to nonprofits to offset the costs for the construction, acquisition, site development, engineering and architectural work for new and rehabilitated buildings from which nonprofit organizations would provide expanded services.

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. IRS designation as a 501(c)(3) nonprofit entity;
 - 3. Certificate of Good Standing from the Office of the Secretary of State;
 - 4. Documentation, in the form of grant awards or letters of commitment of grant awards, evidencing that Subrecipient has sufficient financial resources, in addition to this ARPA grant, to complete the Project.
- (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 Mayor shall be deemed the City's authorized representative.

4. SUBRECIPIENT'S COMPENSATION AND METHOD OF PAYMENT

- (a) The City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment: (i) that Subrecipient has expended funds for eligible approved expenditures, (ii) that Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation, (iii) that Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City, (iv) that Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit "C" and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.
- (b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.
- (c) The aggregate of all payments made hereunder shall not exceed Nine Hundred Seventy-Five Thousand Dollars (U.S. \$975,000.00). City shall make said funds available to Subrecipient within thirty (30) days following approval of this Agreement by the City Council of the City of Pueblo and execution of this Agreement by the Subrecipient. The use of said funds shall be limited to expenditures to offset the costs for the rehabilitation, construction, development, engineering and architectural work for a rehabilitated building located at 219 W. Northern Ave. ("Premises") in the Bessemer neighborhood, from which the Subrecipient shall provide expanded services, as set forth in this Subrecipient Agreement. The grant funds shall not be distributed in a lump sum. Subrecipient shall provide the City with draw packages for the costs and expenses to rehabilitate the Premises, including construction materials, labor costs, payments to a general contractor and subcontractors and all other construction-related expenses.

- (d) 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.
- (e) 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 December 31, 2026 unless sooner terminated as herein provided.
- (b) The term of this Agreement shall be from the Effective Date set forth above to December 31, 2026 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.

EXHIBIT A SCOPE OF SERVICES

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.

A. 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.

SUBRECIPIENT'S SCOPE OF SERVICES

B. 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 the Subrecipient's work plan under this Agreement shall be as follows:

- (1) Use CLRF Funds to rehabilitate 219 W. Northern Ave., Pueblo, CO 81004 for use as a behavioral health and community center.
- (2) The work of revitalizing 219 W. Northern Ave. shall proceed as follows:
 - Phase I. Property renovation. Includes; entire flooring repair, electrical and plumbing installation, roof repair, window replacements, installation of refrigeration system, commercial kitchen set up, security systems, heating and cooling systems repair. Purchase of the insurance needed for the facility.
 - Phase II. Purchase technology, food storage systems, academic resources. Contract and lease spaces to other organizations.
 - Phase III. Open facility with a minimum of 8 services, programs and classes with food access for the Bessemer community.
- (3) Client data shall be collected by all participating organizations in the Unite Us platform.
- (4) The community center shall operate as a health, wellness, education, resource, and cultural hub for the Bessemer area with SCHRA acting as the coordinator of services brought into the community. SCHRA shall work toward developing place-based systems of care by leveraging partnerships to bring those systems to the Bessemer neighborhood. General service categories include:

- comprehensive supports around substance use prevention and recovery
- telehealth medicine
- crisis intervention
- life skills and job training for youth and adults
- wellness services such as yoga and meditation
- social resources such as transportation, food, and a space for community engagement

C. Budget \$975,000.

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 this 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: January 23, 2023

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 UNITED WAY OF PUEBLO COUNTY, INC., 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 NINE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$975,000) 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 United Way of Pueblo County, Inc. a Colorado nonprofit corporation ("United Way") for training programs, technology, office space and other resources for local nonprofits at its nonprofit Leadership, Empowerment and Development ("LEAD") Center (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 \$975,000 will be paid out of Project No. CI2113, the American Rescue Plan Act. The use of said funds shall be limited to expenditures to offset the costs for the construction, acquisition, site development, engineering and architectural work for a new or rehabilitated building from which United Way shall provide expanded services.

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:

A LEAD Center is necessary to meet the post-pandemic needs of local nonprofits. United Way recently conducted a survey of 19 partnering nonprofits and found that 42.1% of respondents saw a "significantly increased" community demand for their services. Respondents simultaneously reported their own struggles with increased expenses, staff burnout and budget reductions. About 63.2% of survey respondents felt their organization was the same to significantly worse compared to before the pandemic. Over 68% of survey respondents said "collaboration and service alignment" with other nonprofits would benefit their organizations. Survey respondents also requested increased opportunities for public outreach, training and grant writing services. United Way would provide these benefits through establishment of a LEAD center.

To be effective, the location of the LEAD Center must be centrally located, handicap accessible and near a bus transit route. United Way estimates that approximately 10,000 square feet of office space and conference room space would be necessary for future use by local nonprofits. United Way also proposes to relocate its operations into the LEAD Center.

United Way's proposed LEAD Center would be patterned after United Way of Larimer County's Shared Services Program, which offers human resources, grant writing, graphic design, communication and other "back-office services" to Larimer County nonprofits.

This ARPA grant award is also modeled after the State of Iowa's "vertical infrastructure" program which provided up to \$3 million in ARPA funds, to nonprofits to offset the costs for the construction, acquisition, site development, engineering and architectural work for new and rehabilitated buildings from which nonprofit organizations would provide expanded services.

The LEAD Center must be located in a Qualified Census Tract ("QCT") of the City of Pueblo.

31 CFR 35.6 provides that capital expenditures has the same meaning given in 2 CFR 200.1. Under 31 CFR 35.3, capital assets means:

(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

- i. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
- ii. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

31 CFR 35.6(b)(3)(ii)(C) authorizes grants to nonprofits for construction and land acquisition purposes. 31 C.F.R. Part 35 implements section 9901 of ARPA and its

amendments to the Social Security Act. Per 31 C.F.R. § 35.6(b)(3)(ii)(C), a recipient may use funds to respond to the public health emergency for certain enumerated eligible uses, including “Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance” (emphasis added). The definition of capital expenditures includes construction and improvements and land acquisition.

During the term of the attached Subrecipient Agreement, United Way shall be required to provide the following programming and achieve the following outcomes:

LEAD Center Programming

- Nonprofit Collaboration/Innovation Hub
- Technology/Resources
- Nonprofit LEAD Training Program
- Shared Resources
- Training Center for United Way's Community Impact Fellowship
- Office Space (below market rates)
- Regional Nonprofit Training Center

LEAD Center Outcomes

- Increase efficiencies and improve service delivery
- Leverage resources to address root causes of inequity
- Support community-wide solutions that result in systems change
- Economic impact, both directly and indirectly, through resources reinvested back into the Pueblo community and significant cost savings

FINANCIAL IMPLICATIONS:

United Way will receive \$975,000 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 United Way's LEAD initiative.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. ARPA - Subrecipient Agreement between City and United Way (updated) (1)

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO SIGN A SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND UNITED WAY OF PUEBLO COUNTY, INC., 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 NINE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$975,000) FROM PROJECT NO. CI2113 - AMERICAN RESCUE PLAN ACT, FOR PURPOSES THEREOF

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

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

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

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

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

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

SECTION 1.

The Subrecipient Agreement ("Agreement") dated February 13, 2023, between the City of Pueblo, a Colorado municipal corporation and United Way of Pueblo County, Colorado, Inc., a Colorado nonprofit corporation, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

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

SECTION 3.

Funds in the amount of \$975,000 are hereby authorized to be paid from Project No. CI2113 – American Rescue Plan Act, for purposes of providing financial support to United Way's Leadership, Empowerment and Development ("LEAD") Center.

SECTION 4.

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

described herein.

SECTION 5.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

SUBRECIPIENT AGREEMENT

THIS SUBRECIPIENT AGREEMENT ("Agreement") is made and entered into this 13th day of February, 2023 (hereinafter "Effective Date") by and between the City of Pueblo, a Colorado municipal corporation, hereinafter referred to as the "City" and United Way of Pueblo County, Colorado, Inc., a Colorado nonprofit corporation, hereinafter referred to as the "Subrecipient" or "United Way." City and Subrecipient/County 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 to offer training programs, technology, office space and other resources for local nonprofits at its nonprofit Leadership, Empowerment and Development (LEAD) Center (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 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. FACTUAL BASIS FOR THE GRANT AWARD

- (a) A LEAD Center is necessary to meet the post-pandemic needs of local nonprofits. Through continuous interactions and partnerships within the nonprofit community, it has been shared that additional support would be beneficial in aiding the ability of nonprofits to accomplish their missions and best meet the needs of clients. This is especially true in attempting to rebuild due to the effects of the COVID-19 pandemic on funding and need levels. In addition to anecdotal information, United Way recently conducted a survey of 19 partnering nonprofits and found that 42.1% of respondents saw a "significantly increased" community demand for their services. Respondents simultaneously reported their own struggles with increased expenses, staff burnout and budget reductions. About 63.2% of survey respondents felt their organization was the same to significantly worse compared to before the pandemic. Over 68% of survey respondents said "collaboration and service alignment" with other nonprofits would benefit their organizations. Survey respondents also requested increased opportunities for public outreach, training and grant writing services. United Way would provide these benefits through construction of a LEAD center. Survey participation remains open, and feedback is being collected on an ongoing basis. The Nonprofit LEAD Center would serve as a key resource for nonprofits, the people who work and volunteer with them. It would allow for shared meeting and office space, resources, and encourage the ability to work in partnership. Much more can be accomplished as a nonprofit community by working together than by working in silos. NPOs play a fundamental role in creating equitable and thriving communities, and by coming together it is possible to ensure all have the resources we need to be successful.
- (b) To be effective, the location of the LEAD Center must be centrally located, handicap accessible and near a bus transit route. Subrecipient estimates that approximately 10,000 square feet of office space and conference room space would be necessary for future use by local nonprofits. United Way also proposes to relocate its operations into the LEAD Center.
- (c) United Way's proposed LEAD Center would be patterned after United Way of Larimer County's Shared Services Program, which offers human resources, grant writing, graphic design, communication and other "back-office services" to Larimer County nonprofits.

- (d) This ARPA grant award is also modeled after the State of Iowa's "vertical infrastructure" program which provided up to \$3 million in ARPA funds, to nonprofits to offset the costs for the construction, acquisition, site development, engineering and architectural work for new and rehabilitated buildings from which nonprofit organizations would provide expanded services.
- (e) The LEAD Center must be located in a Qualified Census Tract ("QCT") of the City of Pueblo.
- (f) 31 CFR 35.6 provides that capital expenditures has the same meaning given in 2 CFR 200.1. Under 31 CFR 35.3, capital assets means:
- (1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
 - (i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
 - (ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).
- (g) 31 CFR 35.6(b)(3)(ii)(C) authorizes grants to nonprofits for construction and land acquisition purposes. 31 C.F.R. Part 35 implements section 9901 of ARPA and its amendments to the Social Security Act. Per 31 C.F.R. § 35.6(b)(3)(ii)(C), a recipient may use funds to respond to the public health emergency for certain enumerated eligible uses, including "Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance," (emphasis added). The definition of capital expenditures includes construction and improvements and land acquisition.
- (h) During the term of this Subrecipient Agreement, United Way shall be required to provide the following programming and achieve the following outcomes:

LEAD Center Programming

- Nonprofit Collaboration/Innovation Hub
- Technology/Resources

- Nonprofit LEAD Training Program
- Shared Resources
- Training Center for United Way's Community Impact Fellowship
- Office Space (below market rates)
- Regional Nonprofit Training Center

LEAD Center Outcomes

- Increase efficiencies and improve service delivery
- Leverage resources to address root causes of inequity
- Support community-wide solutions that result in systems change
- Economic impact, both directly and indirectly, through resources reinvested back into the Pueblo community and significant cost savings

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. IRS designation as a 501(c)(3) nonprofit entity;
 3. Certificate of Good Standing from the Office of the Secretary of State;
 4. Documentation, in the form of grant awards or letters of commitment of grant awards, evidencing that Subrecipient has sufficient financial resources, in addition to this ARPA grant, to complete the Project.
- (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 Mayor shall be deemed as City's authorized representative.

4. SUBRECIPIENT'S COMPENSATION AND METHOD OF PAYMENT

- (a) The City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment: (i) that Subrecipient has expended funds for eligible approved expenditures, (ii) that Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation, (iii) that Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City, (iv) that Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit "C" and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.
- (b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.
- (c) The aggregate of all payments made hereunder shall not exceed Nine Hundred Seventy-Five Thousand Dollars (U.S. \$975,000.00). City shall make said funds

available to Subrecipient within thirty (30) days following approval of this Agreement by the City Council of the City of Pueblo and execution of this Agreement by the Subrecipient. The use of said funds shall be limited to expenditures to offset the costs for the construction, acquisition, site development, engineering and architectural work for a new or rehabilitated building from which the Subrecipient shall provide expanded services, as set forth in this Subrecipient Agreement. If United Way uses ARPA funds to purchase real property for its LEAD Center, prior to disbursement of such funds, United Way shall provide the City with (i) a copy of a Real Property Appraisal Report issued by a Certified General Appraiser licensed by the Board of Real Estate Appraisers, Division of Real Estate, Department of Regulatory Agencies of the State of Colorado; and (ii) a copy of the Contract to Buy and Sell Real Estate in which the purchase price does not exceed the amount of the appraisal report.

- (d) 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.
- (e) 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 December 31, 2026 unless sooner terminated as herein provided.
- (b) The term of this Agreement shall be from the Effective Date set forth above to December 31, 2026 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

EXHIBIT A SCOPE OF SERVICES

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.

A. 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.

SUBRECIPIENT'S SCOPE OF SERVICES

B 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 the Subrecipient's work plan under this Agreement shall be as follows:

Establish a LEAD Center

Offer training programs, technology, office space and other resources for local nonprofits at Subrecipient's nonprofit Leadership, Empowerment and Development (LEAD) Center.

LEAD Center Programming

- Nonprofit Collaboration/Innovation Hub
- Technology/Resources
- Nonprofit LEAD Training Program
- Shared Resources
- Training Center for United Way's Community Impact Fellowship
- Office Space (below market rates)
- Regional Nonprofit Training Center

Subrecipient's performance under this Subrecipient Agreement shall be assessed by the following criteria:

LEAD Center Outcomes

- Increase efficiencies and improve service delivery
- Leverage resources to address root causes of inequity
- Support community-wide solutions that result in systems change

- Economic impact, both directly and indirectly, through resources reinvested back into the Pueblo community and significant cost savings

C. Budget \$975,000.

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 Agreement contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the Agreement 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 this 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: January 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Steven Meier, Director of Parks and Recreation

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A GRANT AGREEMENT FOR THE CITY OF PUEBLO FROM THE STATE OF COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE FOR THE BETTER LED SPACES GRANT, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING PROJECT NUMBER CI2314, AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$744,000 TO PROJECT NUMBER CI2314

SUMMARY:

This Ordinance approves and accepts the Better LED Spaces Grant awarded by the State of Colorado Department of Public Safety, Division of Criminal Justice which would improve public safety by bettering park lighting with upgrades and additions of LED lighting fixtures in City Park, Mitchell Park, and Ray Aguilera Park, which were determined to be three of the City's parks with the highest-crime incidents.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

In August 2022, the City submitted a grant seeking funding from the State of Colorado Department of Public Safety, Division of Criminal Justice relating to their Crime Prevention through Safer Streets Grant Program, which aims to make Colorado one of the safest states in the nation.

The Parks and Recreation Department collaborated with the Pueblo Police Department to identify parks that exhibit high crime statistics that would benefit from additional and upgraded LED lighting. Extensive data that supported where lighting can deter crime in our parks system was provided which determined that City Park, Mitchell Park, and Ray Aguilera Park would benefit the greatest from the additional LED park lighting. In mid-November, we received an email notifying us that we received a grant in the amount of \$744,000 to improve the lighting in these parks.

FINANCIAL IMPLICATIONS:

The Capital improvement fund will initially pay the expenses of the lighting, and will be reimbursed by the State of Colorado per the terms of the grant agreement, up to \$744,000.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance

ALTERNATIVES:

Should Council choose not to approve this grant agreement, the additional and upgraded LED lighting will not be installed and other funding sources must be found to cover the costs of improving the park lighting to deter crime in those neighborhoods.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 2022 Crime Prevention through Safer Streets grant agreement_01.23.23

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A GRANT AGREEMENT FOR THE CITY OF PUEBLO FROM THE STATE OF COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE FOR THE BETTER LED SPACES GRANT, AUTHORIZING THE MAYOR TO EXECUTE SAME, ESTABLISHING PROJECT NUMBER CI2314, AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$744,000 TO PROJECT NUMBER CI2314

WHEREAS, the City Council of Pueblo has the authority on behalf of the City of Pueblo to accept funding from the State of Colorado Department of Public Safety, Division of Criminal Justice, for public and municipal purposes; and

WHEREAS, the State of Colorado Department of Public Safety, Division of Criminal Justice has tendered a grant award in the total amount of \$744,000.00 upon conditions recited therein or incorporated therein by reference; and

WHEREAS, acceptance of the funding for the purposes for which it has been made is in the best interest of the City and will benefit the health, welfare, and safety of the citizens of the City; NOW, THEREFORE,

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

SECTION 1.

The Grant Award Letter (Intergovernmental Grant Agreement), DCJ Grant #: 2023-SS-23-9, ("Agreement") between the City of Pueblo, a Municipal Corporation, and the State of Colorado Department of Public Safety, Division of Criminal Justice, for the Better LED spaces project, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute the Agreement in the name and on behalf of the City of Pueblo, where the Mayor may execute the Agreement by electronic signature and such electronic signature shall be attributable to the Mayor and the City of Pueblo.

SECTION 3.

Project Number CI2314 is hereby established.

SECTION 4.

The grant award from the State of Colorado Department of Public Safety, Division of Criminal Justice, totaling \$744,000.00 is hereby approved and accepted in accordance with the Agreement.

SECTION 5.

All funds accepted pursuant to this Ordinance shall be budgeted and appropriated into Project Number CI2314. Said funds shall only be expended and used for this project.

SECTION 6.

Pursuant to the Agreement, the State of Colorado Department of Public Safety, Division

of Criminal Justice, may unilaterally amend the terms of the Agreement or the amount of grant funds pursuant to an Option Letter or Grant Funding Change Letter. In the event the State increases the grant award via such a letter, the additional funds may be accepted pursuant to this Ordinance and budgeted and appropriated into Project Number CI2314, where said funds shall only be expended and used for this project.

SECTION 7.

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

SECTION 8.

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

Action by City Council:

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

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

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

**GRANT AWARD LETTER
(Intergovernmental Grant Agreement)**

SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Department of Public Safety, Division of Criminal Justice	DCJ Grant Number 2023-SS-23-9
Grantee City of Pueblo	Federal Unique Entity Identifier (UEI) NJK3BNUDRHJ7
Grant Issuance Date (Start Date) The later of the Effective Date or January 1, 2023	Grant Expiration Date (End Date) June 30, 2023
Grant Amount State Fiscal Year 2022-2023: \$744,000 Total for all State Fiscal Years: \$744,000	Grant Authority (State Authority) The Division of Criminal Justice is authorized to disburse these funds by Colorado Revised Statute 24-33.503 and 507. C.R.S. 24-33.5-117. Crime prevention through the safer streets grants program
Grant Description The Better LED spaces project will improve public safety, by bettering park lighting with upgrades and additions of LED lighting fixtures. Investments will be most worthwhile in Pueblo's highest-crime neighborhoods. This strategy will not only act as a situational deterrent to crime, but will also improve community cohesion and pride, which in turn increases the willingness of residents to intervene in crime and cooperate with the police. Improvements to the physical environment of crime-susceptible areas will dissuade potential offenders. Improved lighting will send a message to potential offenders that the neighborhood no longer offers easy opportunities for crime.	
Grant Purpose To award grant funding to eligible recipients for the evaluation of and design of safer streets and neighborhood models that discourage crime, revitalize community image, and establish place-specific crime prevention strategies that account for geographic, cultural, economic, and social characteristics of the target areas.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Grant: - Exhibit A1, Sample Option Letter. - Exhibit A2, Sample Grant Funding Change Letter - Exhibit B, Grant Requirements. - Exhibit C, Special Conditions. - Exhibit D, Statement of Work. - Exhibit E, Budget. 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: - Exhibit C, Special Conditions. - The provisions of the other sections of the main body of this Agreement. - Exhibit B, Grant Requirements. - Exhibit D, Statement of Work. - Exhibit E, Budget.	

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

SIGNATURE PAGE**THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT****STATE OF COLORADO**

Jared S. Polis, Governor
Department of Public Safety
Stan Hilkey, Executive Director

DocuSigned by:



14DB46E240044E2...

By: ☐ Joe Thome, Director, or
☒ Debbie Oldenettel, Deputy Director

12/28/2022 | 8:59:04 AM PST
Date: _____

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

**STATE CONTROLLER
Robert Jaros, CPA, MBA, JD**

DocuSigned by:



363D688603F0405...

By: Lyndsay J. Clelland, Contract and Grant Coordinator, Division of Criminal Justice

12/30/2022 | 1:27:13 PM MST
Effective Date: _____

TABLE OF CONTENTS

SUMMARY OF GRANT AWARD TERMS AND CONDITIONS	1
SIGNATURE PAGE	2
1. GRANT.....	3
2. TERM	3
3. DEFINITIONS	4
4. STATEMENT OF WORK	6
5. PAYMENTS TO GRANTEE.....	6
6. REPORTING - NOTIFICATION	7
7. GRANTEE RECORDS	7
8. CONFIDENTIAL INFORMATION-STATE RECORDS.....	8
9. CONFLICTS OF INTEREST.....	9
10. INSURANCE	9
11. REMEDIES	9
12. DISPUTE RESOLUTION.....	10
13. NOTICES AND REPRESENTATIVES	10
14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION.....	10
15. GOVERNMENTAL IMMUNITY	10
16. GENERAL PROVISIONS	10
EXHIBIT A1, SAMPLE OPTION LETTER	1
EXHIBIT A2, GRANT FUNDING CHANGE LETTER	1
EXHIBIT B, GRANT REQUIREMENTS	1
EXHIBIT C, SPECIAL CONDITIONS	1
EXHIBIT D, STATEMENT OF WORK	1
EXHIBIT E, BUDGET.....	1

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 in accordance with **§16.D**.

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 or other funds used for this

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

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 total reimbursement payable under this Grant Award Letter that corresponds to the Work satisfactorily completed, as determined by the State, less payments previously made. 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. “**Budget**” means the budget for the Work described in **Exhibit E, Budget**.
- B. “**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.
- C. “**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.
- D. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- E. “**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.
- F. “**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.
- G. “**Grant Expiration Date**” means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- H. “**Grant Issuance Date**” means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- I. “**Exhibits**” exhibits and attachments included with this Grant as shown on the first page of this Grant
- J. “**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
- K. “**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.
- L. “**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.
- M. “**Initial Term**” means the time period between the Grant Issuance Date and the Grant Expiration Date.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

- N. “**Party**” means the State or Grantee, and “**Parties**” means both the State and Grantee.
- O. “**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.
- P. “**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.
- Q. “**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.
- R. “**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.
- S. “**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, PHI, PCI, Tax Information, 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.
- T. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- U. “**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.
- V. “**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.
- W. “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. This establishes a **procurement** relationship. The subcontractor provides goods or services for the benefit of the purchaser.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

- X. **“Subgrantee”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. This establishes a **grant** relationship. The beneficiary, not the purchaser, receives benefit from the work. There may be multiple tiers of subgrantees that do not include procurement transactions.
- Y. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- Z. **“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 E, Budget**. 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. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount for each State Fiscal Year shown on the first page of this Grant Award Letter. 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.

B. Reimbursement of Grantee Costs

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 and receives approval from 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).

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

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 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 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 federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting this Award. The State may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. 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. Grantee shall allow the State to perform all monitoring based on the State's risk analysis of Grantee. 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. If Grantee enters into a subcontract or subgrant then Grantee shall contain provisions permitting both Grantee and the State to perform all monitoring of that subcontractor or subgrantee.

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. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subgrantees and 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 Subgrantees or Subcontractors will or may receive the following types of data, Grantee or its Subgrantees or 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, Subgrantees and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns, Subgrantees and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, Subgrantees 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, Subgrantees 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 Subgrantees or 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.

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.

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 Subgrantees and Subcontractors maintain all insurance customary for the completion of the Work done by that Subgrantee or 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.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

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.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

D. Modification

The State may modify the terms and conditions of this Grant by issuance a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

- i. For each fiscal year of the Grant, the State shall issue an updated **Exhibit D, Statement of Work** and **Exhibit E, Budget** by Option Letter substantially equivalent to Exhibit A1, Sample Option Letter each fiscal year (July 1 through June 30). Work shall not begin on a new fiscal year until such an Option Letter is effective. The provisions of the Option Letter shall become part of and be incorporated into this Grant.
- ii. The State may, at the State's discretion, issue an updated **Exhibit D, Statement of Work** and **Exhibit E, Budget** by Option Letter substantially equivalent to **Exhibit A1, Sample Option Letter** to reflect changes during the fiscal year. The provisions of the Option Letter shall become part of and be incorporated into this Grant.
- iii. Grantee may terminate the grant if the Grantee cannot adhere to the approved **Exhibit D, Statement of Work** and **Exhibit E, Budget** as updated from time to time.
- iv. The State may, at the State's discretion, use an Option Letter or Grant Funding Change letter substantially equivalent to **Exhibit A1, Sample Option Letter** or **Exhibit A2, Sample Grant Funding Change Letter** to modify the grant agreement. If exercised, the provisions of the Option Letter or Grant Funding Change Letter shall become part of and be incorporated into the grant agreement.
- v. The State may increase or decrease the quantity of goods/services described **Exhibit D, Statement of Work** and **Exhibit E, Budget** based upon the rates established in the Grant. If the State exercises the option, it will provide written notice to Grantee at least 15 days prior to the end of the current grant term in a form substantially equivalent to **Exhibit A1, Sample Option Letter**.
- vi. The State may add or delete the goods/services described **Exhibit D, Statement of Work** and **Exhibit E, Budget** as long as the change does not change the overall scope of the approve grant. If the State exercises the option, it will provide written notice to Grantee at least 15 days prior to the end of the current grant term in a form substantially equivalent to **Exhibit A1, Sample Option Letter**.

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

Grantee shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, *et seq.*, C.R.S. Grantee shall 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 and available at <https://www.w3.org/TR/WCAG21/>.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

EXHIBIT A1, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Agreement Number of the Original Contract
Current Agreement Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option Agreement Number Insert CMS number or Other Agreement Number of this Option Agreement Performance Beginning Date Month Day, Year Current Agreement Expiration Date Month Day, Year

1. **OPTIONS:**

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Agreement
- C. Option to change the quantity of Services under the Agreement
- D. Option to modify Agreement rates
- E. Option to initiate next phase of the Agreement

2. **REQUIRED PROVISIONS:**

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. **OPTION EFFECTIVE DATE:**

- F. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE By: Name & Title of Person Signing for Agency or IHE Date: _____	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval Option Effective Date: _____
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Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

EXHIBIT A2, GRANT FUNDING CHANGE LETTER

State Agency Insert Department's or IHE's Full Legal Name	Grant Funding Change Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	Original Grant Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Grant Funding Change Letter Contract Number Insert CMS number or Other Contract Number of this Option Contract Performance Beginning Date Month Day, Year Current Contract Expiration Date Month Day, Year

1. GRANT FUNDING CHANGE

In accordance with **§Insert Section Number** of the Original Grant referenced above, the State Agency listed above commits the following funds to the grant:

A. The funding available for State Fiscal Year 20xx is Increased/Decreased by \$Amount of Change, because Insert Reason For Change.

B. The total funding avail for all State Fiscal Years as of the effective date of this Grant Funding Change Letter is shown as the current contract maximum above.

2. TERMINOLOGY

All terminology used in this Grant Funding Change Letter shall be interpreted in accordance with the Original Grant referenced above.

3. NO ORDER FOR WORK

This Grant Funding Change Letter modifies the available funding only and does not constitute an order or authorization for any specific services or goods under the Grant.

4. GRANT FUNDING CHANGE LETTER EFFECTIVE DATE:

The effective date of this Grant Funding Change Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE _____ By: Name & Title of Person Signing for Agency or IHE Date: _____
In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval Grant Funding Change Letter Effective Date: _____

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

EXHIBIT B, GRANT REQUIREMENTS

The following terms as used herein shall be construed and interpreted as follows:

1. AUDIT REQUIREMENTS

A. DUE DATE:

I. PROJECT START:

The Grantee must submit the most recent audit or financial review, including the corresponding management letter, to DCJ within thirty (30) days of request; and, if the most recent audit/financial review has not already been submitted to DCJ, it must be submitted within thirty (30) days of the start of this project.

II. PROJECT DURATION AND END:

The Grantee assures that it will procure an audit or financial review, incorporating this grant award, by an independent Certified Public Accountant (CPA), licensed to practice in Colorado. The audit or financial review incorporating this grant award must be completed and received by DCJ within nine (9) months of the end of the fiscal years that includes the end date of the grant, or within thirty (30) days of the completion of such audit or review, whichever is earlier.

B. REPORT/AUDIT TYPE:

I. If your entity expended \$750,000 or more in Federal funds (from all sources including pass-through subawards) in your organization's fiscal year (12-month turnaround reporting period), your organization is required to arrange for a single organization-wide audit conducted in accordance with the provisions of Title 2 C.F.R. Subpart F (§ 200.500 et seq.)

II. [NOT APPLICABLE TO SUBGRANTEES AS DEFINED IN §3.DD. "SUBGRANTEE"] If your entity expends less than \$750,000 in Federal funds (from all sources including pass-through subawards) in your organization's fiscal year (12-month turnaround reporting period), your organization is required to arrange for either an audit or financial review as follows:

- 1.** Grantees that have revenue greater than \$300,000 from all sources during the entity's fiscal year are required by DCJ to obtain a financial audit.
- 2.** Grantees that have revenue less than \$300,000 from all sources during the entity's fiscal year are required by DCJ to obtain a financial audit or financial review. A compilation is not sufficient to satisfy this requirement.

C. REPORT/AUDIT COSTS:

The Grantee accepts responsibility for the costs of a financial program audit to be performed by the Department of Public Safety in the event that the audit report or financial review:

- I.** does not meet the applicable federal audit or DCJ standards;

II. is not submitted in a timely manner; or,

III. does not provide an audit response plan with corresponding corrections made sufficient to satisfy any audit findings.

D. FAILURE TO COMPLY:

The grantee understands and agrees that DCJ or the federal awarding office (DOJ) may withhold award funds, or may impose other related requirements, if the grantee does not satisfactorily and promptly address outstanding issues from audits required by Part 200 Uniform Requirements, by the terms of this award, by the current addition of the DOJ Grants Financial Guide, or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

2. ADDITIONAL REPORTING REQUIREMENTS

In addition to quarterly report requirements these grant funds may have additional report requirements. The additional reports may include, but is not limited to, reporting progress and statistics directly into a federal Performance Management Tool (PMT).

3. FINANCIAL AND ADMINISTRATIVE MANAGEMENT

- A. The Grantee assures that fund accounting, auditing, monitoring, evaluation procedures and such records as necessary will be maintained to assure adequate internal fiscal controls, proper financial management, efficient disbursement of funds received, and maintenance of required source documentation for all costs incurred. These principles must be applied for all costs incurred whether charged on a direct or indirect basis.
- B. All expenditures must be supported by appropriate source documentation. Only actual, approved, allowable expenditures will be permitted.
- C. The Grantee assures that it will comply with the applicable Administrative Guide of the Division of Criminal Justice (Guide), located at the Division of Criminal Justice Grants website. However, such a guide cannot cover every foreseeable contingency, and the Grantee is ultimately responsible for compliance with applicable state and federal laws, rules and regulations. In the event of conflicts or inconsistencies between the Guide and any applicable state and federal laws, rules and regulations, such conflicts or inconsistencies shall be resolved by applicable state and federal laws, rules and regulations.

4. PROCUREMENT AND CONTRACTS

- A. Grantee assures that open, competitive procurement procedures will be followed for all purchases under the grant. All contracts for professional services, of any amount, and equipment purchases over five thousand dollars (per item, with a useful life of at least one year) must receive prior approval by the DCJ. Grantee shall submit Form 16 – Professional Services/Consultant Certification and/or Form 13 – Equipment Procurement Certification Form.
- B. Grantee may not assign its rights or duties under this grant without the prior written consent of the DCJ.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

5. AWARD CHANGE REQUESTS

- A. Grantee may request budget modifications by submitting a request to DCJ. DCJ reserves the right to make and authorize modifications, adjustments, and/or revisions to the Contract for the purpose of making changes in budget categories, extensions of grant award dates, changes in goals and objectives, and other modifications as described in the body of the Contract.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

EXHIBIT C, SPECIAL CONDITIONS

Special requirements of the law, program requirements, and other administrative requirements. These requirements apply to this agreement.

- I. Grant funds are to be utilized for improvements designed to decrease the incidence of crime and create safer streets.
- II. Eligible grantees are local Governmental agencies.
- III. Money from the grant award must enhance community safety both inside and outside of urban areas
- IV. Funds for this agreement cannot be used for the following:
 - Hiring law enforcement or code enforcement personnel or peace officers
 - Facial recognition purposes
 - Surveillance programs that utilize networks of sensory to detect gunshots, commonly referred to as a “ShotSpotter” program
 - License reader purposes
- V. Grant-Supported strategies must not displace homeless populations.
- VI. Grant-supported activities must not harm Communities of Color or other vulnerable populations.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

EXHIBIT D, STATEMENT OF WORK

The Statement of Work contained within the DocuSign Envelope is incorporated herein.

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

EXHIBIT E, BUDGET

The Budget and Budget Narrative contained within the DocuSign Envelope is incorporated herein.

EXHIBIT D – STATEMENT OF WORK

Project Summary:

Public safety will be improved by bettering park lighting with upgrades and additions of LED lighting fixtures. Investments will be most worthwhile in Pueblo's highest-crime neighborhoods. This strategy will not only act as a situational deterrent to crime, but will also improve community cohesion and pride, which in turn increases the willingness of residents to intervene in crime and cooperate with the police. Improvements to the physical environment of crime-susceptible areas will dissuade potential offenders. Improved lighting will send a message to potential offenders that the neighborhood no longer offers easy opportunities for crime.

Project Plan:

Public spaces, including parks, are essential to modern life, especially in urban areas. For these open spaces to be welcoming, and to feel safe for people using them, they must be sufficiently well-lit. Lighting is a situational crime-prevention measure that focuses on reducing opportunity and increasing risk through modification of the physical environment.

Based on crime data and the assessed likelihood that improved lighting would decrease crime the city has identified the following projects:

- City Park: Upgrading the existing 25 halogen fixtures with new LED light fixtures, plus add another 25 LED fixtures along the roadway.
- Mitchel Park: Installation of four additional LED streetlights along the streets and alley, plus fifteen additional LED streetlights in the interior of the park.
- Ray Aguilera Park: the addition of one streetlight along each side of the street plus add another eleven LED streetlights along the interior walkways and facilities.

Regardless of park size, safety begins at the perimeter. Lights will be placed on the adjacent streets, and in each park, with the intent to increase opportunities for informal surveillance and reduce the number of isolated places where crime can take place unseen. Lights will be improved or added only where genuinely needed, positioned to respond to problems of surveillance rather than arbitrary light pole placement. What is vitally important is that safety should be a primary consideration along main routes through parks and between the park perimeter and the street. No project areas have conservation nor preservation areas; artificial lighting will not trespass the habitats of wildlife.

It is notable that concurrent to improved lighting construction, the City will take other steps to discourage crime in the target areas:

- Public Works will take steps to lessen the impact of vacant, derelict, or problematic land uses nearby a target area.
- Pueblo Police Department will encourage 'Park Watch' schemes to encourage surveillance by local residents and merchants. PPD has an officer dedicated to Neighborhood Watch.
- Parks and Recreation will trim or remove landscaping, fences, walls, etc. that create dangerous areas of isolation. Clear sightlines allow park users to ability to verify the presence of persons which they might find threatening. They will also work to identify and remove movement predictors. Finally, people feel safer when they know where they are and how to get to where they want to go, signage will be improved.

Goals & Outcomes

GOAL 1

Goal 1 Improved lighting reduces crime at night.

Objective 1.1

Objective Violent crimes decrease
 Measurement Crime statistics of robbery, assault, and burglary
 Timeframe Incrementally, each quarter

Objective 1.2

Objective Property crimes decrease
 Measurement incidents of vandalism
 Timeframe Incrementally, each quarter

Objective 1.3

Objective Calls for service increase in Q1 and Q2 as informal surveillance increases and willingness to assist the police increases. Calls for service increase in Q1 and Q2 as informal surveillance increases and willingness to assist the police increases
 Measurement Number of calls for service
 Timeframe Each quarter

GOAL 2

Goal 2 Light trespass and pollution is minimized while maintaining desired standards of brightness.

Objective 2.1

Objective Minimize the emission of skyglow, glare, spill light, and over-lighting, indoor and outdoor lighting beyond the intended target
 Measurement Actual illumination levels will be evaluated by accredited professional bodies
 Timeframe Q1, may be completed as supplies are ordered

Objective 2.2

Objective New installations will have active controls to reduce illumination levels or extinguish lighting completely based on time of day or occupancy.
 Measurement Observation
 Timeframe Q1, may be completed as lights are installed

Objective 2.3

Objective The spectral content, or color, of light should be limited to only what is necessary for the task.
 Measurement Total emissions of short-wavelength or “blue” light are evaluated by accredited professional bodies
 Timeframe Q1, may be completed as lights are installed

Grantee: City of Pueblo
Project: Better LED Spaces

DCJ Grant #: 2023-SS-23-9

Exhibit E – Budget

	Grant Funds	Match Funds	Project Total
Personnel	\$0	\$0	\$0
Supplies & Operating	\$132,000	\$0	\$132,000
Travel	\$0	\$0	\$0
Equipment	\$612,000	\$0	\$612,000
Consultants / Contracts	\$0	\$0	\$0
Indirect	\$0	\$0	\$0
Total	\$744,000	\$0	\$744,000

Personnel: Budget & Budget Narrative Details													
Position Title	Annual Base Salary	Annual Base Salary To Be Paid By Grant Funds	% To Be Paid By Grant Funds	Annual Fringe	Annual Fringe To Be Paid By Grant Funds	% To Be Paid By Grant Funds	Total Annual Base Salary + Fringe	Total Base Salary + Fringe To Be Paid By Grant Funds	OT - Annual Base Salary	OT - Annual Base Salary To Be Paid By Grant Funds	OT - Annual Fringe	OT - Annual Fringe To Be Paid By Grant Funds	Total To Be Paid By Grant Funds (including overtime)
NA	\$0	\$0	0%	\$0	\$0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Budget Narrative and Justification:													
Personnel Total:	\$0	\$0	0%	\$0	\$0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Non-Personnel: Budget & Budget Narrative Details		
Budget Item	Amount To Be Paid By Grant Funds	Budget Narrative and Justification
SUPPLIES & OPERATING		
LED Upgrade - City Center	\$100,000	25 LED upgrades at \$4,000 each in City Center
LED Upgrade - Eastside	\$16,000	4 LED upgrades at \$4,000 each in Eastside
LED Upgrade - Bessemer	\$16,000	4 LED upgrades at \$4,000 each in Eastside
Supplies & Operating Total	\$132,000	
TRAVEL		
NA	\$0	
Travel Total	\$0	
EQUIPMENT		
Lights/Poles - City Center	\$300,000	25 light fixtures and poles at \$12,000 each, City Center. Price estimates include necessary trenching/boring, transformers and installation.

Lights/Poles - Eastside	\$180,000	15 new light fixtures and poles at \$12,000 each, Eastside. Price estimates include necessary trenching/boring, transformers and installation.
Lights/Poles - Bessemer	\$132,000	11 new light fixtures and poles at \$12,000 each, Bessemer. Price estimates include necessary trenching/boring, transformers and installation.
Equipment Total	\$612,000	
CONSULTANTS/CONTRACTS (PROFESSIONAL SERVICES)		
NA	\$0	
Consultants/Contracts Total	\$0	
INDIRECT		
NA	\$0	
Indirect Total	\$0	
Total Non-Personnel	\$744,000	

Certificate Of Completion

Envelope Id: 97E05310489A475C8F9380CF774F2020

Status: Completed

Subject: DCJ Grant 2023-SS-23-9; Better LED Spaces

Source Envelope:

Document Pages: 24

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

OAJJA Grants

AutoNav: Enabled

700 Kipling St

Enveloped Stamping: Enabled

Lakewood, CO 80215

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

cdps_dcj_oajjagrants@state.co.us

IP Address: 165.127.87.1

Record Tracking

Status: Original

Holder: OAJJA Grants

Location: DocuSign

12/28/2022 7:51:22 AM

cdps_dcj_oajjagrants@state.co.us

Security Appliance Status: Connected

Pool: FedRamp

Storage Appliance Status: Connected

Pool: CDPS Contracts and Grants

Location: DocuSign

Signer Events**Signature****Timestamp**

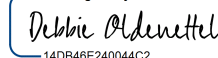
Debbie Oldenettel

Debbie.Oldenettel@state.co.us

Deputy Director, DCJ

Security Level: Email, Account Authentication
(None)

DocuSigned by:



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Sent: 12/28/2022 7:54:45 AM

Viewed: 12/28/2022 8:58:56 AM

Signed: 12/28/2022 8:59:04 AM

Signature Adoption: Pre-selected Style

Using IP Address: 165.127.87.120

Electronic Record and Signature Disclosure:

Accepted: 8/15/2022 3:01:53 PM

ID: b0c4163c-f100-4ad2-99f4-9e68c87552b7

Lyndsay J. Clelland

lyndsay.clelland@state.co.us

Contract, Grant and Compliance Coordinator

Division of Criminal Justice

Security Level: Email, Account Authentication
(None)

DocuSigned by:



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Sent: 12/28/2022 8:59:07 AM

Viewed: 12/30/2022 12:27:07 PM

Signed: 12/30/2022 12:27:13 PM

Signature Adoption: Pre-selected Style

Using IP Address: 184.96.176.203

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Nicholas A. Gradisar

ngradisar@pueblo.us

Mayor

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 12/30/2022 12:27:16 PM

Electronic Record and Signature Disclosure:

Accepted: 8/14/2022 8:21:33 AM

ID: 77b2f4c9-b436-44d2-b6ae-854c7d0d81d6

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Kayleight McKenzi kmckenzie@pueblo.us Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/30/2022 12:27:16 PM
Steven Meier smeier@pueblo.us Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/30/2022 12:27:16 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/28/2022 7:54:45 AM
Certified Delivered	Security Checked	12/30/2022 12:27:07 PM
Signing Complete	Security Checked	12/30/2022 12:27:13 PM
Completed	Security Checked	12/30/2022 12:27:16 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, CDPS Contracts and Grants (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact CDPS Contracts and Grants:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: sarah.white@state.co.us

To advise CDPS Contracts and Grants of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at sarah.white@state.co.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from CDPS Contracts and Grants

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to sarah.white@state.co.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with CDPS Contracts and Grants

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to sarah.white@state.co.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify CDPS Contracts and Grants as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by CDPS Contracts and Grants during the course of your relationship with CDPS Contracts and Grants.

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A PACOG MULTIMODAL TRANSPORTATION AND MITIGATION OPTIONS FUND, CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY (MMOF-ARPA-SLFRF) FUNDS GRANT, RELATING TO TRANSPORTATION PLANNING SERVICES, ESTABLISHING PROJECT NUMBER TP2241, BUDGETING AND APPROPRIATING FUNDS NOT TO EXCEED \$200,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Pueblo Area Council of Governments Multimodal Transportation and Mitigation Options Project, Project Number TP2241 is hereby established.

SECTION 2.

Funds in the amount of \$200,000 comprised of Multimodal Transportation and Mitigation Options Fund and Coronavirus State and Local Fiscal Recovery Funds awarded to the Pueblo Area Council of Governments (PACOG), are hereby budgeted and appropriated into the Multimodal Transportation and Mitigation Options Project.

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 effectuate the policies and procedures described herein.

SECTION 4.

This Ordinance shall become effective upon approval of the following actions:

1. The approval of a Resolution by the Pueblo Area Council of Governments approving the grant agreement and the amendment of the 2023 PACOG budget.
2. The approval of an Ordinance by City Council and a Resolution by PACOG amending the 2023 Delegation Agreement between the City and PACOG including the funding for the completion of the Multimodal Transportation and Mitigation Options Project.
3. 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

ORDINANCE NO.

AN ORDINANCE APPROVING AND ACCEPTING A PACOG MULTIMODAL TRANSPORTATION AND MITIGATION OPTIONS FUND, CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY (MMOF-ARPA-SLFRF) FUNDS GRANT, RELATING TO TRANSPORTATION PLANNING SERVICES, ESTABLISHING PROJECT NUMBER TP2241, BUDGETING AND APPROPRIATING FUNDS NOT TO EXCEED \$200,000 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

President of City Council

ATTEST

City Clerk

STATE OF COLORADO GRANT AGREEMENT FOR SLFRF

COVER PAGE

State Agency Department of Transportation	Agreement Number/PO Number 23-HTD-ZL-00064/491003100
Grantee PUEBLO AREA COUNCIL OF GOVERNMENTS	Agreement Performance Beginning Date The Effective Date
UEI/SAMS Number D57UDNFVRBL5	Initial Agreement Expiration Date March 31, 2025
Agreement Maximum Amount Initial Term State Fiscal Year 2023 \$200,000.00	Fund Expenditure End Date March 31, 2025
	Agreement Authority CRS §§43-1-106, 43-1-110, 43-1-117, 43-2-101(4)(c), 43-4-811(2), SB2018-001, SB 2021-260.
Total for All State Fiscal Years \$200,000.00	
Agreement Purpose The purpose of this Grant is for CDOT to disburse MMOF-ARPA-SLFRF Funds to the Grantee to conduct work within the provisions of this Grant. The work to be completed under this Grant by the Grantee is more specifically described herein.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: 1. Exhibit A, Statement of Work 2. Exhibit B, Sample Option Letter 3. Exhibit C, Budget 4. Exhibit D, Federal Provisions 5. Exhibit E, Agreement with Subrecipient of Federal Recovery Funds 6. Exhibit F, SLFRF Subrecipient Quarterly Report 7. Exhibit G, Sample SLFRF Reporting Modification Form 8. Exhibit H, Federal Provisions Personal Services Contracts (Civil Rights) In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: 1. Exhibit D, Federal Provisions 2. Exhibit H, Federal Provisions Personal Services Contracts (Civil Rights) 3. Exhibit E, Agreement with Subrecipient of Federal Recovery Funds 4. Colorado Special Provisions in §17 of the main body of this Agreement 5. The provisions of the other sections of the main body of this Agreement 6. Exhibit A, Statement of Work 7. Exhibit B, Sample Option Letter 8. Exhibit C, Budget 9. Exhibit F, SLFRF Subrecipient Quarterly Report 10. Exhibit G, Sample SLFRF Reporting Modification Form	
Principal Representatives For the State: Michael Snow Division of Transportation Development 2829 W. Howard Place Denver, CO 80204 Michael.snow@state.co.us For Grantee: Eva Cosyleon PUEBLO AREA COUNCIL OF GOVERNMENTS 229 WEST 12TH STREET PUEBLO, CO 81003-2810 ecosyleon@pueblo.us	

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.

SIGNATURE PAGE**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

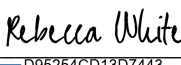
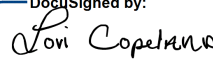
GRANTEE PUEBLO AREA COUNCIL OF GOVERNMENTS DocuSigned by:  2E1D7F669415456... Eva Cosyleon MPO Manager By: Name & Title of Person Signing for Grantee Date: <u>12/30/2022</u>	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director DocuSigned by:  D95254CD13D7443... By: Rebecca White – Director, Division of Transportation Development Date: <u>1/3/2023</u>
2nd State or Grantee Signature if Needed By: Name & Title of Person Signing for Signatory Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General N/A By: Assistant Attorney General Date: _____
In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD DocuSigned by:  BDA801C5CFAC478... By: Department of Transportation Effective Date: <u>1/4/2023</u>	

TABLE OF CONTENTS

	COVER PAGE	1
	SIGNATURE PAGE	2
1.	42.	43.
	64.	95.
	96.	117.
	128.	139.
	1410.	1411.
	1612.	1713.
	1814.	1915.
	1916.	2017.
	24	

1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Fund Expenditure End Date. 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 Insert Exhibit Number.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Grantee in a form equivalent to Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not.

The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by **12.A.i.**

i. Method and Content

The State shall notify Grantee of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in **§12.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Grantee 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 Grantee for a portion of allowable actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

F. Grantee's Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this 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. **“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.
- D. **“Breach of Agreement”** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- 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. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- J. **“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 for this Agreement.
- K. **“End of Term Extension”** means the time period defined in §2.D2.D.
- L. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- M. **“Extension Term”** means the time period defined in §2.C.
- N. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement Agreement, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to an Agreement or payments to an individual that is a beneficiary of a Federal program.
- O. **“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 is the subject of this Agreement.

- P. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- Q. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- R. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.* C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- S. **“Initial Term”** means the time period defined in §2.B2.B.
- T. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- U. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- V. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.
- W. **“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.
- X. **“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.
- Y. **“Recipient”** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- Z. **“Services”** means the services to be performed by Grantee as set forth in this Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.
- AA. **“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, PHI, PCI, Tax Information, 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 Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, 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.

- BB. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- CC. **“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.
- DD. **“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.
- EE. **“Subcontractor”** means third parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees of grant funds.
- FF. **“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. For the purposes of this Agreement, Grantee is a Subrecipient.
- GG. **“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.
- HH. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- II. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- JJ. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined 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 Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Agreement Maximum for each State Fiscal Year shown on the Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Grantee 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 Grantee 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 Grantee 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 this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Grantee shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within 30 days following the earlier to occur of Grantee'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 Grantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State funding

continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.E**.

v. Federal Recovery

The closeout 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. Matching Funds

Grantee shall provide Matching Funds as provided in **§5.A** and Exhibit A. Grantee shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Grantee'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 Grantee and paid into Grantee's treasury or bank account. Grantee represents to the State that the amount designated "Grantee's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Grantee 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 Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

D. Reimbursement of Grantee Costs

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in Exhibit A and **§5.A** for all allowable costs described in this Grant 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 with written approval from the State. The change shall not modify the total maximum amount of this Agreement, the maximum amount for any State fiscal year, or modify any requirements of the Work. The State shall reimburse Grantee for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit A. However, any costs incurred by Grantee 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. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget 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).

E. Close-Out

Grantee shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete closeout, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement 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. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement due to Grantee's failure to submit required documentation, then Grantee may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING – NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any Agreement having a term longer than three months, Grantee 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 Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Grantee 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 Grantee's ability to perform its obligations under this Agreement, Grantee shall, within ten days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement.

C. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

D. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance

Grantee 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. Grantee shall maintain such records for a period (the "Record Retention Period") of five years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. 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 Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Grantee shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Grantee's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Grantee's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

D. 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 Agreement or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use

by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. 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 Agreement 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 CJ; and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, 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 Agreement. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

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 Agreement, 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. Unless Grantee can establish that none of Grantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. 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. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof.

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.

9. **CONFLICTS OF INTEREST**

A. **Actual 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 Agreement. Such a conflict of interest would arise when a Grantee or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. **Apparent Conflicts of Interest**

Grantee 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, 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 Agreement.

C. **Disclosure to the State**

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. 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.

10. **INSURANCE**

Grantee shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. **Workers’ Compensation**

Workers’ compensation insurance as required by state statute, and employers’ liability insurance covering all Grantee or Subcontractor employees acting within the course and scope of their employment.

B. **General Liability**

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction Agreements require additional insured coverage for completed operations) required of Grantee and Subcontractors.

H. Primacy of Coverage

Coverage required of Grantee and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Grantee or the State.

I. 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 Grantee and Grantee shall forward such notice to the State in accordance with §14 within seven days of Grantee's receipt of such notice.

J. Subrogation Waiver

All commercial insurance policies secured or maintained by Grantee 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 Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (the "GIA"), Grantee shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Grantee shall ensure that the Subcontractor maintain at all times during the terms of this Agreement, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

For each commercial insurance plan provided by Grantee under this Agreement, Grantee shall provide to the State certificates evidencing Grantee's insurance coverage required in this Agreement within seven Business Days following the Effective Date. Grantee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Grantee's Subcontractor is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Grantee's execution of the Subcontractor. No later than 15 days before the expiration date of Grantee's or any Subcontractor's coverage, Grantee 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, Grantee shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement 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 §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Grantee 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 **§11**, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Grantee's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Grantee fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Grantee 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, Grantee shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and Subcontractors with third parties. However, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Grantee shall assign to the State all of Grantee's rights, title, and interest in and to such terminated orders or Subcontractors. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State's request, Grantee shall return materials owned by the State in Grantee's possession at the time of any termination. Grantee 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 Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee'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.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee 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 Grantee's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee 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 Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Grantee's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State **(i)** secure that right to use such Work for the State and Grantee; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in **§11** and the dispute resolution process in **§13** shall have all remedies available at law and equity.

13. **DISPUTE RESOLUTION**

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §13.A13.A fails to resolve the dispute within ten Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S. (the “Resolution Statutes”), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. **NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party’s principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. **RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

A. Work Product

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, Grantee 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 Grantee cannot make any of the assignments required by this section, Grantee 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, Grantee 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 Grantee 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 Grantee is under Agreement with the State at the time, Grantee 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. Grantee 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"). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee 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 Grantee

Grantee retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Grantee 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 Grantee under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Grantee Property"). Grantee Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. GENERAL PROVISIONS

A. Assignment

Grantee'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 Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontractors

Grantee shall not enter into any subgrant or Subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Grantee shall submit to the State a copy of each such subgrant or Subcontract upon request by the State. All subgrants and Subcontracts entered into by Grantee in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Grantee enters into a Subcontract or subgrant would also be considered a Subrecipient, then the Subcontract or subgrant entered into by Grantee shall also contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontract in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in **§17.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

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

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

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

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

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

M. Survival of Certain Agreement Terms

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

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Grantee. Grantee shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§ 17.A**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Grantee's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Indemnification

i. General Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (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 any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Grantee in violation of **§8** may be cause for legal action by third parties against Grantee, the State, or their respective agents. Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Grantee, or its employees, agents, assigns, or Subcontractors in violation of **§8**.

iii. Intellectual Property Indemnification

Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

U. Compliance with State and Federal Law, Regulations, and Executive Orders

Grantee 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 Grant.

V. Accessibility

- i. Grantee 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. Grantee 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. Grantee 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 Grantee'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 Grantee's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Grantee'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.

17. **COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all agreements except where noted in italics.

A. **STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. **FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials

shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Grantee shall perform its duties hereunder as an independent contractor, and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Grantee 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 Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee 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.

Grantee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Agreement and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate

termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee by deduction from subsequent payments under this Agreement, deduction from any payment due under any other Agreements, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

EXHIBIT A, STATEMENT OF WORK
2023 State MMOF Program Award
Pueblo Area Council of Governments MPO
2023 Travel Modeling

- **Subrecipient's unique entity identifiers** (provide **both** the DUNS and the SAMs UEI which is effective after 4/1/22): DUNS
 - DUNS: 84-1327303
 - SAM UEI: D57UDNFVRBL5
- Subawardee Name (as listed with DUNS account):
 - Pueblo Area Council of Governments
- Subawardee Address (as listed with DUNS account):
 - 229 West 12th Street, Pueblo, CO 81003
- **Amount of Subaward** (federal only): \$200,000
- Subaward Obligation/Action Date:
- **Subawardee Principal Place of Performance**: Pueblo County, Colorado
- Subaward Number (i.e., the entity's unique identifier):
- CFDA number: 20.205

Project Manager:

Eva Cosyleon
Metropolitan Planning Organization Manager
211 E. D Street
Pueblo, CO 81003
719-553-2248
ecosyleon@pueblo.us

Scope of Work:

The PACOG/MPO maintains a four-step travel demand model in TransCAD and will begin updating the model in 2023. This will include updating the current base year of 2020 as the baseline for Greenhouse Gas Model as well as developing a new base year of 2023 and modeling out to 2050. In addition to the standard update process of incorporating newer data on traffic counts, road network, land-use, and other model inputs, the model update includes other modeling requirements for plan updates to meet the Greenhouse Gas (GHG) Standard for Transportation Planning. These improvements may include the following:

- **Addition of Transit Fixed-Route Services and Multimodal network to model-** Integration of fixed-route transit and the existing multimodal network. Model will change from a mode-split model to a mode-choice model to reflect these choices.
- **Population Synthesizer-** Integration of population synthesizer, such as that used in the state model, in PACOG model with enhanced demographic sensitivity (i.e., age and gender variables)
- **Disaggregate Land Use and Demographic Depiction / Effects on Trip Generation:** This task would use additional capabilities from the population synthesizer to develop a disaggregate trip generation model that considers a wider set of variables for trip production, which may include age, employment status, auto ownership, and household type.
- **Trip Generation (or Equivalent) Sensitivity to Accessibility:** This task explores the notion of induced demand in Pueblo County and incorporates induced demand into the model, as appropriate.
- **Training on Model Enhancements:** This task would train PACOG/MPO staff on the new functionalities added to the travel model.
- **Assistance with the GHG Transportation Report:** Components of this report are described in the CDOT Modeling Requirements for Plan Updates to Meet Greenhouse Gas Standards memo.
- **Model calibration and validation, use of the standard data sources, and thorough documentation of model estimation, calibration, validation and operations:** All of these are requirements as part of the model development.

Estimated Costs

Travel Demand Model (TDM) Tasks	Cost
Model Update & Improvements:	\$200,000
Adding transit and multi-model network	
TDM/MOVES iterative process	
Integrating Population Synthesizer	
Disaggregate Trip Generation	
Training on Model Enhancements	
Total Cost	\$200,000

Budget

- **\$200,000 – MMOF Federal Recovery (ARPA), State MMOF Program**
- **No match requirement**

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Agreement Number of the Original Agreement
Current Agreement Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option Agreement Number Insert CMS number or Other Agreement Number of this Option Agreement Performance Beginning Date Month Day, Year Current Agreement Expiration Date Month Day, Year

1. OPTIONS:

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Agreement
- C. Option to change the quantity of Services under the Agreement
- D. Option to modify Agreement rates
- E. Option to initiate next phase of the Agreement

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Agreement, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

- A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE By: Name & Title of Person Signing for Agency or IHE Date: _____	In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Name of Agency or IHE Delegate-Please delete if agreement will be routed to OSC for approval Option Effective Date: _____
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EXHIBIT C, BUDGET

1. BUDGET BY US TREASURY EXPENDITURE CATEGORY

1.1 Expenditure Categories identified in Exhibit C will determine what is reported on as outlined in Exhibits D-G.

Project Number	Project Title	US Treasury Expenditure Category Number and Name	Budget
Total			

2. BUDGET BY FUNCTION

Intentionally left blank July, /2022.

3. EXPENDITURE CATEGORY MODIFICATIONS

- 3.1 Increases or decreases in any Expenditure Category must be requested and approved by the State Agency by using the SLFRF Expenditure Modification Form. This form can be found at: <https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab).

Exhibit D, Federal 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. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "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.

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “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.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “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.
- 2.1.13. “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.
- 2.1.14. “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.
- 2.1.15. “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:
 - 2.1.15.1. Salary and bonus;
 - 2.1.15.2. 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;

- 2.1.15.3. 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;
- 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
- 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
- 2.1.15.6. 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.
- 2.1.16. “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.
- 2.1.17. “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.
- 2.1.18. “Unique Entity ID Number” means the twelve-character alphanumeric ID assigned to an entity by SAM.gov to uniquely identify a business entity. Information on UEIs can be found at: sam.gov/content/duns-uei

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 terms or conditions that undermine efforts to stop COVID-19 or discourage compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY IDENTIFIER (UEI) 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. UEI. Grantee shall provide its UEI number to its Prime Recipient, and shall update Grantee’s information in SAM 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 F 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 UEI Number;
- 8.1.2.2. Subrecipient UEI Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization UEI 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 UEI 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).
 - 8.1.3.7.1. For projects over \$10 million:
 - 8.1.3.7.1.1. 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.

8.1.3.7.1.2. 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.

8.1.3.7.1.3. Whether the project prioritizes local hires.

8.1.3.7.1.4. 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 G – 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 E 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.

EVENT OF DEFAULT AND TERMINATION.

- 14.3. 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.
- 14.4. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 14.4.1. 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;
 - 14.4.2. 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;
 - 14.4.3. 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;
 - 14.4.4. 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
 - 14.4.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

Exhibit E, AGREEMENT WITH SUBRECIPIENT 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.

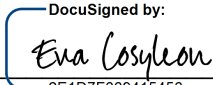
As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees 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 Pueblo Area Council of Governments

Authorized Representative: Eva Cosyleon

Title: MPO Manager

Signature:  2E1D7F669415456...

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 subaward is shown on page one of this Agreement. Subrecipient may use funds to cover eligible costs incurred, as set forth in Treasury's implementing regulations, during this period of performance.
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. The State will provide notice of such additional reporting requirements via Exhibit G – Reporting Modification Form.
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.

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

8. 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.
- v. 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.
- vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- ix. 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.
18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to 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 F, 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 G – SAMPLE SLFRF REPORTING MODIFICATION FORM

Grantee:		Grant Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:			

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 Grantee 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.

Grantee

Date

State Agency Grant Manager

Date

Exhibit H, Federal Provisions Personal Services Contracts (Civil Rights)

Terms defined in this Exhibit shall only apply to the section of this Exhibit in which the definition occurs. Defined terms used in this Exhibit without a definition shall have the definition given in the Contract.

1) **USDOT Order 1050.2A, Appendix A - Standard Title VI Assurances and Nondiscrimination Provisions** ***[Applies to all personal services contracts]***

“Acts” and “Regulations” means 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 Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964); and 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).

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:

- a) **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (“FHWA”), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
- b) **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.
- c) **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 nondiscrimination on the grounds of race, color, or national origin.
- d) **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 State or the 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 State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- e) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the nondiscrimination provisions of this Contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i) withholding payments to the contractor under the Contract until the contractor complies; and/or
 - ii) cancelling, terminating, or suspending the Contract, in whole or in part.
- f) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs 1.a through f 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 State or the 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 State to enter into any litigation to protect the interests of the State. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

2) USDOT Order 1050.2A, Appendix E - Pertinent Nondiscrimination Authorities
[Applies to all personal services contracts]

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 nondiscrimination statutes and authorities, including but not limited to:

Pertinent Nondiscrimination Authorities:

- a) 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;
- b) 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);
- c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- d) 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;
- e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- f) 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);
- g) 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);
- h) 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;
- i) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j) 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;
- k) 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, contractor must take reasonable steps to ensure that LEP persons have meaningful access to programs (70 Fed. Reg. at 74087 to 74100); and
- l) Title IX of the Education Amendments of 1972, as amended, which prohibits contractor from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

3) Discrimination, Harassment, and Workplace Violence Reporting
[Applies to all personal services contracts]

The State prohibits any form of workplace discrimination, harassment and retaliation. The State also has a zero tolerance policy with respect to workplace violence. If any of Contractor's agents, employees, assigns or Subcontractors believes they have been harassed, discriminated against, retaliated against or subjected to workplace violence by the State while working on or as part of this Contract, Contractor shall immediately notify the State's principle representative listed on the Cover Page of this Contract.

4) Assurances under the Disadvantaged Business Enterprise Program. 49 C.F.R. § 26.13(a)
[Applies only if the Contract is funded with FHWA or FTA funds]

The Contractor, sub recipient 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 State deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the Contractor from future bidding as non-responsible.

5) Prompt Payment by Contractors to Subcontractors. 49 C.F.R. § 26.29(a)
[Applies only if the Contract is funded with FHWA or FTA funds]

The Contractor shall pay Subcontractors and suppliers for all Work which has been satisfactorily completed within thirty calendar days after receiving payment for that Work from the State. For the purpose of this section only, Work shall be considered satisfactorily complete when the State has made payment for the Work. The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to Subcontractors and suppliers must be included in all subcontracts at every tier. The Contractor shall ensure that all Subcontractors and suppliers at every tier are promptly paid. If the Contractor or its Subcontractors fail to comply with this provision, the State will not authorize further progress payment for Work performed directly by the Contractor or the noncompliant Subcontractor until the required payments have been made. The State will continue to authorize progress payments for Work performed by compliant Subcontractors.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 23, 2023

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 AN AMENDMENT TO THE 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 amendment of 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 2023 Delegation Agreement between PACOG, and the City of Pueblo approved by Ordinance 10320, November 14, 2022.

BACKGROUND:

This Ordinance approves an amendment to 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 amended FY 2022-23 UPWP, that will be adopted by PACOG Resolution TBD on February 23, 2023. 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 \$200,000 from Multimodal Transportation and Mitigation Options fund, Coronavirus State and Local Fiscal Recovery (MMOF-ARPA-SLFRF) Funds for completion of the project. 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:

Resolutions for PACOG to approve this amendment to the 2023 Delegation Agreement and approve the grant agreement with CDOT for the Mitigation Options fund, Coronavirus State and Local Fiscal Recovery (MMOF-ARPA-SLFRF) Funds will be on their February 23, 2023 agenda.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

If City Council does not approve this Ordinance, PACOG will look at other options for the funding of this work to be completed.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. 2023 Delegation Agreement Amendment

ORDINANCE NO.

AN ORDINANCE APPROVING AN AMENDMENT TO THE 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 Amendment to 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 complete services pertaining to the Multimodal Transportation and Mitigation Options Project, 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 Amendment to the 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 upon approval of the following actions:

1. The approval of a Resolution by the Pueblo Area Council of Governments approving the grant agreement and the amendment of the 2023 PACOG budget.
2. The approval of an Ordinance by City Council and a Resolution by PACOG amending the 2023 Delegation Agreement between the City and PACOG including the funding for the completion of the Multimodal Transportation and Mitigation Options Project.
3. 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

**AMENDMENT TO AGREEMENT FOR TRANSPORTATION PLANNING
AND IMPROVEMENT SERVICES FOR 2023**

THIS Amendment to Agreement for Transportation Planning and Improvement Services for 2023 effective January 1, 2023 through December 31, 2023, approved by PACOG Resolution No. 2022-019, October 27, 2022 and Pueblo City Council Ordinance No. 10320 on November 14, 2022, by and between the Pueblo Area Council of Governments, hereinafter referred to as "PACOG" and the City of Pueblo, a Municipal Corporation, hereinafter referred to as "CITY".

RECITALS

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; and

WHEREAS, PACOG is eligible to receive funds to perform the work tasks for these activities and has entered into 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 and PACOG entered into an AGREEMENT FOR TRANSPORTATION PLANNING AND IMPROVEMENT SERVICES FOR 2023 ("AGREEMENT"), effective January 1, 2023 through December 31, 2023, approved by PACOG Resolution No. 2022-019, October 27, 2022 and City Council Ordinance No. No. 10320 on November 14, 2022 authorizing CITY to undertake such transportation planning and improvement projects; and

WHEREAS, CITY AND PACOG desire to amend 2023 contract to include an additional \$200,000 of funding from the Multimodal Transportation and Mitigation Options fund, Coronavirus State and Local Fiscal Recovery (MMOF-ARPA-SLFRF) Funds.

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

The 2023 Agreement for Transportation Planning and Improvement Services is hereby amended to include an additional \$200,000 of funding from the Multimodal Transportation and Mitigation Options fund, Coronavirus State and Local Fiscal Recovery (MMOF-ARPA-SLFRF) Funds received by PACOG for updating the PACOG/MPO travel demand model, developing new base year of 2023 and travel demand model estimates to 2050 that are already included within the 2023 Urban Planning Work Program.

2. SIGNATURES.

The persons signing this Amendment to Agreement for Transportation Planning and Improvement Services for 2023 on behalf of each party represent and warrant that such persons and their respective party have the requisite power and authority to enter

into, 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.

3. AMENDMENT MODIFICATIONS.

Except as modified by this Amendment, the Agreement for Transportation Planning and Improvement Services for 2023 will remain in full force and effect inuring to the benefit of and binding upon the City and PACOG.

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

_____	By _____
Secretary	Chairperson

ATTEST:

CITY OF PUEBLO

_____	By _____
City Clerk	Nicholas A. Gradisar, Mayor



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 23, 2023

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 LEASE BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND BLACK HILLS COLORADO ELECTRIC, LLC, A DELAWARE LIMITED LIABILITY FOR THE USE OF CITY-OWNED PARCEL NO. 536100025 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves a Lease between the City and Black Hills Colorado Electric, LLC ("Black Hills") of a .34-acre City-owned property, Parcel No. 536100025, located immediately northwest of the Black Hills Units 5 & 6, south of a BNSF-owned railroad spur, and west of the parking lot shared by Black Hills Energy and the Riverwalk.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Black Hills has submitted a request to lease a .34-acre City-owned property, Parcel No. 536100025, located immediately northwest of Black Hills Units 5 & 6, south of a BNSF-owned railroad spur, and west of the parking lot shared by Black Hills and the Riverwalk. Black Hills would like to use this parcel for a fenced parking lot and laydown yard for the storing of materials and equipment and to provide access to other portions of its property. The term of the lease is for one year, from March 1, 2023 to February 28, 2024 and the lease will automatically renew on an annual basis, unless terminated by the City or Black Hills, upon 60 days prior written notice. Annual renewals will not be effective after February 28, 2033, at which time the parties will be required to negotiate a new lease.

FINANCIAL IMPLICATIONS:

The City will receive an annual lease payment of \$1,200, payable in advance.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Should City Council not approve this Ordinance, the property will remain the responsibility of the City to manage and maintain.

RECOMMENDATION:

ATTACHMENTS:

1. Lease Agreement-Signed by John Vigil
2. Black Hills-Property Map Exhibit

ORDINANCE NO.

AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND BLACK HILLS COLORADO ELECTRIC, LLC, A DELAWARE LIMITED LIABILITY FOR THE USE OF CITY-OWNED PARCEL NO. 536100025 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Lease between the City of Pueblo, a Colorado municipal corporation and Black Hills Colorado Electric LLC, a Delaware limited liability company, for City-owned property, Parcel No. 536100025, dated February 14, 2023, a copy of which is attached hereto and incorporated herein by reference, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute the Lease on behalf of the City and the City Clerk is authorized 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 Lease Agreement to implement the transactions 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

LEASE AGREEMENT

This Lease Agreement ("Lease") is made as of this 14th day of February, 2023, by and between the City of Pueblo, a Colorado municipal corporation ("Landlord") and Black Hills Colorado Electric, LLC, a Delaware limited liability company ("Tenant"). Landlord and Tenant are sometimes referred to herein as a "Party" and collectively, as the "Parties."

ARTICLE 1 BASIC DATA

Each reference in this Lease to any of the terms contained in this Article or otherwise defined in this Lease will be construed to incorporate the definitions or data stated under that term, defined as follows:

1.1. Leased Premises: Parcel No. 536100025, located immediately northwest of Black Hills Units 5 & 6, south of a BNSF-owned railroad spur, and west of the parking lot shared by Black Hills and the Riverwalk (approximately .34 acre) (hereinafter "Leased Premises").

1.2. Term: One (1) year

1.3. Commencement date: March 1, 2023

1.4. Termination date: February 28, 2024

1.5. Annual Renewal: This Lease will automatically renew on an annual basis, unless terminated by the Landlord or Tenant, upon 60 days prior written notice. Annual renewals will not be effective after February 28, 2033, at which time the Parties will be required to negotiate a new lease.

1.6. Landlord address:

City of Pueblo
Attn: Mayor
1 City Hall Place, 2nd Floor
Pueblo, CO 81003

1.7. Tenant address:

Black Hills Colorado Electric, LLC
105 S. Victoria Ave.
Pueblo, CO 81003

ARTICLE 2 LEASE OF PREMISES

2.1 Leased Premises. In consideration of the mutual covenants and agreements herein contained, Landlord hereby agrees to lease to Tenant and Tenant agrees to lease from Landlord, the above-described Leased Premises, according to the terms and conditions set for in this Lease.

2.2. Surrender. On the Termination Date of this Lease, Tenant shall quit and surrender the Leased Premises in substantially the same condition as they were on the Commencement Date, reasonable wear and tear excepted. Within sixty (60) days following termination of this Lease, Tenant shall remove all personal property from the Leased Premises, provided that Tenant repairs any damage caused by such removal. Any items of personal property not removed by Tenant within sixty (60) days following the Termination Date of this Lease may be retained or disposed of by Landlord, at Tenant's expense.

ARTICLE 3 RENT

3.1 Rent. Tenant shall pay Landlord, in advance, annual rent in the amount of \$1,200.00.

3.2. Tenant's Tax Obligations. Tenant shall be solely responsible for the payment of its own tax obligations and agrees that said obligations shall not be paid by Landlord. Tenant's own tax obligations include, but are not limited to, sales and use taxes, personal property taxes and possessory interest real property taxes.

ARTICLE 4 USE

4.1. Use. Tenant may use the Leased Premises as a fenced parking lot and laydown yard for the storing of materials and equipment and to provide access to other portions of its property. Any change of use by the Tenant shall require the prior written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

4.2. Compliance with Laws. During the Term of this Lease, Tenant shall comply with all applicable laws, rules, regulations and ordinances of all federal, state, county and municipal authorities having jurisdiction over the Leased Premises.

ARTICLE 5 INDEMNIFICATION AND INSURANCE

5.1. Landlord's Indemnity. Landlord shall defend, indemnify and save harmless Tenant and its agents and employees against all costs (including, without limitation, reasonable attorneys' fees), damages or claims whether for personal injury, bodily injury or property damage, during the Term of this Lease, occurring on the Leased Premises, if caused by an act or omission by Landlord or its agents or employees.

5.2. Tenant's Indemnity. Tenant shall defend, indemnify and save harmless Landlord and its agents and employees against all costs (including, without limitation, reasonable attorneys' fees), damages or claims whether for personal injury, bodily injury or property damage, during the Term of this Lease, occurring on the Leased Premises, if caused by an act or omission by Tenant or its agents or employees.

5.3. Landlord's Insurance.

5.3.1. Liability Insurance. During the Term of this Lease, Landlord must maintain insurance covering Landlord's liability for ownership, occupation and use of the Leased Premises. Such insurance must provide limits of not less than \$1 million with respect to injury to any one

person, \$1 million with respect to any one occurrence and \$500,000 with respect to property damage arising out of any one occurrence.

5.4. Tenant's Insurance.

5.4.1. Liability Insurance. During the Term of this Lease, Tenant must maintain insurance covering Tenant's liability for occupation and use of the Leased Premises. Such insurance must provide limits of not less than \$1 million with respect to injury to any one person, \$1 million with respect to any one occurrence and \$500,000 with respect to property damage arising out of any one occurrence.

5.4.2. Worker's Compensation Insurance. Tenant shall maintain and keep in force an "all-employees" compensation insurance policy as required under the laws of the State of Colorado.

5.5. Waiver of Subrogation. The Parties to this Lease hereby release each other and their respective officers, agents, managers, directors, and employees from any and all claims and demands for loss, damages, expense or injury to any person which are caused by or result from any risk insured against under insurance policies carried or required to be carried by the Parties and in force at the time of any such loss, to the extent such loss is covered by such Parties' insurance policies. The Parties shall each obtain from their respective insurers waivers of all rights of subrogation, which the insurer of one Party might have against the other Party and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waivers of subrogation.

ARTICLE 6 DEFAULT AND REMEDIES

6.1. Tenant's Default. If Tenant fails to perform or observe any agreement or condition contained in this Lease, and such failure is not corrected within thirty (30) days after Tenant receives notice from Landlord of such failure, then, in addition to all other remedies available at law or in equity, Landlord has the right to terminate this Lease and recover possession of the Leased Premises in the manner prescribed by law.

6.2. Landlord's Default: In the event Landlord defaults in the performance of its obligations hereunder, and such failure is not corrected within thirty (30) days after Landlord receives notice from Tenant of such failure, then, in addition to all other remedies available at law or in equity, Tenant shall have the right to terminate this Lease by written notice to the Landlord.

6.3. Disputes. In the event of an unresolved dispute between Landlord and Tenant regarding the performance by either Party of an obligation or condition of this Lease, as a condition precedent to the filing of litigation, authorized representatives of Landlord and Tenant will use good faith and commercially reasonable efforts to resolve such disputes.

ARTICLE 7 CONDITION OF PREMISES

7.1 EXCEPT AS SPECIFICALLY SET FORTH IN THIS LEASE, IT IS UNDERSTOOD AND AGREED THAT LANDLORD IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTY OR REPRESENTATION 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 HABITABILITY, MERCHANTABILITY,

FITNESS FOR A PARTICULAR PURPOSE ZONING, PHYSICAL OR ENVIRONMENTAL CONDITIONS, UTILITIES, GOVERNMENTAL APPROVALS, COMPLIANCES OF THE LEASED PREMISES WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY DOCUMENT OR OTHER INFORMATION PROVIDED TO TENANT BY ANY OTHER PERSON, OR ANY OTHER MATTER OR THING REGARDING THE LEASED PREMISES.

7.2 The taking of possession of the Leased Premises by Tenant after the Commencement Date shall be conclusive evidence that the Tenant accepts the Leased Premises in its then present condition "As Is, Where Is, With All Faults" and that the Leased Premises are in good and satisfactory condition at the time of the commencement of this Lease.

ARTICLE 8 GENERAL PROVISIONS

8.1. Notices. Notices, consents, and demands required or permitted to be given hereunder must be in writing and be effective when received or refused, whether by hand delivery, nationally recognized overnight courier (with evidence of receipt or refusal), or U.S. Mail (return receipt requested), to the parties' respective addresses stated in Article 1 of this Lease, or to such other address as the parties designate by written notice to each other, and each party may identify additional parties to receive copies of same.

8.2. Waiver/Remedies. The failure of Landlord or Tenant to insist upon strict performance by the other of any of the provisions of this Lease or to exercise any option herein conferred will not be deemed as a waiver or relinquishment for the future of any such provision or option. Except as expressly provided otherwise herein, all rights and remedies provided for herein or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies by either party shall not preclude or waive its right to the exercise of any or all the others.

8.3. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance is, at any time or to any extent, invalid or unenforceable, the remainder of this Lease will not be affected thereby, and each such provision will be valid and will be enforced to the fullest extent permitted by law.

8.4. Attorneys' Fees. In the case of any litigation among the Parties under this Lease, the prevailing party will be entitled to reimbursement for its reasonable costs, including reasonable attorneys' fees, incurred in any such dispute.

8.5. Entire Agreement. This Lease contains the entire and exclusive agreement between the parties relating to the Leased Premises and may not be modified except by written instrument signed by the party to be bound thereby.

8.6. Venue and Waiver of Trial by Jury. In the event of any litigation arising under this Lease, exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District or County Court and each Party submits to the personal and subject matter jurisdiction of such court. Landlord and Tenant hereby waive a trial by jury in any action, proceeding, or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Leased Premises, and/or any claim of injury or damage.

8.7. Relationship of the Parties. Neither Party shall be, or hold itself out as, agent of the other or as joint venturers or partners under this Agreement.

8.8. Drafting of Agreement. 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.

8.9. Broker. Tenant and Landlord represent and warrant that they shall each pay their respective brokers or real estate agents, if any, in connection with this transaction. Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees), resulting from any claims that may be made against Tenant by any broker or other person claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of Landlord. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all claims, loss, liability, costs and expenses (including reasonable attorneys' fees), resulting from any claims that may be made against Landlord by any broker or other person claiming a commission, fee or other compensation by reason of the transaction contemplated hereby if the same shall arise by, through or on account of Tenant.

8.10. No Third-Party Beneficiaries. The provisions of this Lease 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.

8.11. Counterparts. This Lease may be executed in any number of 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.

8.12. Survival. Whether or not specifically noted within any section or provision of this Lease, any provision of this Lease which must survive termination of this Lease in order to be effective will so survive such termination.

IN WITNESS WHEREOF, this Lease is executed and delivered as of the date first above written.

LANDLORD
City of Pueblo, Colorado
a Colorado municipal corporation

By: _____
Name: Nicholas A. Gradisar, Mayor

Date: _____

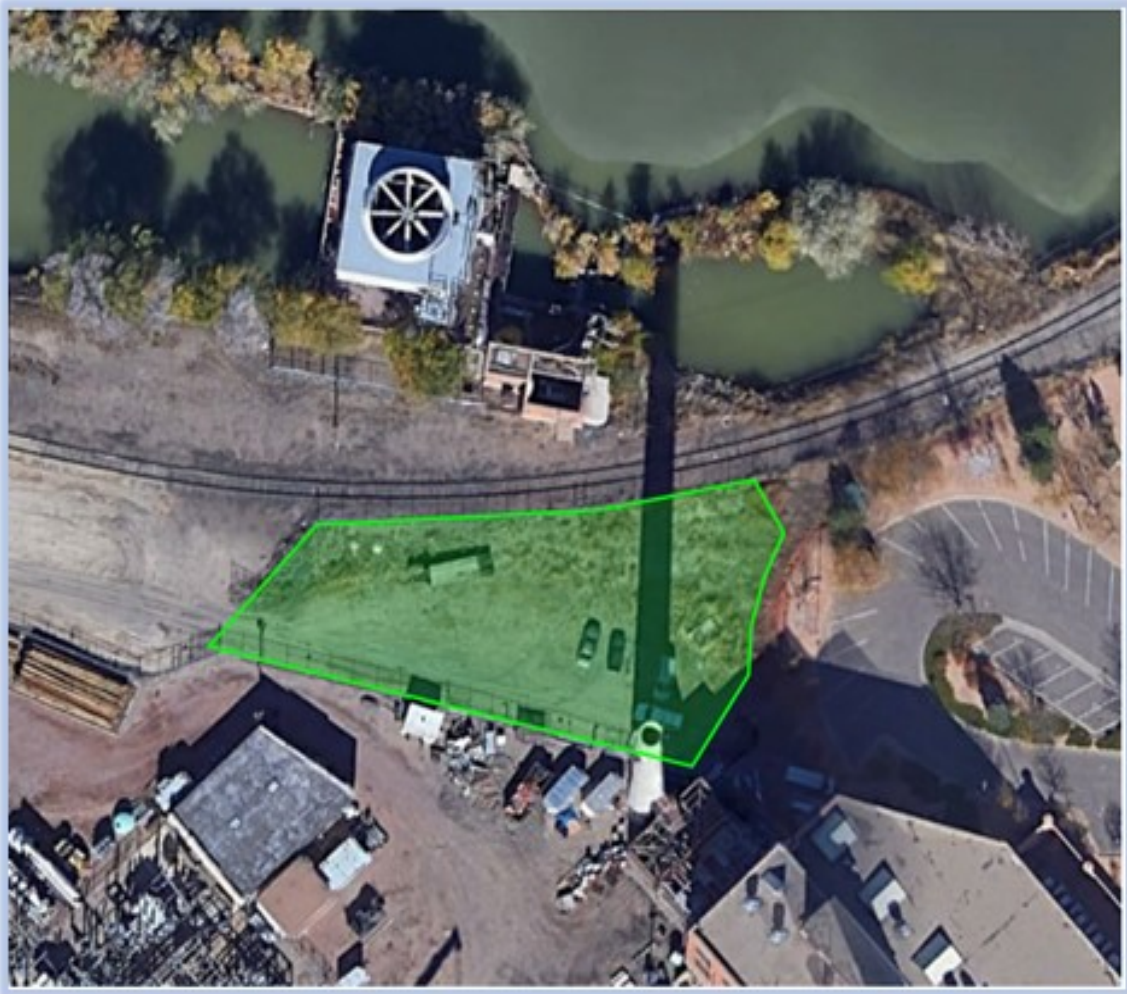
TENANT
Black Hills Colorado Electric, LLC
a Delaware limited liability company

By: _____
Name: John Vigil

Title: Senior Program Manager, Community Affairs

Date: 01/05/2023

Property Map Exhibit





Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Lori Pinz, Director Information Technology

SUBJECT: AN ORDINANCE APPROVING AN EXCHANGE AGREEMENT BETWEEN THE CITY OF PUEBLO AND BIF IV INTREPID OPCO, LLC, ALLOWING FOR THE USE OF A CITY-OWNED CONDUIT FOR THE INSTALLATION OF INTREPID'S FIBER OPTIC PATHWAY IN EXCHANGE FOR TWELVE (12) FIBER STRANDS FOR THE CITY'S EXCLUSIVE USE, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves the attached Exchange Agreement between the City of Pueblo and BIF IV Intrepid OpCo, LLC, allowing for the use of a city-owned conduit in exchange for twelve (12) fiber strands for the City's exclusive use.

PREVIOUS COUNCIL ACTION:

City entered into a License Agreement dated April 11, 2022, granting Intrepid the right to install facilities upon or within the corporate boundaries of the City to provide Telecommunications Services.

BACKGROUND:

Intrepid is installing fiber-optic infrastructure allowing broadband providers to provide high-speed internet services to the home and businesses in our community. Intrepid desires to access, occupy, and utilize space within a conduit owned by the City which traverses the 8th Street Bridge in exchange for twelve (12) fiber strands that will be used to expand or provide network connectivity and services for the City of Pueblo's departments. These strands will be for the exclusive use of the City's Information Technology Department. The City will access the use of these fibers at 317 N. Main where the City's network already has a presence.

FINANCIAL IMPLICATIONS:

This is a no-cost agreement.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If City Council does not approve this Ordinance, the City of Pueblo will not receive the dedicated fiber strands, and Intrepid will have to explore alternative options for their buildout of high-speed internet to the eastside community.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Pueblo Exchange Agreement 8th Street
2. Exchange Agreement - Exhibits A and B
3. Exhibit_Map

ORDINANCE NO.

AN ORDINANCE APPROVING AN EXCHANGE AGREEMENT BETWEEN THE CITY OF PUEBLO AND BIF IV INTREPID OPCO, LLC, ALLOWING FOR THE USE OF A CITY-OWNED CONDUIT FOR THE INSTALLATION OF INTREPID'S FIBER OPTIC PATHWAY IN EXCHANGE FOR TWELVE (12) FIBER STRANDS FOR THE CITY'S EXCLUSIVE USE, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, BIF IV Intrepid OpCo, LLC ("Intrepid") desires to access, occupy, and utilize space within a conduit owned by the City traversing the 8th Street Bridge in Pueblo, Colorado for the purpose of installing, constructing, operating, and maintaining fiber

WHEREAS, the City desires to utilize and operate a fiber pathway along a planned running line cable to be constructed and installed by Intrepid at the Data Center at 317 N. Main Street, Pueblo, Colorado, and Intrepid agrees thereto; NOW, THEREFORE,

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

SECTION 1.

The Exchange Agreement ("Agreement") between the City of Pueblo, a Municipal Corporation, and BIF IV Intrepid OpCo, LLC for the exchange of fiberoptic conduit space in return for twelve strands of fiber, 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, where the Mayor may execute the Agreement by electronic signature and such electronic signature shall be attributable to the Mayor and the City of Pueblo.

SECTION 3.

The officers and staff of the City are authorized to perform all acts consistent with the intent of this Ordinance to implement the transaction described herein.

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT (the "Exchange Agreement") is made and entered into as of this 5th day of January 2023 (the "Effective Date") by and between BIF IV Intrepid OpCo, LLC, a Delaware limited liability company ("Intrepid"), and the City of Pueblo, a Municipal Corporation ("City") (collectively the "Parties" and individually a "Party").

WHEREAS, Intrepid and City entered into a License Agreement dated April 11, 2022 (the "License Agreement") pursuant to which the City granted the right to Intrepid to install Facilities upon or within the corporate boundaries of the City upon certain terms and conditions in order for Intrepid to provide Telecommunications Services ("Facilities" and "Telecommunications Services" defined as set forth in the License Agreement);

WHEREAS, Intrepid desires to access, occupy, and utilize space within a conduit owned by the City traversing the 8th Street Bridge in Pueblo, Colorado, described and mapped in Exhibit A, attached hereto and incorporated herein by reference, (the "Pathway") for the purpose of installing, constructing, operating, and maintaining fiber during the term of the License Agreement;

WHEREAS, City is authorized to and has agreed to grant the right to Intrepid to access, occupy, and utilize space within the Pathway for the purpose of installing, constructing, operating, and maintaining Pathway Fiber (as defined in Section 2) pursuant to the terms of this agreement;

WHEREAS, City desires to utilize and operate a fiber pathway along a planned running line cable to be constructed and installed by Intrepid at the Data Center at 317 N. Main Street, Pueblo, Colorado, and Intrepid agrees thereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Exchange Agreement, the parties agree as follows:

1. **Relation to License Agreement.** This Exchange Agreement does not extend the terms of the License Agreement nor otherwise grant Intrepid additional rights to the public right of way or City property. The Pathway conduit is solely owned by the City and not part of the public right of way. This Exchange Agreement only grants Intrepid the limited right to use the Pathway in accordance with the terms hereof.
2. **License to Intrepid.**
 - a. Subject to Intrepid's compliance at all times with all of the terms and conditions of this Exchange Agreement, all applicable local, state, and federal laws, and further subject to the City's lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit, and building code requirements) and the City's prior and superior right to usage for municipal purposes, City hereby grants to Intrepid a non-exclusive revocable license to reasonably construct, install, operate, and maintain not more than one (1) fiber optic cable run within the Pathway (the "Pathway Fiber"), where the Pathway is owned solely by the City. The City will provide Intrepid access to and use of the Pathway for the

construction, installation, operation, and maintenance of Intrepid's Pathway Fiber no later than thirty (30) days after the Effective Date of this Exchange Agreement.

- b. The license granted herein to make reasonable use of the Pathway shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right to make or grant a similar use of the Pathway to any other person or entity. City may alter, move, or otherwise change the Pathway without the consent of Intrepid and without causing a default of this agreement. Said changes shall not in any way make City liable to Intrepid.
- c. The City retains the following rights with regards to this license:
 - i. To use, control, and regulate the use of City rights of way and the areas above, below, and surrounding the Pathway; and
 - ii. To require the removal or relocation of any of the fiber installed by Intrepid within the Pathway, in the sole judgment of the City for any public or municipal purpose or project; and
 - iii. To terminate and revoke the license at will, with or without cause, upon sixty (60) days prior written notice to Intrepid. Upon revocation of the license by City, the term of this agreement shall end, Intrepid's rights to use the Pathway shall cease, and City's right to use Intrepid's fiber detailed in Section 4 below shall terminate.
- d. The license granted herein to make reasonable use of the Pathway shall not be deemed to grant authorization to construct or operate Wireless Communications Facilities or other Facilities beyond the scope of the License Agreement, as those terms are defined therein. Authorization for same must be obtained through a separate agreement specifically permitting the use.

3. **Use of Pathway.**

- a. Pathway Fiber shall be located, installed, and maintained by Intrepid so that there is no danger to the lives, health, or safety of persons, nor interference with any public improvements of the City or other governmental entities (including any storm water, sanitary sewer or water utilities or enterprises) in place or that may be put in place, nor shall the location, installation, or maintenance of the Pathway Fiber hinder or obstruct the use of the streets or other public ways for their public purposes, including but not limited to vehicular and pedestrian traffic. All Pathway Fiber shall be installed and maintained so as to cause minimum interference with the rights and reasonable convenience of property owners adjoining the Pathway.
- b. Prior to construction, installation, operation, and maintenance of Pathway Fiber in the Pathway, Intrepid shall furnish to the City the general schematic plans for the Pathway Fiber. In addition, Intrepid shall assess and report on the impact of its proposed construction on the City environment. Such plans may be reviewed by the City to ensure: (i) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (ii) that aesthetic and good planning principles have been given due consideration; and (iii) that adverse impact on the environment has been

minimized. Intrepid shall comply with all regulatory requirements of the City and shall incorporate all other reasonable changes to its plans requested by the City.

- c. All construction, installation, operation, and maintenance of Intrepid's Pathway Fiber in the Pathway shall be the responsibility of Intrepid and paid for solely by Intrepid. All construction, excavation, maintenance, and repair work done by Intrepid shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to the City, the general public, and individuals. Intrepid shall be liable for any damage to the City or City owned property caused by Intrepid. All such construction, excavation, maintenance, and repair work done by Intrepid shall comply with all applicable codes of the City and the State of Colorado, and Intrepid shall be responsible for obtaining all applicable permits and licenses. The City shall have the right to inspect all construction or excavation work to ensure compliance with applicable codes and permits, and may order Intrepid to perform corrective work. All public and private property disturbed by Intrepid's activities shall be promptly restored by Intrepid at its own expense to substantially former condition, subject to inspection by the City's Director of Public Works or their designee and compliance by Intrepid with any reasonable remedial action required by said official pursuant to the inspection. Intrepid shall be liable to City for the full cost of restoring any public property not promptly remedied by Intrepid.
- d. Intrepid shall, upon reasonable notice and at its sole cost and expense, remove and relocate its Pathway Fiber from the Pathway in such manner as City may at any time require, for the purpose of facilitating the construction, reconstruction, maintenance, repair, or change in grade of any street, sidewalk, public improvement or other City project, or for the purpose of promoting the efficient operation of any such public improvement or project, or for the purpose of facilitating the vacation and/or redevelopment of a right of way by the City. In the event Intrepid fails to act within a reasonably allocated time, the City may cause Intrepid's Pathway Fiber to be relocated, and Intrepid shall be liable to City for the costs thereof. In the event City causes Intrepid's Pathway Fiber to be relocated after Intrepid's failure to act within a reasonable time, City shall be held harmless for any damages incurred to Intrepid's Pathway Fiber or other property during such relocation.
- e. In the event Intrepid abandons the Pathway Fiber, or a certain part thereof, under the terms of this Exchange Agreement, or fails to use it for a period of one (1) year, or in the event the term of this Exchange Agreement or the License Agreement expires or is terminated or is canceled for any reason, then Intrepid shall remove its Pathway Fiber, or the abandoned portions thereof in the case of a partial abandonment, at its expense. As an alternative to removal, if mutually agreed to by Intrepid and the City, the ownership of the Pathway Fiber, or its abandoned portions, may be transferred to the City, in which event, all obligations and liabilities of Intrepid under this Exchange Agreement in connection with the portion of the Pathway Fiber so transferred to City shall terminate.
- f. The license granted by this agreement confers only the right to make reasonable use of the Pathway for Intrepid's provision of Telecommunication Services and it is expressly conditioned that Intrepid shall not operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer to provide "cable

services" as that term is defined under federal law (47 USC §522(6)), without proper local, state, and federal authorization, as required by law. Additionally, Intrepid shall contractually prohibit any customer of Intrepid from using its network, including the Pathway Fiber, in Pueblo for the provision of cable services unless and until such customer has received such proper legal authorization to provide cable services.

- g. Legal title to the Pathway and all other conduit and municipal property shall remain with the City, and nothing herein shall be deemed to relinquish City's right, title, interest, or control of the same.

4. **Grant to City.**

- a. In consideration for the revocable license allowing Intrepid's use of the Pathway, and as a portion of the compensation to the public for special use of such municipal property, Intrepid grants to City an indefeasible right to use twelve (12) fiber strands, to be approved and accepted by City, (the "Recipient Fibers") in its planned running line cable from a demarcation point at the Intrepid Data Center at 317 N. Main Street, Pueblo, Colorado to a manhole, to be placed by Intrepid, within 500 feet of the intersection of 8th Street and Erie Street in Pueblo, Colorado, described and mapped in Exhibit B, attached hereto and incorporated herein by reference. Intrepid will provide the City with a handoff to the Recipient Fiber in said manhole. City's right to the Recipient Fiber shall only terminate upon the termination or expiration of this agreement. Each individual fiber strand in the Recipient Fiber will comply with generally accepted industry standards. Intrepid agrees to deliver to City the Recipient Fibers within thirty (30) days of the Effective Date.
- b. Legal title to Intrepid's fiber, including fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers, and other hardware needed or used to fasten or support the cables shall be held by Intrepid. Nothing contained in this agreement, nor any use, however extended, of the Recipient Fibers, nor any placement of City's facilities shall create or vest in City any right, title, or interest in or to any real or personal property owned by Intrepid, other than the indefeasible right to use the Recipient Fibers.
- c. City shall have the right to pledge its rights and privileges contained in this agreement to secure financial obligations to third parties, without the need to obtain consent from Intrepid.
- d. City shall be permitted to connect the Recipient Fibers to, and use the fiber for the benefit of, City and all of City's instrumentalities, departments, legal enterprises, and affiliated entities without limitation. This authorization specifically allows City to use Recipient Fibers to connect City facilities to any exchange or interexchange carrier or to the internet backbone. City may connect the Recipient Fibers to other governmental entities, or allow use by other governmental entities, for governmental purposes.
- e. Intrepid will provide City with access to the Recipient Fibers at such splice points on the system route as reasonably requested by City, subject only to the requirements of this

agreement and provided that such access points do not materially interfere with any of Intrepid's Facilities.

- f. City shall have no limitations on the types of electronics or technologies employed to utilize the Recipient Fibers subject to commercially reasonable safety procedures.
- g. If City desires to connect other fiber optic cables to the Recipient Fibers or create connections with buildings or other structures along the network route, Intrepid will cooperate with City for City to acquire access. City shall have the right to place its own connecting facilities within public rights of way between the Recipient Fibers and such adjoining properties. However, at the request of City, Intrepid will place connecting facilities within public rights of way between the Recipient Fibers and such adjoining properties, subject to the ability to do so in accordance with the License Agreement. Such placement of connecting facilities by Intrepid at the request of City shall be at City's cost and expense.

5. **Maintenance of Recipient Fiber.**

- a. Intrepid shall maintain and repair or replace the Recipient Fibers so as to assure continuous conformity of the Recipient Fibers with their respective operating specifications.
- b. Intrepid shall respond in a timely manner to any interruption of service or failure of the Recipient Fibers to operate in accordance with this agreement. Intrepid will immediately notify City upon learning of any material damage or outage to the Recipient Fiber. Intrepid will be responsible for the repair of the Recipient Fiber up to the connection with City-owned fiber.
- c. Intrepid shall splice the Recipient Fibers so as to assure continuing conformity with City specifications, including, without limitation, conducting surveillance of such facilities, location of faults, splicing and splice testing associated with any restoration, and procurement of replacement cable used in restoration. Splice configuration shall be provided to Intrepid by City.
- d. Intrepid shall be responsible for routine maintenance of all cable in its network and costs thereof not specifically due to requirements of City.
- e. If, during the term of this agreement, (i) Intrepid is required by a governmental authority with jurisdiction to relocate any portion of its network and such relocation affects the Recipient Fibers, including any condemnation or taking under the power of eminent domain, or (ii) with City's consent upon Intrepid's request, Intrepid may relocate such portion of its network and shall provide City sixty (60) days prior written notice of any such relocation, if possible. Intrepid may determine the extent of, the timing of, and methods to be used for such relocation, provided that any such relocation shall be constructed and tested in accordance with the specifications and requirements set forth herein. Nothing in this section, however, shall be construed to limit or restrict City in

requiring specific relocation arrangements, physical locations, or materials in connection with City's control over public rights of way, including excavation permits.

6. **Term and Termination.**

- a. The term of this Exchange Agreement shall be coterminous with the term of the License Agreement. Should the License Agreement be renewed or otherwise extended, this Exchange Agreement will be automatically extended for the same term and continue to run conterminously.
- b. City may terminate this Exchange Agreement at any time upon sixty (60) days' prior written notice to Intrepid. Intrepid may terminate this Agreement at any time upon one hundred eighty (180) days' prior written notice to the City. Upon termination of the License Agreement for any reason, this Exchange Agreement shall automatically terminate. The indemnification provisions of Section 8(a) of this agreement shall survive termination.
- c. Upon expiration of the term of this agreement or termination, all rights of City to the Recipient Fibers shall concurrently terminate, and City shall promptly thereafter disconnect its equipment, power, and other items from the Recipient Fibers.

7. **Remedies.**

- a. In the event of any breach of the terms of this agreement by either party, the non-breaching party shall have the right to terminate this agreement, but such remedy shall not be exclusive of any other remedies available to the non-breaching party at law or in equity. In the event either party is required to commence an action to enforce its rights under this agreement or to obtain the remedies provided above and substantially prevails therein, such party shall be entitled to recover its costs.
- b. Before terminating the agreement for cause on account of any default, the non-defaulting party shall provide the party in default with written notice of the default and afford such party thirty (30) days within which to cure the default. Should the defaulting party make continuous good faith efforts to cure within the thirty (30) day period but be unable to cure the default within said time, the defaulting party shall have an additional thirty (30) days to cure.

8. **Indemnification and Insurance.**

- a. Intrepid shall install, construct, maintain, and operate its Pathway Fiber in a safe manner providing reasonable protection against injury or damage to any and all persons or property. Intrepid specifically agrees to indemnify, defend, and hold City harmless from all claims, costs, demands, suits, reasonable expert witness and attorneys' fees, court costs, and other reasonable costs of defense and judgments to the extent the same arise, in whole or in part, from Intrepid's negligent acts or omissions of failure to comply with the provisions of this Exchange Agreement, and from all damages or penalties to the extent arising out of the installation, construction, operation, or maintenance of Intrepid's

Pathway Fiber, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Exchange Agreement, except to the extent such damages or penalties result from the willful and wanton misconduct of the City. City shall not be liable for, and Intrepid shall indemnify, defend, and hold the City harmless from all costs, damages and claims to the extent arising from or relating to delay by Intrepid in performing its obligations hereunder, for any cause whatsoever. Intrepid shall not enter into any compromise or settlement which imposes any obligation or liability on the City without the prior written consent of the City. In the event Intrepid fails to timely assume the defense of any such claim which has been properly and promptly tendered to it, Intrepid also hereby agrees to pay all reasonable expenses of the City incurred by the City in defending itself with regard to any such damages, claims, or penalties, including all out of pocket expenses, reasonable attorneys' fees, and the reasonable value of any services rendered by the City Attorney, his assistants, or any employees of the City (collectively "Expenses"), but shall not be required to pay for any Expenses that are in excess of any settlement or compromise which was rejected by the City.

- b. Prior to commencement of any installation of Pathway Fiber under this Exchange Agreement, Intrepid shall procure and thereafter continuously maintain, for as long as this Exchange Agreement remains in effect, at Intrepid's expense, Commercial General Liability ("CGL") insurance written on ISO form CG 00 01 01 96, or a substitute form providing equivalent coverage, with a limit of not less than \$2 Million per occurrence, covering liability arising from premises, operations, independent contractors, personal injury, products, completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this Exchange Agreement shall be defined as an insured contract. The policy shall identify the City as an additional insured, shall contain a waiver of the right of subrogation against City, and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse, and underground property damage hazards. A certificate of insurance shall be filed with the City's Director of Finance prior to commencement of installation of Pathway Fiber, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to City prior to cancellation or material change of any insurance referred to herein. In the event the certificate states that it confers no rights upon the certificate holder, the City may require Intrepid to furnish a complete copy of the policy including all declarations and endorsements.

9. **Sales and Use Tax.** Intrepid agrees to obtain a sales and use tax license from the City and to comply with all applicable provisions of Title XIV of the Pueblo Municipal Code. Intrepid acknowledges that its sale of Telecommunications Services or sale or lease of data circuits to its customers is subject to City's sales tax ordinance, and Intrepid agrees to collect such taxes from its customers and promptly remit same to the City in accordance with the Pueblo Municipal Code.

10. **Notices.** Except as otherwise provided herein, notice under this Exchange Agreement shall be deemed sufficient if provided in writing and mailed by US certified mail, return receipt requested, or delivered by a nationally recognized courier, and shall be deemed effective upon actual receipt or refusal of delivery, and shall be addressed to the respective party as follows:

If to the City: Mayor
1 City Hall Place
Pueblo, CO 81003

with a copy to: Director of Information Technology
200 S. Main Street
Pueblo, CO 81003

If to Intrepid: BIF IV Intrepid OpCo, LLC
Brookfield Place
250 Vesey Street
New York, NY 10281-1023

With copies to: Jack Waters
CEO, Intrepid Fiber
E-mail: jack.waters@intrepidfiber.com

and

Patrick Hildebrand
Business Development Lead, Intrepid Fiber
E-mail: patrick.hildebrand@intrepidfiber.com

11. **Additional Rights.** The rights established hereunder shall be in addition to any rights contained in the applicable License Agreement and do not limit or otherwise supersede any terms and conditions of the applicable License Agreement.

12. **Governing Law and Venue.** This Exchange Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to its choice of law rules. Venue for any proceeding brought pursuant to this Exchange Agreement shall be in the District Court located in Pueblo County, Colorado.

13. **Final Agreement; Amendment.** This Exchange Agreement, including the exhibits hereto, constitutes the entire understanding and agreement between the parties with respect to the subject matter herein. This Exchange Agreement may only be modified or supplemented upon mutual agreement through an instrument executed by authorized representatives of both parties. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s). This Exchange Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

14. **Force Majeure.** Neither Party shall be liable for its failure to perform any of its obligations hereunder if such failure is caused by an act of God, labor strike, fire, earthquake, power blackouts, pandemics, epidemics, or any other cause beyond its reasonable control and without its fault or negligence.

15. **Limitation of Liability.** In no event shall either Party be liable to the other Party for indirect or consequential damages. This is a no charge agreement. Neither party shall charge the other for use of the Pathway or Recipient Fibers, as applicable, and may not obtain monetary damages from the other, except as set forth herein.

16. **Relationship.** Nothing in this Exchange Agreement is intended to, nor shall be deemed to constitute, a partnership or joint venture between the Parties, or to create any agency or partner relationship between the Parties. Neither Party shall hold itself out as a partner, joint venture, agent, or representative of the other under this Agreement.

17. **Assignment.** This Exchange Agreement shall not be assigned by Intrepid without the prior written consent of the City, which consent may be granted, denied, or conditioned in City's sole and absolute discretion. Notwithstanding the foregoing, if the License Agreement is assigned by Intrepid to a third party in compliance with the terms thereof, then Intrepid's rights and obligations under this Exchange Agreement shall be deemed to be assigned to the same assignee.

18. **No Third Party Beneficiaries; No Waiver of Immunities.** Nothing in this Exchange Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law, including but not limited to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.

19. **No Multi-year Fiscal Obligation on City.** This Exchange Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this agreement, with respect to any financial obligation of City which may arise under this agreement 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 agreement, including any sub-agreement, attachment, schedule or exhibit thereto, by the City. City may in its sole and absolute discretion terminate this agreement for reasons of non-appropriation immediately upon written notice without causing default or breach.

20. **Authority of Signers.** Each person signing this Exchange Agreement on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this agreement on behalf of such party and that this agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

21. **Electronic Signatures.** This Exchange Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be: (i) an original, and all of which taken together

shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal law, and (iii) enforceable in accordance with its terms.

IN WITNESS WHEREOF, each of the parties has entered into this Exchange Agreement as of the Effective Date written above.

BIF IV Intrepid OpCo, LLC

City of Pueblo, a Municipal Corporation

By  _____

By _____

Name Jeffrey Polachek

Name _____

Title Head of Operations & Construction

Title _____

Date 01/05/2023

Date _____

EXHIBIT A

Description of the Pathway

The Pathway refers to the conduit pathway owned by City, which crosses the 8th Street bridge from the manhole located at _____ to the manhole located at _____ in Pueblo, Colorado.

[INCLUDE MAP/IMAGE]

EXHIBIT B

Description of the Recipient Fiber

EXHIBIT A

Description of the Pathway

The Pathway refers to the conduit pathway owned by City, which crosses the 8th Street bridge from the manhole located at I-25 to the manhole located at Albany Street in Pueblo, Colorado.

Map of the same follows:

EXHIBIT B

Description of the Recipient Fiber

Intrepid will provide twelve (12) fibers in a buffer tube to the City of Pueblo from the 4th and Court Street demarcation (1-MH) to 8th Street and Erie Avenue (2-MH). The map of the same will be found in Exhibit A.

Exhibit_IFN - City of Pueblo

IFN-to provide 12 fibers to The City of Pueblo from 4th St and Court St Demarc 1-MH
to 8th St and Erie Ave Demarc-2
City of Pueblo - to provide the use of duct from HH at Albany Ave and 8th St to
Bridge Attachment and crossing Fountain Creek ending at the MH at the corner of 8th St and Erie Ave.

Legend



 Bridge Attachment



 City Conduit



 City HH and Duct Begins



 Courtyard by Marriott Pueblo Downtown



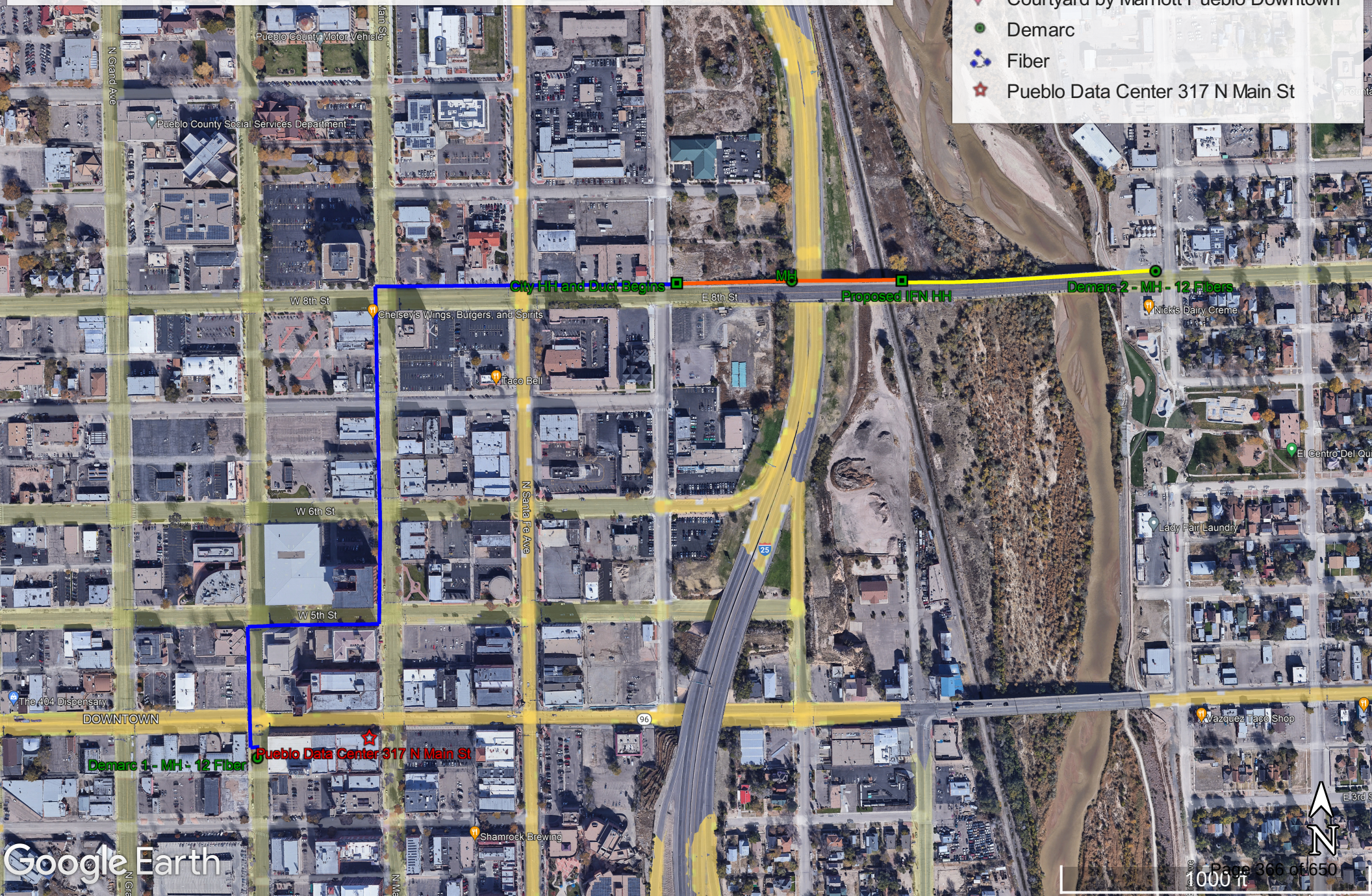
 Demarc



 Fiber



 Pueblo Data Center 317 N Main St





Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 23, 2023

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 AN ANIMAL SERVICES CONTRACT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND PUEBLO COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO AND THE HUMANE SOCIETY OF THE PIKES PEAK REGION, A COLORADO NON-PROFIT CORPORATION RELATING TO THE OPERATION OF THE PUEBLO ANIMAL SHELTER AND THE ENFORCEMENT OF LOCAL ANIMAL CONTROL ORDINANCES AND AUTHORIZING THE MAYOR TO EXECUTE SAID CONTRACT

SUMMARY:

Attached is an Ordinance approving an animal services contract with the Humane Society of the Pikes Peak Region ("HSPPR") for 2023 through 2025.

PREVIOUS COUNCIL ACTION:

On April 8, 2019, by Ordinance No. 9444, and on June 24, 2019, by Ordinance No. 9492, the City Council approved animal services contracts with HSPPR.

BACKGROUND:

This Ordinance approves the Contract between the City, Pueblo County and HSPPR relating to the operation of the animal shelter and enforcement of animal control ordinances ("Contract") for from January 1, 2023 through December 31, 2025.

FINANCIAL IMPLICATIONS:

Fee Schedule:

Year	City	County	Total	% Increase
2023	\$ 1,742,602	\$ 1,161,735	\$ 2,904,337	
2024	1,794,880	1,196,587	2,991,467	3%
2025	1,848,726	1,232,485	3,081,211	3%
Total	\$ 5,386,208	\$ 3,590,807	\$ 8,977,015	

Monthly Payments:

Year	City	County	Total
2023	\$ 145,216.83	\$ 96,811.25	\$ 242,028.08
2024	149,573.33	99,715.58	249,288.91
2025	154,060.50	102,707.08	256,767.58

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, HSPPR may discontinue the management of the animal shelter and enforcement of animal control ordinances.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. Contract between City and HSPPR (2023-2025)

ORDINANCE NO.

AN ORDINANCE APPROVING AN ANIMAL SERVICES CONTRACT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND PUEBLO COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO AND THE HUMANE SOCIETY OF THE PIKES PEAK REGION, A COLORADO NON-PROFIT CORPORATION RELATING TO THE OPERATION OF THE PUEBLO ANIMAL SHELTER AND THE ENFORCEMENT OF LOCAL ANIMAL CONTROL ORDINANCES AND AUTHORIZING THE MAYOR TO EXECUTE SAID CONTRACT

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

SECTION 1.

The Contract for Animal Services ("Contract") dated January 1, 2023, between the City of Pueblo, a Colorado municipal corporation ("City") and Pueblo County, a political subdivision of the State of Colorado ("County") and the Humane Society of the Pikes Peak Region, a Colorado non-profit corporation ("HSPPR") having been approved as to form by the City Attorney, is hereby approved. The Mayor is authorized to execute and deliver said contract in the name 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 Contract 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 *nunc pro tunc* January 1, 2023.

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

**HUMANE SOCIETY OF THE PIKES PEAK REGION
ANIMAL SERVICES CONTRACT**

Contractor: Humane Society of the Pikes Peak Region
610 Abbot Lane
Colorado Springs, CO 80905
(719) 473-1741
Attn: Duane Adams, President/CEO
dadams@hsppr.org

Representative/Contact Information:

City of Pueblo: Dan Kogovsek, City Attorney
1 City Hall Place
Pueblo, CO 81003
(719) 562-3899
dkogovsek@pueblo.us

County of Pueblo: Cynthia Mitchell, County Attorney
215 W. 10th Street, Room 312
Pueblo, CO 81003
(719) 583-6630
mitchellc@co.pueblo.co.us

Commencement Date: January 1, 2023

Expiration Date: December 31, 2025

This Animal Services Contract ("Contract") is made and entered into effective January 1, 2023 by and between the **City of Pueblo**, a municipal corporation ("City") and the **Board of County Commissioners of Pueblo County, Colorado** ("County") (together, "Entity") and the **Humane Society of the Pikes Peak Region**, a Colorado nonprofit corporation ("Contractor"). Contractor also conducts its operations by and through its operational division known as Animal Law Enforcement Services ("ALE").

Background and Purpose

A. Entity desires to purchase and receive from Contractor the animal services described in the Scope of Services attached hereto as Exhibit A and incorporated by this reference.

B. Contractor is an entity qualified and able to provide the type of services required by Entity and is willing to provide such services in accordance with the terms and conditions set forth in this Contract.

NOW, THEREFORE, in consideration of the benefits and obligations under this Contract, Entity and Contractor agree as follows:

Agreement

1. Scope of Services. Entity agrees to retain Contractor to perform the services described in Exhibit A ("Services"). Any modification to the Services provided by Contractor must be approved by Entity and Contractor in writing and upon mutual execution, shall become part of this Contract. In addition to the services described in Exhibit A and the other Exhibits to this Contract, Contractor agrees to provide assistance to Pueblo City and County Law Enforcement and Emergency Management Personnel in emergency situations that threaten animals in the Pueblo Community

such as fires, floods and other natural disasters consistent with the Pueblo Community Animal Response Team (CART) Agreement of November, 2016.

2. Standard of Performance. In performing the Services, Contractor shall use that degree of care and skill ordinarily performed by members of the same profession in the state of Colorado. Contractor represents to Entity that Contractor is and its employees performing such Services are properly licensed and/or registered within the state of Colorado (if licensure and/or registration is required by applicable law) and that Contractor and its employees possess the skills, knowledge and abilities to competently, timely and professionally perform the Services in accordance with this Contract. More specific standards of Contractor's performance are set forth in Exhibit A.

3. Compensation. Contractor shall perform the Services and Entity shall pay for the Services performed based on the rates and/or compensation schedule set forth in Exhibit B. It is understood and agreed to by the Parties that City and County may adjust the percentage of fees each owes to Contractor under this Contract as long as the total amount paid to Contractor each month by Entity remains unchanged. Entity will provide 30 days written notice to Contractor prior to any change in the percentage of fees paid under this Contract by City and County. Under no circumstances will the total amounts owed by Entity to Contractor under this Contract be changed by any adjustment to the fee split between City and County. It is understood by the Parties that fee schedules set forth in Exhibit B are subject to appropriation of funds by Entity. Payment of the Compensation shall be made in monthly installments and shall be due in advance on the tenth day of each month commencing following the execution of this Contract and continuing thereafter until through December 10 of the last year of the Term. Any cost, charge, fee or expense incurred by Contractor that is not specifically authorized under this Contract shall be deemed a non-reimbursable cost and Contractor shall be solely responsible for payment. Any modification of Compensation to be paid to Contractor must be approved by Entity and Contractor in writing and, upon mutual execution, shall become part of this Contract.

4. Term. The term of this Contract shall commence on the Commencement Date and shall terminate on the Expiration Date unless earlier terminated under this Contract, or otherwise agreed by Entity and Contractor in writing. Services to be performed under this Contract shall begin on January 1, 2023. Unless the Parties agree in writing to extend this Contract or enter into a superceding contract with Contractor, Entity will provide the following notices to Contractor:

- a. No later than 240 days prior to the scheduled expiration of this Contract, Entity will issue a Request for Proposals (RFP) soliciting bids for providing Animal Shelter and/or Animal Law Enforcement services and will provide Contractor with a copy of any such RFP.
- b. No later than 180 days prior to the scheduled expiration of this Contract, Entity will notify Contractor regarding what entity or entities were selected after evaluation of the RFP responses.

5. Independent Contractor. Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Contractor or any of Contractor's employees, agents, or other personnel performing the Services. It is expressly understood and agreed that neither Contractor nor Contractor's employees, agents, servants or other personnel shall be entitled to any payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever from Entity.

6. Insurance. Contractor understands and agrees that it has no right of coverage under any existing or future comprehensive, self or personal injury policies maintained by Entity. Contractor shall provide insurance coverage for and on behalf of Contractor that will sufficiently protect Contractor, Contractor's agents, employees and other personnel in connection with the Services provided by Contractor pursuant to this Contract. Contractor shall provide worker's compensation insurance coverage for all Contractor personnel. Contractor shall furnish insurance certificates to Entity upon request and shall also name Entity as an additional insured on Contractor's liability insurance

policies that relate to the Services performed by Contractor under this Contract. All insurance policies maintained by Contractor under this Contract shall contain an endorsement waiving subrogation against Entity.

7. Indemnification and Hold Harmless. Contractor expressly agrees to, and shall, indemnify and hold harmless Entity and any of its officers, agents, or employees from any and all claims, damages, liability, or court awards, including costs and reasonable attorney fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, or entity in connection with or arising out of any act or omission by Contractor or any of its employees, agents, partners, subcontractors, consultants, or others working on behalf of Contractor in performance of the Services under this Contract. Nothing in this paragraph shall constitute an agreement by Contractor to indemnify or hold Entity harmless for any act or omission by Entity or any of its officers, agents, or employees.

8. Audit and Inspection. Contractor shall at all times during the term of this Contract maintain such books and records as shall sufficiently and properly reflect all direct costs of any nature in the performance of this Contract, and shall utilize such bookkeeping procedures and practices as will reflect these costs. Books and records shall be subject, at any reasonable time, to inspection, audit or copying by authorized Entity personnel, or such independent auditors or accountants as are designated by Entity. Contractor shall permit the Entity representative or other authorized Entity personnel, at any reasonable time during regular business hours upon advance notice, to inspect the facility and to inspect and/or copy any and all data, notes, records, documents and files of the Services Contractor is performing in connection with this Contract. Such disclosure of records at Entity's request shall not waive any rights of Contractor to claim the disclosed records are confidential or proprietary.

9. Termination.

9.1 Voluntary Termination. This Contract may be terminated by Entity or Contractor for any reason or no reason upon written notice delivered to the other party at least **ninety (90) days prior to termination.** In the event of the exercise of the right of voluntary termination as provided by this paragraph:

- A. Contractor shall continue to provide complete and full Services in connection with this Contract after receipt of or issuance of a notice of termination during the 90-day notice period, and Entity shall continue to pay compensation to Contractor for the Services performed during that period; and
- B. At termination, all finished or unfinished documents, data, studies and reports prepared by Contractor pursuant to this Contract, if any, shall be delivered by Contractor to Entity and shall become the property of Entity; and
- C. Promptly after termination, Contractor shall prepare a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses, if authorized, performed or incurred prior to the date of termination. Such final accounting and final invoice shall be delivered to Entity within forty-five (45) days from the date of termination. Entity shall pay the final invoice, if it is reasonably documented, within thirty (30) days of receipt.

9.2 Payments For Early Termination Unrelated To Performance. If Entity terminates this Contract prior to its expiration date for any reason unrelated to Contractor's performance of its obligations under this agreement, Entity shall may payment to Contractor as follows:

- A. If Entity terminates the Contract for reasons other than performance after one year from the execution of the contract (but before the two years from execution), Entity shall make a payment to Contractor of \$300,000 within 30 days of contract termination.

- B. If Entity terminates the Contract for reasons other than performance after two years from the execution of the contract (but before three years from execution), Entity shall make a payment to Contractor of \$250,000 within 30 days of the contract termination.
- C. If Entity terminates the Contract for reasons other than performance after three years from the execution of the Contract, Entity shall make a payment to Contractor of \$200,000 within 30 days of the contract termination
- D. Entity (City and County) shall be responsible jointly, on a 50/50 payment basis,,for payments, if any, required by this Section 9.2.

9.3 Termination for Non-Performance. Should a party to this Contract fail to materially perform in accordance with the terms and conditions of this Contract, this Contract may be terminated by the performing party if the performing party first provides written notice to the non-performing party ("Default Notice"). The Default Notice shall specify the default under the Contract, the remedy for curing the default, the date by which the default must be cured (which date shall be a reasonable time period, not less than ten (10) business days) and a notice that if such default is not cured, or no action has been taken to cure the default during the cure period, the Contract will be terminated. In the event of termination under this paragraph, Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. The final accounting and final invoice shall be delivered to Entity within forty-five (45) days of the termination date, and Entity shall pay the final invoice, if it is reasonably documented, within thirty (30) days of receipt. Provided that notice of default is given in accordance with this paragraph, nothing in this paragraph shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a party.

10. Dispute Resolution. If a dispute arises between the parties relating to this Contract, other than the non-payment of compensation due for Services performed by Contractor, the following procedure applies:

10.1 A party shall give written notice of the dispute to the other party. The parties shall hold a meeting attended by persons with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution. The meeting shall be held promptly, but in no event later than fifteen (15) calendar days after the initial written notice of the dispute. Such meeting shall not be deemed to reduce or eliminate the obligations and liabilities of the parties or be deemed a waiver by a party of any remedies to which such party would otherwise be entitled, unless otherwise agreed to by the parties in writing.

10.2 If, within fifteen (15) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.

10.3 The parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the meeting referred to in Section 10.1 above, a mediator shall be appointed by the Judicial Arbiter Group or, if the Judicial Arbiter Group is no longer in operation, by a similar private mediation company in Colorado.

10.4 The parties will schedule the mediation for a date within thirty (30) calendar days after selection of the mediator(s). The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days after the mediation. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the parties are not successful in resolving the dispute through mediation, then the parties shall be free to litigate the matter subject to the terms of this Contract.

11. General Conditions.

11.1 Notices. Unless otherwise specifically required by a provision of this Contract, any notice required or permitted by this Contract shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail, postage prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing to the other party. Such notice shall be deemed to have been given when deposited into the United States mail properly addressed to the intended recipient.

If to the Entity:

If to the Contractor:

Pueblo County: Attn: Cynthia Mitchell County Attorney 215 W. 10 th St. Rm. 312 Pueblo, CO 81003	Humane Society of the Pikes Peak Region Attn: Duane Adams, CEO 610 Abbot Lane Colorado Springs, CO 80905
City of Pueblo Attn: Dan Kogovsek, City Attorney 1 City Hall Place, 3 rd Floor Pueblo, CO 81003 With a copy to: Nick Gradisar, Mayor 1 City Hall Place Pueblo, CO 81003	

11.2 No Waiver of Governmental Immunity. Nothing in this Contract shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to Entity, its officials, employees, contractors, or agents, or any other person acting on behalf of Entity (including Contractor) and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

11.3 No Waiver of Rights. A waiver by any party to this Contract of the breach of any term or provision of this Contract shall not operate or be construed as a waiver of any subsequent breach by either party. Entity's approval or acceptance of, or payment for, Services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Contract. No covenant or term of this Contract shall be deemed to be waived by either party except in writing signed by both parties. Any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

11.4 Assignment/Subcontracts. Contractor shall not assign its interest in this Contract or subcontract any of the Services to be performed under this Contract without the written consent of Entity.

11.5 Conflict of Interest. Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for Contractor with regard to providing the Services pursuant to this Contract. Contractor shall not offer or provide anything of benefit to any Entity official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. § 24-18-109, as amended, or any Entity-adopted code of conduct or ethical principles.

11.6 Compliance with Laws. At all times during the performance of this Contract, Contractor shall strictly observe and conform to all applicable federal, state and local laws, rules, regulations and resolutions that are currently in force or may hereafter be established. Contractor

shall be responsible at its own expense for obtaining and maintaining all licenses and permits necessary to perform the Services under this Contract.

11.7 Compliance with Immigration and Control Act. Contractor certifies that it has complied with the United States Immigration and Control Act of 1986. All persons employed by Contractor for performance of this agreement have completed and signed Form I-9 verifying their identities and authorization for employment.

11.8. State-Imposed Mandates Prohibiting Illegal Aliens from Performing Work Under this Contract.

(a) At or prior to the time for execution of this Contract, the Contractor shall submit its certification that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that the Contractor will participate in either the E-Verify Program created in Public Law 208, 104th Congress, as amended and expanded in Public law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to Section 8-17.5-102(5)(c), C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

(b) Contractor shall not:

(I) Knowingly employ or contract with an illegal alien to perform work under this Contract;

(II) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

(c) The following state-imposed requirements apply to this Contract:

(I) The Contractor shall have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-Verify Program or Department Program.

(II) The Contractor is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

(III) If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien to perform work under this Contract, the Contractor shall be required to:

A. Notify the subcontractor and Entity within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(III)A. above the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(IV) The Contractor is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as CDLE) made in the course of an investigation that CDLE is undertaking pursuant to its authority under Section 8-17.5-102(5), C.R.S.

(d) Violation of this Section by the Contractor shall constitute a breach of contract and grounds for termination. In the event of such termination, the Contractor shall be liable for Entity's actual and consequential damages.

(e) Nothing in this Section shall be construed as requiring the Contractor to violate any terms of participation in the E-Verify Program.

11.9 Non-discrimination. Contractor shall not hire, discharge, transfer, promote or demote, or in any manner discriminate against any person otherwise qualified and capable because of race, color, sex, marital status, age, religion, disability or national origin. Contractor agrees to comply with applicable federal and state statutes and regulations concerning non-discrimination.

11.10 Rights of Third Parties. This Contract does not and shall not be deemed to confer on any third party the right to the performance or proceeds under this Contract, to claim any damages or to bring any legal action or other proceeding against the Entity or Contractor for any breach or other failure to perform this Contract.

11.11 Governing Law, Venue, and Enforcement. This Contract shall be governed by and interpreted according to the laws of the state of Colorado. Venue for any action arising under this Contract shall be in the appropriate court for Pueblo County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this agreement, **the parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Contract.** The parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Contract.

11.12 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Contract shall not be assigned by Contractor without the written consent of Entity. Any written assignment shall expressly refer to this Contract, and shall specify the particular rights, duties, obligations, responsibilities, or benefits so assigned. No assignment shall release Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

11.13 Incorporation of Exhibits and Recitals; Conflict in Terms. Unless otherwise stated in this Contract, all exhibits, or documents referenced in this Contract and the recitals set forth above shall be incorporated into this Contract for all purposes. In the event of a conflict between any exhibit and this Contract, the provisions of this Contract shall control.

11.14 Severability. Invalidation of any of the provisions of this Contract or the application thereof in any given circumstances shall not affect the validity of any other provision of this Contract.

11.15 Binding Effect. This Contract shall be binding upon the successors, heirs, legal representatives, and authorized assigns of Entity and Contractor.

11.16 Article X Section 20/TABOR. The parties understand and acknowledge that Entity is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of Entity are expressly dependent and conditioned upon the

continuing availability of funds beyond the term of Entity's current fiscal period ending upon the next succeeding December 31. Financial obligations of Entity payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Entity, and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

11.17 Contractor's Records Not Subject to Colorado Open Record's Act. Unless specifically identified as public records in the Scope of Services attached hereto as Exhibit A, all records of Contractor related to, prepared by, or maintained in connection with the provisions of services under this Contract are the property of Contractor, shall be deemed confidential and proprietary, and shall not be deemed public records as defined in the Colorado Open Records Act ("CORA").

Contractor will respond to public requests for records in accordance with Contractor's written policy concerning such disclosure. Any work product, materials, and documents produced or maintained by Contractor pursuant to this Contract shall remain the property of Contractor and retained in accordance with Contractor's written records retention policy.

11.18 Additional Terms and Conditions. Additional provisions set forth in Exhibits A, B, and C attached hereto are made a part of this Contract.

11.19 Entire Agreement. This Contract represents the entire and integrated agreement between Entity and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Contract must be in writing and be signed by both Entity and Contractor. The individuals executing this Contract represent they are expressly authorized to enter into this Contract on behalf of the Entity and Contractor and to bind their respective entities.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE EXECUTED THIS CONTRACT ON BEHALF OF ENTITY AND CONTRACTOR:

ATTEST:

**CITY OF PUEBLO
A COLORADO MUNICIPAL CORPORATION**

City Clerk

By _____
Nicholas A Gradisar, Mayor

[S E A L]

Date: _____

**Board of County Commissioners of
Pueblo County, Colorado**

By: _____
Chairperson of the Board

Attest: _____
Clerk to the Board of County
Commissioners

Approved as to form:

Daniel C. Kogovsek

Pueblo City Attorney

Approved as to form:

Pueblo County Attorney

CONTRACTOR:

Humane Society of the Pikes Peak Region
a Colorado nonprofit corporation

By: _____
Duane Adams, CEO/President

Date: _____

EXHIBIT A
SCOPE OF SERVICES

Sheltering Scope of Services

1. The Humane Society of the Pikes Peak Region shall be the designated shelter operator for the City of Pueblo and Pueblo County. HSPPR shall accept animals from the Animal Law Enforcement related activities 24 hours per day 7 days per week. The shelter shall accept stray and owned domestic animals from the general public during business hours determined by HSPPR.
2. Animals shall be provided humane treatment and veterinary care during their stay at HSPPR.
3. Animals impounded by Animal Law Enforcement or accepted from a citizen as a stray animal (except for feral cats and community cats) shall be held as required by City Ordinance, County Code or State Statute (for example bite cases, dangerous animal, or animal cruelty).
4. HSPPR will provide service to reunite lost pets with their family in accordance with the City and County codes.
5. Animals that become the property of HSPPR will be assigned a disposition in accordance to the policies and procedures of HSPPR. The policies and procedures of HSPPR will be provided to Entity upon request.
6. HSPPR will operate in compliance with the local, state and federal laws pertaining to operating an animal shelter.
7. HSPPR will provide janitorial and interior cleaning services for the shelter. Pueblo County will provide maintenance and routine repairs of the building and grounds costing less than \$1000 in labor and materials, including without limitation HVAC and other building systems, landscaping, roof, parking lot and snow removal.
8. Entity (City and County) will be responsible jointly, on a 50/50 payment basis, for non-routine repairs (those costing \$1000 or more in labor and materials) including renovations of the building such as replacement of walls and other structural features of the facility and of HVAC and other building systems. Requests for such non-routine repairs of the Animal Shelter facilities must be approved by both City and County prior to the time work on such projects starts.
9. HSPPR will provide statistical reporting to Entity on a quarterly basis. HSPPR will conduct quarterly meetings with City and County Elected Officials and/or staff and will be available to meet with the City Mayor and

City Council, and the Board of County Commissioners at least two times per year.

10. Any fees, licensing revenue or restitution collected by HSPPR related to services performed under the terms of this Contract remain the revenue of HSPPR.

11. Hours for the shelter will be as follows:

Receiving:

8:30-5:00 Mon-Fri

8:30-5:00 Sat-Sun

Adoptions and Reclaims:

12:00-5:00 Mon-Fri

12:00-5:00 Sat-Sun

12. HSPPR shall provide reasonable adoption services at the Pueblo Animal Shelter and adoption fees will be set and retained by HSPPR. Animals will be spayed or neutered before they are adopted. If adopted animals are not eligible for sterilization, the adopter will pay a spay and neuter deposit as mandated by state law.

Animal Law Enforcement Scope of Services

1. The Animal Law Enforcement Department service provider shall, during established regular business hours, enforce City Code, County Resolutions and State Statutes related to domestic animals within the entire area of the City of Pueblo and Pueblo County excluding Military Installations, Universities and Colleges, and State and County Parks. Animal Law Enforcement Officers employed by Animal Law Enforcement will be given Special Police Powers as defined in the City Code and County Resolution through appointment as prescribed by each entity.

ALE Officer Hours

April through October: 8:00 am to 9:00 pm

November through March: 8:00 am to 6:00 pm

Sundays throughout the year: 8:00 am to 5:00 pm

City / County Recognized Holidays Emergency On-Call Services Only

2. Animal Law Enforcement Officers shall respond to Emergency (Priority 1) calls for service outside of regular business hours. Emergency (Priority 1) calls outside of regular business hours shall be received and dispatched to Animal Law Enforcement by the Pueblo Police Department Communication Center in accordance with established policies and procedures.

Emergency (Priority 1) Calls for Service

Call Type	Description
Dangerous Animal at Large	Animal has attacked or threatened to attack coming in direct physical contact with a person or domestic animal and animal is believed to be running at large. Animal has attacked a person causing bodily or severe bodily injury and animal remains a threat to public safety.
Assists to Law Enforcement or Fire Department	Response requested by law enforcement (Pueblo PD, Pueblo SO, CSP, etc.) to assist with domestic animal. Common situation may include arrest where an animal would be left unattended in a vehicle or home, search warrant, death of a person and animals are unattended, domestic violence, or anytime law enforcement requires assistance to remove an animal. Fire Department or other government agency as may be required to assist with control or removal of an animal such as a vehicle accident where operator and/or passengers were transported for health care and animal must be removed.
Critically Injured Domestic Animals	Situation involving life threatening injury to a domestic animal such as a dog or cat that was struck by an automobile, is bleeding profusely or other injury where loss of animal's life is likely to occur if immediate treatment is not provided.
Severe Animal Cruelty	Extremely emaciated, injured, or neglected animals that if left in the in their existing situation will likely result in severe suffering and/or loss of life. Common situations may include an animal hoarding case, co-occurrence of domestic violence or child abuse where animal cruelty also exists, or any other severe animal cruelty where the animal's life is in immediate jeopardy.
Other Incidents	On occasions there may be other situations where a response from an Animal Law Enforcement Officer is required after hours. These cases will be rare and normally will be generated as a result of a request from law enforcement or other governmental agency.

3. Animal Law Enforcement shall provide assistance to Law Enforcement as may be reasonably requested by the Pueblo Police Department or Pueblo County Sheriff Office 24 hours per day 7 days per week, at no additional cost to the City or County, when domestic animals are present and responding Law Enforcement Agency is requesting removal of those animals. The Pueblo Police Department and Pueblo County Sheriff Office shall reciprocate requests by Animal Law Enforcement where Law Enforcement assistance is required to execute the duties contained herein. Animal Law Enforcement Officers will

testify in court regarding summons issued at no additional cost to the City or County.

4. Animal Law Enforcement and HSPPR shall fulfill all of their obligations under state law and local code and ordinances regarding cases potentially involving rabies and in executing appropriate quarantines in cases of possible domestic animal exposure to rabies.
5. Animal Law Enforcement and HSPPR shall provide all necessary equipment for the performance of Animal Law Enforcement Services under this Contract. Such equipment shall include but is not limited to caging, computers, vehicles, swab units, personal protective equipment, capture and handling devices, and other necessary materials needed to protect officer safety and the welfare of animals, except that the City or County shall provide assistance in procuring communication equipment (800 MHz or equivalent radios and dedicated frequency) and upgrades to that equipment when necessary.
6. Animal Law Enforcement shall operate a Communications Center during approved regular business hours. The Communications Center will answer telephone calls from the general public, City and County Staff, or other agencies related to Animal Law Enforcement Services and dispatch Officers to matters related to enforcement of City Code, County Resolution, and State Statutes involving domesticated animals. After hour calls will be screened and dispatched through Pueblo City/County dispatch center.
7. Animal Law Enforcement shall license animals in accordance with City Code and County Resolutions. Appropriate records shall be maintained on licensed animals. All funds collected for the licensing of animals shall be retained by HSPPR.
8. Contractor shall work collaboratively with the City's and County's representatives to facilitate Animal Law Enforcement and animal sheltering needs. Appropriate City/County Staff and HSPPR representatives will meet or coordinate not less than quarterly to review performance, reports, and discuss opportunities for improvement.
9. Contractor shall provide humane treatment of all animals while in the care of HSPPR and provide first aid services as required, including emergency veterinary care at the expense of HSPPR.
10. Contractor shall provide humane euthanasia services for animals as required in the performance of duties in a manner that conforms to statutes and regulations of the State of Colorado and provide disposition of domestic animal carcasses as required by law.

11. ALE will not respond to nuisance or dangerous wildlife calls, deceased wild animals or pick up owned, nuisance, or at large domestic felines. However, ALE agrees to remove and dispose of deceased domestic dogs and cats reported on Entity's streets, roads and public rights-of-way. The fees paid by Entity under this Contract reflect the anticipated costs in time and resources incurred by ALE when responding to deceased domestic animal situations. Contractor agrees to report the frequency of such deceased animal calls and Entity agrees to meet with Contractor during the term of this Agreement to assess whether the Contractor's burden under this term should be reduced or, in the alternative, whether the Contractor should receive more compensation for this responsibility.

**EXHIBIT B
COMPENSATION SCHEDULE**

Subject to appropriation of funds by the Pueblo County Board of County Commissioners and the Pueblo City Council for their respective fee obligations, Entity agrees to pay Contractor for the complete and satisfactory performance of Services under this Agreement in the following amount and per the payment schedule listed below. As noted in paragraph 3 (Compensation) of this Contract, Entity may mutually agree to adjust their respective share of the fees paid to Contractor as long as the total fees paid to Contractor by Entity remains unchanged.

Fee Schedule:

Year	City	County	Total	% Increase
2023	\$ 1,742,602	\$ 1,161,735	\$ 2,904,337	
2024	1,794,880	1,196,587	2,991,467	3 %
2025	1,848,726	1,232,485	3,081,211	3 %
Total	\$ 5,386,208	\$ 3,590,807	\$ 8,977,015	

Monthly Payments:

Year	City	County	Total
2023	\$ 145,216.83	\$ 96,811.25	\$ 242,028.08
2024	149,573.33	99,715.58	249,288.91
2025	154,060.50	102,707.08	256,767.58

EXHIBIT C
ADDITIONAL TERMS AND CONDITIONS

**Agreement between HSPPR and City of Pueblo and Pueblo County
(together, the "Entity")**

1. At all times during this Contract a HSPPR Pueblo Animal Shelter Community Liaison and Compliance Committee shall exist and meet no less frequently than ten (10) times per year. The Animal Shelter Community Liaison and Compliance Committee shall receive briefings regarding the operations of the Animal Shelter and Animal Law Enforcement (ALE) operations, including updates on any State inspections or reports, statistics on animal law enforcement and sheltering, and any know ongoing or potential future community issues that involve or affect the Animal Shelter or ALE. The Community Liaison and Compliance Committee shall provide advice and counsel regarding the Animal Shelter and ALE.
2. HSPPR shall appoint up to 4 members of the Community Liaison and Compliance Committee. City and County may each provide one (1) representative for the Community Liaison and Compliance Committee. The City representative shall be appointed by the Mayor's Office and the County Representative shall be appointed by the Board of County Commissioners. The City and County representatives shall act as a liaison between their respective governments and Animal Shelter/ALE management. In addition, one representative each may be provided by:
 - a. Pueblo County Sheriff's Office
 - b. Pueblo City Police Department
 - c. Pueblo Department of Health and Environment
 - d. Colorado State University Extension
3. City or County may audit HSPPR financials within a mutually agreed upon time frame and at their own expense. HSPPR will provide Entity with supplemental statements in audited financial statements.
4. HSPPR will notify Entity of any PACFA inspections within 48 hours of such inspections occurring. HSPPR will provide Entity with copies of any PACFA reports HSPPR receives related to the services provided under this Contract within three (3) business days of receipt by HSPPR of such reports.
5. HSPPR may hire staff and provide benefit packages at its discretion using its own funding.

6. City and County Public Information Officers will work with HSPPR to create a common media strategy regarding the Animal Shelter and to respond rapidly to any misinformation, accusations, or public concerns regarding the Animal Shelter.
7. HSPPR will pay all utilities at the Animal Shelter facility during the term of this Contract.
8. Pueblo County will provide, at its own cost, snow removal at the PAS facility when there is 2 inches of snow or more on sidewalks and parking area.
9. Pueblo County will provide at its own cost at the animal shelter facility all lawn and grounds maintenance, mowing one time per week, provide appropriate fertilizer and weed treatments three times a year, and service and winterize the sprinkler system and provide off-lawn weed and bush care.
10. Pueblo County will provide routine HVAC services at its own cost for the animal shelter facility, including tests, inspections, filter changes, and preventative service.
11. Pueblo County will provide at its own cost all other required routine building and parking lot maintenance and routine repairs needed for the animal shelter facility.
12. HSPPR may use funding from grants, donations from Pueblo City and/or County residents, and other non-governmental funding sources to supplement the work for the Pueblo community that HSPPR is required to perform under this Contract.
13. HSPPR owns certain equipment and personal property currently located at the Pueblo animal shelter that was funded by donations and grants and not by Entity ("HSPPR Property"). HSPPR Property is identified on the attached Schedule 1, as may be amended from time to time. In the event of termination of the Contract, HSPPR shall be allowed to retain and remove all HSPPR Property from the Animal Shelter facility.
14. HSPPR shall document the source of funds used for all equipment and other purchases made for the performance of services under this Contract. HSPPR shall retain, and provide receipts or other documentation to Entity showing the source of funds for each purchase and identify the ownership of the purchased property (Entity or HSPPR). HSPPR shall provide written reports of its purchases to Entity on no less than an annual basis.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 23, 2023

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 AMENDING CHAPTER 1 OF TITLE XI OF THE PUEBLO MUNICIPAL CODE, UPDATING THE PROVISIONS FOR DANGEROUS ANIMALS AND POTENTIALLY DANGEROUS ANIMALS

SUMMARY:

Attached for consideration is a text amendment to Chapter 4 of Title XI of the Pueblo Municipal Code, updating Section 11-4-14 – Dangerous Animals, Potentially Dangerous Animals.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Pueblo Municipal Code Section 14 of Chapter 4, Title XI, omits language in subsection (f) making it an offense to fail to comply with protection orders associated with ownership of a dangerous animal if you are not the person who owned the dangerous animal at the time of its dangerous designation. In other words, subsequent owners of animals designated as dangerous are not currently included in the statute penalizing failure to comply with the provisions of the protection order, which restricts how the animal is to be cared for and maintained. Changes are needed to bring the provisions up to date with current law and to create an enforceable requirement. This Ordinance makes those changes.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

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, subsequent owners of dangerous animals will not be required to comply with protective orders.

RECOMMENDATION:

Staff recommends approval of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE XI OF THE
PUEBLO MUNICIPAL CODE, UPDATING THE PROVISIONS
FOR DANGEROUS ANIMALS AND POTENTIALLY DANGEROUS
ANIMALS

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

Section 11-4-14 of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-4-14. Dangerous animals; potentially dangerous animals.

(a) Definitions. As used in this Section, the following words have the following meanings:

(1) *Serious bodily injury* means any physical injury that results in severe bruising, muscle tearing, skin laceration, or any physical injury that requires corrective or cosmetic surgery.

(2) *Dangerous animal* means any animal that:

a. Has inflicted serious bodily injury upon a person or has inflicted serious bodily injury upon or caused the death of a domestic animal; or

b. Has engaged in or been trained for animal fighting as described and prohibited in Section 18-9-204, C.R.S.; or

c. Has been previously adjudged as a potentially dangerous animal under this Section and the animal has engaged in subsequent behavior that poses a threat to public safety or the owner has failed to abide by a protective order.

(3) *Potentially dangerous animal* means any animal that may be a threat to public health and safety as demonstrated by:

a. Causing any injury less than a serious bodily injury to any person or domestic animal.

b. Actions that cause a reasonable person to believe that the animal may inflict bodily injury upon or cause the death of any person, whether such person is on foot, in a vehicle, or on a device which allows such person to be in motion, and whether such animal is tethered or otherwise restrained.

c. Attacks any person who is lawfully on the owner's property.

d. Acts in a highly aggressive manner within a fenced yard or enclosure and appears to a reasonable person to be able to jump over, dig under, or otherwise immediately escape such fenced yard or enclosure to complete an attack.

(b) Violation, Ownership of Dangerous Animal. It shall be unlawful and a Class 1 municipal offense for any person to own, possess, harbor, keep, have a financial or property interest in, or have custody or control of a dangerous animal; except that a person who maintains a dangerous animal pursuant to and in compliance with a dangerous animal license and protective order entered by a court of competent jurisdiction shall be presumed not to be in violation of this provision. This presumption may be rebutted by the fact that the animal acted as a potentially dangerous animal or caused bodily injury despite such compliance.

(c) Violation, Ownership of Potentially Dangerous Animal. It shall be unlawful and a Class 2 municipal offense for any person to own, possess, harbor, keep, have a financial or property interest in, or have custody or control of a potentially dangerous animal; except that a person who maintains a potentially dangerous animal pursuant to and in compliance with a potentially dangerous animal license and protective order entered by a court of competent jurisdiction shall be presumed not to be in violation of this provision. This presumption may be rebutted by the fact that the animal acted as a potentially dangerous animal or caused bodily injury despite such compliance.

(d) Affirmative Defense. Except as otherwise noted, the following circumstances shall constitute an affirmative defense to a violation of the foregoing Subsection (b) or (c) in the following manner:

(1) At the time of the attack by the animal which causes injury to a domestic animal, the domestic animal was at large, was an estray and entered upon the property of the owner and the attack began, but did not necessarily end, upon such property;

(2) At the time of the attack by the animal which causes injury to a domestic animal, said domestic animal was biting or otherwise attacking the animal or its owner;

(3) At the time of the attack by the animal which causes injury to a person, the victim of the attack was committing or attempting to commit a criminal offense against the animal's owner, and the attack did not occur on the owner's property;

(4) At the time of the attack by the animal which causes injury to a person, the victim of the attack was committing or attempting to commit a criminal offense against a person on the owner's property or the property itself, and the attack began, but did not necessarily end, upon such property; or

(5) The person who was the victim of the attack by the animal tormented, provoked, abused or inflicted injury upon the animal in such an extreme manner which resulted in the attack.

(e) Protective Order. Upon entry of sentence pursuant to a plea of or finding of guilt, the Municipal Court shall order upon violation of Subsection (b), and may order upon violation of Subsection (c), the defendant to:

(1) Confine such animal in a building or enclosure designed to be escape-proof and, whenever such animal is outside of such building or enclosure, the animal shall be securely muzzled and restrained by a secure collar and leash no longer than four (4) feet under the direct physical control of the owner or other responsible person at all times. Escape-proof enclosure means a structure of at least six (6) feet in height with secured sides, locked, and designed to prevent the animal escaping the enclosure. If such enclosure has no bottom secured to the sides, the sides must be embedded into the ground no less than two (2) feet deep. If the required six (6) feet in height and two (2) feet in depth is inadequate to contain the animal, the height and depth of the enclosure shall be increased until the enclosure is deemed escape-proof by an Animal Control Officer. The enclosure must be suitable to prevent the entry of young children or lunging attacks outward by the animal. Nothing in this Subsection shall prevent the humane care of the animal. Animal Control Officers are permitted to inspect the animal and premises for compliance at reasonable times.

(2) Display in a prominent place on the defendant's premises, and the premises where the animal resides if different, a sign easily readable by the public from the public street using the words "Beware of Dangerous Animal" or "Beware of Potentially Dangerous Animal," as applicable.

(3) Immediately report to the Shelter Operator any material change in the animal's situation, including but not limited to a change of address, escape or death.

(4) At the defendant's expense, permanently identify the animal through the implantation of a microchip by a licensed veterinarian or a licensed shelter. The owner shall file the veterinary record of the microchip implantation with the Shelter Operator.

(5) Prior to the implantation of the microchip, pay a nonrefundable microchip license fee of fifty dollars (\$50.00) to the Shelter Operator.

(6) Spay or neuter the animal, if the animal is not already spayed or neutered, at the owner's expense. The Municipal Court may grant an exception to the spay or neuter requirement where defendant provides to the court within thirty (30) days: (i) a letter from a licensed veterinarian stating such spaying or neutering of the animal would be harmful to its health, or (ii) paperwork demonstrating the animal is registered and actively being shown in an event that does not allow the animal to be altered.

(7) Prior to the animal receiving any service or treatment, disclose in writing to any provider of the service or treatment, including but not limited to a veterinary health care worker, groomer, humane agency staff person, pet animal care facility staff person, professional handler, or trainer, each acting in the performance of his or her respective duties, that the animal has been the subject of a conviction of a violation of this Section.

Unless the Municipal Court declassifies an animal from its status as dangerous or potentially dangerous in accordance with this Chapter, all protective orders entered pursuant to this Chapter shall remain in effect for the life of the animal and shall be binding upon all future owners, possessors, keepers, or handlers of the animal.

(f) Violation, Failure to Comply. It shall be unlawful and a strict liability offense for any person convicted of violating Subsection (b) or (c), **or a subsequent owner, possessor, keeper, or handler of a Dangerous Animal or Potentially Dangerous Animal subject to a protective order,** who has been personally served with a copy of the protective order issued under Subsection (e), to continue to own, possess, harbor, keep or control the animal which was the subject of such conviction in violation of the provisions of the protective order.

(g) Violation, Failure to Provide Notice. It shall be unlawful and a Class 2 municipal offense for any person to fail or refuse to provide written notice or a copy of the protective order as required by this Chapter and the protective order.

(h) Violation, Breeding of Dangerous Animal. It shall be unlawful and a Class 1 municipal offense for any person to possess with intent to sell, offer for sale, breed, buy, or attempt to buy within the City any animal which has been adjudicated to be a dangerous animal pursuant to a conviction under Subsection (b) or a conviction under Section 18-9-204.5, C.R.S. This provision does not apply to an animal adjudicated potentially dangerous under this Section.

(i) Impoundment and Euthanization.

(1) It shall be the duty of the Animal Control Officer to impound an animal whose acts form the basis for issuance of a complaint for violation of Subsection (b) or (c) if the animal presents a continuing threat of serious harm to persons or domestic animals.

(2) It shall be the duty of the Animal Control Officer to impound an animal, which has been adjudicated to be a dangerous animal pursuant to a conviction under Subsection (b), adjudicated to be a potentially dangerous animal pursuant to a conviction under Subsection (c), or to be a dangerous dog pursuant to a conviction under Section 18-9-204.5, C.R.S., where

such animal is found beyond the premises of its owner and not securely muzzled and restrained by a secure collar and leash. The Animal Control Officer may impound in accordance with this provision without first obtaining a warrant.

(3) Any animal impounded pursuant to the requirements of this Section shall not be released pending disposition of any euthanization hearing or related criminal charges under this Section except on order of the Municipal Court, which may direct the owner to pay all impounding fees. Subject to the foregoing limitation and the exception noted herein, an impounded dangerous animal shall be handled and processed according to the requirements set forth in Section 11-4-16 of this Code and, if applicable, Section 11-4-13 of this Code, except that no dangerous animal shall be sold or put up for adoption except in accordance with Chapter 4.5 of this Title XI. Any dangerous animal which is deemed abandoned under Section 11-4-16 shall be humanely euthanized as provided in Chapter 4.5 of this Title XI.

(4) The Municipal Court is authorized to order the release of any animal impounded pursuant to this Section when, in the Municipal Court's judgment, said animal does not represent a continuing threat of serious harm to persons or domestic animals. If, in the Municipal Court's judgment, the animal represents a continuing threat of serious harm to persons or domestic animals, the Municipal Court may order said animal to be humanely euthanized as provided in Chapter 4.5 of this Title XI.

(j) Application. Subsections (b) and (c) shall have no application to the following:

(1) To any dog that is used by a peace officer while the officer is engaged in the performance of the peace officer's duties;

(2) To any animal which causes the death of a person;

(3) To any animal that inflicts injury upon any veterinary health care worker, groomer, humane agency personnel, professional handler, trainer or show judge, each acting in the performance of his or her respective duties; or

(4) To any dog that inflicts injury upon or causes the death of a domestic animal while the dog was working as a hunting dog, herding dog or predator control dog on the property of or under the control of the dog's owner and the injury or death was to a domestic animal naturally associated with the work of such dog.

(k) No animal that has previously been determined to be dangerous, potentially dangerous, or the equivalent thereof in another jurisdiction, shall be kept, owned, or harbored in the City unless the animal's owner obtains and maintains a dangerous or potentially dangerous animal license prior to bringing such animal into the City, without need for further adjudication by the Municipal Court. Animals in violation of this Subsection are subject to impoundment after notice and a hearing under this Subsection, except that the only issues for hearing are whether the animal ever received a dangerous or potentially dangerous designation or similar designation in another jurisdiction, and whether the animal's owner complied with the requirements under this Subsection.

(l) An animal classified as dangerous may not be declassified from said designation. An animal classified as potentially dangerous may be declassified from such after one (1) year, if the conditions posed under this Section were met for the uninterrupted period and upon the Municipal Court's approval. The Municipal Court may declassify an animal after the applicable period despite violations if it determines that the violations were not systematic or serious and upon the imposition of a fee.

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 Ordinance

COUNCIL MEETING DATE: January 23, 2023

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 AMENDING CHAPTER 1 OF TITLE XI OF THE PUEBLO MUNICIPAL CODE TO UPDATE THE HARASSMENT PROVISIONS IN ACCORDANCE WITH RECENT SUPREME COURT RULINGS

SUMMARY:

Attached for consideration is a text amendment to Chapter 1 of Title XI of the Pueblo Municipal Code, updating Section 11-1-303 – Harassment.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

Pueblo Municipal Code Section 303 of Chapter 1, Title XI, contains language in subsection (a)(3) that parallels Colorado statute C.R.S. 18-9-111(1)(e). This language was found to be unconstitutionally vague by the Colorado Supreme Court and is therefore unenforceable. These provisions have not been amended since the Supreme Court's most recent rulings and changes are needed to bring the provisions up to date with current law. This Ordinance makes those required changes.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

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, the code provisions as they are may be found to conflict with current law.

RECOMMENDATION:

Staff recommends approval of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE XI OF THE PUEBLO MUNICIPAL CODE TO UPDATE THE HARASSMENT PROVISIONS IN ACCORDANCE WITH RECENT SUPREME COURT RULINGS

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

SECTION 1.

Section 11-1-303 of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-1-303. Harassment.

(a) A person commits the offense of harassment if, with intent to [harass]**intimidate**, annoy or alarm another person, he or she:

1. In a public place directs obscene language or makes an obscene gesture to or at another person;
2. Follows a person in or about a public place;
3. Initiates communication with a person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computing network or computer system, [in a manner intended to harass or] **and intimidates**, threatens bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, **telephone network, data network, text message, instant message**, computer, computing network or computer system which is obscene;
4. Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
5. Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property;
6. Repeatedly insults, taunts, challenges or communicates with another in a manner intended to cause a reasonable person to feel fear, intimidation or annoyance; or
7. Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact.

(b) As used in this Section, unless the context otherwise requires, obscene means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Paragraph (a)(3) of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail or other electronic communication was either made or received. Any acts prohibited by Paragraph (a)(4) of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received.

(d) Harassment is a Class 1 municipal offense.

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 Ordinance

COUNCIL MEETING DATE: January 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Trevor Gloss, Assistant City Attorney

SUBJECT: AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 3 OF TITLE XI OF THE PUEBLO MUNICIPAL CODE, UPDATING ALCOHOL BEVERAGE TASTING PROVISIONS DUE TO CHANGES IN STATE LAW

SUMMARY:

Attached for consideration is a text amendment that will amend Article VI of Chapter 3 of Title XI of the Pueblo Municipal Code, updating alcohol beverage tasting provisions for fermented malt beverage and wine retailers.

PREVIOUS COUNCIL ACTION:

Not applicable to this Ordinance.

BACKGROUND:

A majority of the electors voting at the November 8, 2022 election voted in favor of Proposition 125. Proposition 125 amended the Colorado Liquor Code with respect to fermented malt beverage (beer) retailers to allow them to also sell wine effective March 1, 2023. Every fermented malt beverage retailer in the State will automatically become a fermented malt beverage and wine retailer on said date, without any action required by the City.

As part of the change, fermented malt beverage and wine retailers will gain expanded abilities similar to liquor stores, including the ability to obtain alcohol tasting permits. This Ordinance will amend the Pueblo Municipal Code to grant fermented malt beverage and wine retailers the ability to obtain alcohol tasting permits, in addition to retail liquor stores and liquor-licensed drugstores.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

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, fermented malt beverage and wine retailers within the City will be unable to obtain an alcohol tasting permit.

RECOMMENDATION:

Staff recommends approval of this Ordinance.

ATTACHMENTS:

1. Ordinance (2)

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 3 OF
TITLE XI OF THE PUEBLO MUNICIPAL CODE, UPDATING
ALCOHOL BEVERAGE TASTING PROVISIONS DUE TO
CHANGES IN STATE LAW

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscoring indicates new matter being added)

SECTION 1.

Section 11-3-61 of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-3-61. Authority.

A [retail liquor store or liquor-licensed drugstore] **retail liquor store, liquor-licensed drugstore, or fermented malt beverage and wine retailer** licensee may conduct alcohol beverage tastings within the City only following approval of an application for an alcohol beverage tastings permit by the Liquor and Beer Licensing Board and subject to the limitations set forth in this Article and Section 44-3-301(10), C.R.S., **as may be amended.**

SECTION 2.

Section 11-3-62 of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-3-62. Application.

- (a) A [retail liquor store or liquor-licensed drugstore] **retail liquor store, liquor-licensed drugstore, or fermented malt beverage and wine retailer** licensee desiring to conduct alcohol beverage tastings must submit a permit application or permit application renewal for that purpose in accordance with this Article.
- (b) An alcohol beverage tastings permit shall be valid for the period of the then-existing liquor license, **running concurrently therewith,** and the permit may be renewed at the time of any liquor license renewal.
- (c) An application for **an** alcohol beverage tastings permit must be submitted to the Liquor and Beer Licensing Board no later than thirty (30) days prior to the date of the first alcohol beverage tasting requested in the application or **[at]** the time of license renewal, whichever occurs first.
- (d) At a minimum, the application must include the following information:
 - (1) The name of the licensee and location of the premises of the [retail liquor store or liquor-licensed drugstore] **retail liquor store, liquor-licensed drugstore, or fermented malt beverage and wine retailer;**
 - (2) Schedule of the specific dates and times of requested alcohol beverage tastings for the period of the permit. Following approval of a tastings permit and the tastings schedule by the Liquor and Beer Licensing Board, the licensee may amend such schedule by delivering to the Liquor and Beer Licensing Board, at least fourteen

(14) days prior to an unscheduled event, a notice of amendment of the approved schedule;

(3) A copy of a certificate of training for individuals who will conduct beverage tastings; and

(4) Any other information requested by the Liquor and Beer Licensing Board reasonably necessary to ensure compliance with the requirements of this Article and Section 44-3-301(10), C.R.S., **as may be amended.**

SECTION 3.

Section 11-3-63 of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-3-63. Decision on application.

(a) The Liquor and Beer Licensing Board may deny an application for issuance of an alcohol beverage tastings permit upon the following grounds:

(1) The applicant has failed to establish that the applicant is able to conduct alcohol beverage tastings in compliance with this Article or Section 44-3-301(10), C.R.S., **as may be amended;**

(2) The alcohol beverage tastings requested by applicant create or threaten to create a public safety risk to the neighborhood; or

(3) The [Licensee] **applicant** has violated the Colorado Liquor Code or any rules and regulations authorized pursuant to such code during the one (1) year immediately preceding the date of the application.

(b) If an application for an alcohol beverage tastings permit is denied, the Liquor and Beer Licensing Board shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the Liquor and Beer Licensing Board within fifteen (15) days after the date of notice.

SECTION 4.

Section 11-3-64 of the Pueblo Municipal Code is hereby amended to read as follows:

Sec. 11-3-64. Operation.

Alcohol beverage tastings shall be conducted in compliance with and subject to the conditions and requirements set forth in this Article and Section 44-3-301(10), C.R.S., **as may be amended.**

SECTION 5.

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 6.

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 Appeal

ISSUE:

Should the City Council uphold the decision of the Pueblo Historic Preservation Commission (HPC) to deny the Certificate of Appropriateness for a steel façade on the structure addressed 322-326 South Union Avenue, located in the Historic Business Zone District? Section 4-14-17, (a), of the Pueblo Municipal Code states, “any owner adversely affected by a final decision of HPC with respect to an application for a Certificate of Appropriateness may seek review by the City Council of such decision by filing with the City Clerk.”

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Following an in-person meeting with Gary Anzuini and Henry Borunda, on December 10, 2021, regarding redevelopment of properties within the Union Avenue Historic Business District, Mr. Borunda installed a steel façade on 322-326 South Union in August 2022. City of Pueblo Code Enforcement Unit issued a Notice of Violation and Order to Correct on September 5, 2022. Fred Gonzales applied for a Certificate of Appropriateness for the steel façade on September 16, 2022, on behalf of property owner Henry Borunda. On November 16, 2022, the HPC reviewed the application and denied the Certificate of Appropriateness based on the following findings:

1. The work does not meet the intent and purpose of the code.
2. The work does not preserve the special character, interest, and value of the landmark or historic district.
3. The work has an adverse impact to the exterior feature of the landmark.
4. The work is not harmonious with the character of the historic district is not compatible with respect to scale, form, and composition of principal facades and relationships to street.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Historic Preservation Commission, at their November 16, 2022, Regular Meeting, voted 6-0 to deny Certificate of Appropriateness approval.

ALTERNATIVES:

The City Council shall sustain the decision of HPC if it finds that HPC did not exceed its jurisdiction or act in an arbitrary or capricious manner.

If the City Council finds that HPC exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council shall return the matter back to the HPC for redetermination consistent with City Council’s written findings.

Attachments:

Minutes of the Historic Preservation Commission, November 16, 2022, public meeting.

Historic Preservation Staff Report, HPC-22-17 Steel Facade with Attachments and Exhibits

City of Pueblo Code Enforcement Unit, Notice of Violation and Order to Correct, September 5, 2022, 322 S. Union, Ave

Certificate of Appropriateness Denial

Appeal of Decision of Historic Preservation Commission, Jimmy Newmoon Roybal, Esq.
December 16, 2022

Gregory Howell
Chair

Jocelyn Martinez
Vice Chair

Anthony Perko
Secretary



Laurel Campbell

Amy Scoby

Susan McCarthy

Suzanne Kuehn

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

Minutes of Regular Meeting
City of Pueblo, Colorado
Thursday November 16, 2022
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 Howell. 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.

MEETING CALLED TO ORDER

Called to order at 1:35 p.m. with Gregory Howell Chairperson, presiding.

Commissioners Present: Amy Scoby, Laurel Campbell, Susanne Kuehn, Susan McCarthy and Jocelyn Martinez

Commissioners Absent: Anthony Perko

Staff Members Present: Wade Broadhead, Senior Planner, Scott Hobson, Acting Director of Planning and Community Development, Cindy Capritta, Land Use Technician, Daniel Kogovsek, City Attorney

Staff Members Absent: N/A

APPROVAL OF AGENDA: Motion by Scoby seconded by McCarthy, motion passes 6-0.

PUBLIC HEARING AND ACTION

REGULAR AGENDA

1. HPC-22-12 Certificate of Appropriateness, 320 S Union Ave, Mayan Mask Mural

Public Hearing:

- Applicant, Henry Barunda and Gary Anzuini, Anzuini Development and Design, were sworn in by City Attorney Kogovsek and testified in support of the application.

Commission Action: Scoby moved to approve the Certificate of Appropriateness, seconded by McCarthy.

Motion Passed: 4 - 2

2. HPC-22-15 Certificate of Appropriateness, 318 S Union Ave, Shade Structures

Public Hearing:

- Mr. Barunda and Mr. Anzuini remained under oath.

Broadhead gave a staff report recommending approval with one condition:

1. If the property is to be used for temporary mobile food vendors, the Certificate of Appropriateness shall not receive final approval and become effective until such time as a special use permit is approved by the City of Pueblo Zoning Board of Appeals.

Commission Action: Martinez moved to approve Certificate of Appropriateness subject to staff's one condition, seconded by Kuehn.

Motion Passed: 4 - 2

3. HPC-22-21 Certificate of Appropriateness, 318 S Union Ave, Screened Fence

Public Hearing:

- Mr. Barunda and Mr. Anzuini remained under oath.

Commission Action: Campbell moved to deny the Certificate of Appropriateness, seconded by Kuehn.

Motion Passed: 5-1

4. HPC-22-17 Certificate of Appropriateness, 322, 324, 326 S Union Ave, Steel Façade

Public Hearing:

- Mr. Barunda remained under oath.

Commission Action: Campbell moved to deny the Certificate of Appropriateness, seconded by Scoby.

Motion passed: 0 - 6.

5. HPC-22-18 Certificate of Appropriateness, 320, 322, 324, 326 S Union Ave, Paint Color

- **Public Hearing:** Mr. Barunda remained under oath.

Commission Action: McCarthy moved to deny the Certificate of Appropriateness, seconded by Campbell.

Motion Passes: 6 - 0

6. HPC-22-19 Certificate of Appropriateness, 326 S Union Ave, Core Mural

- **Public Hearing:** Mr. Barunda remained under oath

Commission Action: Campbell moved to deny the Certificate of Appropriateness, seconded by Scoby.

Motion Passed: 4 - 2

Approval of Minutes: October 27, 2022

Campbell moved to approve the minutes from September 27, 2022, seconded by Martinez.

Motion Passed: 6 - 0

Old/New Business: None

Adjourn: 3:46 PM

Respectfully Submitted,



Land Use Technician

Gregory Howell
Chair

Jocelyn Martinez
Vice Chair

Anthony Perko
Secretary



Laurel Campbell

Amy Scoby

Susan McCarthy

Suzanne Kuehn

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

HPC-22-17 Steel Facade

November 16, 2022

To: Historic Preservation Commission
From: Wade Broadhead, Senior Planner
Through: Scott Hobson, Acting Director of Planning and Community Development
Location: 322, 324, and 326 S. Union Ave
Applicant: Fred Gonzales
Owner: Henry Borunda
Year Built: Remodeled 1945
Legal Description: Lot 4, Block 58, South Pueblo
Zone District: HB, Historic Business Zone District

Synopsis

The applicant is requesting a Certificate of Appropriateness for a steel façade that was applied to the front of the structure in August 2022. The property is located in the Union Avenue Historic District and Historic Business District; Section 17-4-5(a), of the Pueblo Municipal Code requires all exterior alterations to be approved by the Historic Preservation Commission and subject to the Pueblo Historic Business District Guidelines, adopted by City Council in 2001, and the City of Pueblo Historic Preservation Commission, Standards of Appropriateness and Demolition Standards, adopted by City Council, 2005.

Analysis

The subject property is a multi-tenant structure containing three separate addresses 322, 324, and 326 S. Union Avenue. The structure was originally constructed prior to 1905 as a red brick building with two addresses; around 1945 the structure was renovated, and the glazed yellow brick and third address was added. The Union Avenue National Register Historic District was approved by the Park Service in 1980; at that time the glazed brick alteration was not 50 years old and did not qualify as a contributing structure. The applicant installed the steel facade without a building permit or HPC approval and was given a notice of violation on September 5, 2022, by the City of Pueblo Code Enforcement Division.

The applicant provided information on how the steel façade system was affixed to the original exterior wall. Iron Mountain Metal Works completed the installation using fourteen (14) gauge five (5') x (10') steel panels. The area covered measures approximate fifteen (15) tall by seventy (70) wide. The steel panels were stitched together with 1" stitch welds every 16". Locite PL375 Heavy duty construction adhesive was applied to the back of the steel and on the angel trim they used Hilti 1/4" x 2 5/8" screw anchors as well. The installer used KBS clear coat for the final finish. The steel system now covers the street facades of 322-326 S. Union Ave.

The building is listed as non-contributing on the National Register of Historic Places Inventory-Nomination Form. In the Historic Business District guidelines properties are categorized as "Noncontributing, with qualifications" (P. 7) Restoration of properties that are categorized is encouraged but not mandatory. If the property owners choose not to restore the structure, the guidelines for new

construction apply. The standards called “New Construction Historic Business Zone District” for new construction are detailed on pages 22-24 of the design guidelines.

Applicable standards:

Pueblo Historic Business District Guidelines

Guideline: Design new construction or additions with structural system that are independent of the original building (P. 22)

Finding: The steel panels are welded to each other, glued and screwed to the yellow glazed brick façade. Because construction adhesive and screws were used to apply the steel the steel is not considered independent and removal will damage the yellow brick façade. .

Guideline: New Additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property (P.22). “The new work shall be differentiated from the old and shall be compatible with the mass, size, scale and architectural features to protect the historic integrity of the property and its environment”.

Finding: The application of the steel façade, the adhesive, and a number of screws will damage the underlying brick and block when removed.

Guideline: Use Materials that have texture and color similar to this historically used on Union Avenue. (P. 24) Materials should be in context with the color, proportion and scale of existing historic patterns. Brick is by far the predominate material for major building surfaces. The repetition of brick contributes to the visual continuity of downtown Pueblo.”

Finding: brick and to a lesser extent stone and wood are identified as the predominate material types by the Union Avenue Historic District guidelines. Steel facades are not mentioned in the guidelines, nor found in the National Register Nomination and are not a feature of the existing historic district or other commercial districts. The steel façade does not meet the intent of the guideline to keep materials similar to those already found in the historic district.

Standards of Appropriateness and Demolition Standards

3.1 Rehabilitations and Alterations to Commercial Buildings

3.1.4.1 First Floors and Upper Floors

3.1.4.1.1 Preserve storefront elements such as: height, recessed entry, cast iron frame, kick plate, transom window, sign band, entry to upper floors, large glass display window

Finding: The steel façade system covers up the storefront elements that were differentiated through various types of brickwork outlining a transom area and window display surrounds made with brick. All original detailing on the storefront has been obscured.

3.1.5 Storefronts

3.1.5.3 Retain the original shape and size of the transom window as glass.

Finding: Though the transom window had been bricked in around 1945, they left the brick patterning, which highlighted the transom area as an echo to the original transom. The addition of the steel façade has obstructed those details.

3.1.5.7 Preserve original architectural detailing. If original details are presently covered, expose them and incorporate them into renovation design. Avoid removing or altering any historic material or significant architectural features. Replace detailing where it is known to have existed, if feasible.

Finding: The steel façade system has covered the 1945 façade and all architectural detailing. Furthermore, the installation may have seriously damaged the original storefront façade and brick.

The applicant states that the steel façade is intended to remind Pueblo of its steel city roots. Steel façade systems were not found in the Union Avenue Historic District during the period of significance nor at a later date. The guidelines encourage new materials which are recognizable from the old but compatible with the historic material. The guidelines mention that brick is the predominate material even apply to slightly older buildings outside that period of significance whose facades all contribute to the overall feel of the historic character and district which is represented by brick, stone, wood, and glass. If Union Avenue would be resurveyed for national register eligibility the blonde brick/block at 326 S. Union would be a character defining feature of the Mid-Century storefront renovation as it was a significant change over time.

City staff consulted local Pueblo architect, Dave Weihrich, to determine what would be the implications and affects to the historic building of removing the façade system. Mr. Weihrich stated that the adhesive is a sturdy one and with the number of screws it could cause significant damage to the original brick and block during installation and if removed.

FINDINGS OF FACT FOR CERTIFICATE OF APPROPRIATENESS **REQUIREMENTS SECTION 4-14-11:**

1. Conform to the intent and purpose of this code.

Comments:

Negative finding: the steel façade is in direct opposition of the guidelines the state projects should use similar textures and colors, do no harm to existing historic materials, and be independent of the original building.

1. Preserve the special character, interest, and value of the landmark or historic district and its environs.

Comments:

Negative finding, the covering of the character defining blonde block façade material, does not preserve the special character of the historic district. Steel façade material was not used in the historic district during the period of significance.

2. Not be an adverse impact on the exterior features of the landmark.

Comments:

Negative finding, the work will not be easily reversible and will negatively affect the landmark.

3. The extent to which proposed improvements would be harmonious with the character of a Historic District, and the relationship between the results of such work and the exterior features of other neighboring elements in such Historic District.

Comments:

Negative finding: The metal façade treatment does not align with the recommended material type required by the guidelines, does not reflect a similar storefront design in the district and detracts from the largely brick and store storefronts in the historic district. Scale, form, and composition of principal facades and relationship to the street.

5. Scale, form, and composition of principal facades and relationship to the street.

Comments:

Negative finding: the proposed metal storefront system does not meet Historic Business District code or the Standard of Appropriateness. The steel façade does not match surrounding colors, textures, or design elements and obscures and has damaged the original storefront.

Recommendations:

Section 4-14-12, (f), states, “if the proposed work does not conform with the Standards of Appropriateness, HPC shall deny the Certificate of Appropriateness, or continue action thereon for up to sixty days (60) with recommendation for amendments which the owner may wish to submit in a revised application.

The proposed steel façade does not conform to the Pueblo Historic Business District Guidelines or Standards of Appropriateness; therefore, a COA cannot be issued, and modifications shall be removed. The owner may submit a revised application with modifications to the steel façade to meet the criteria of the HB Guidelines and Standards of Appropriateness.

Exhibits

- A. Maps
- B. Photographs
- C. Applications and attachments
- D. Union Avenue National Register Nomination Excerpt

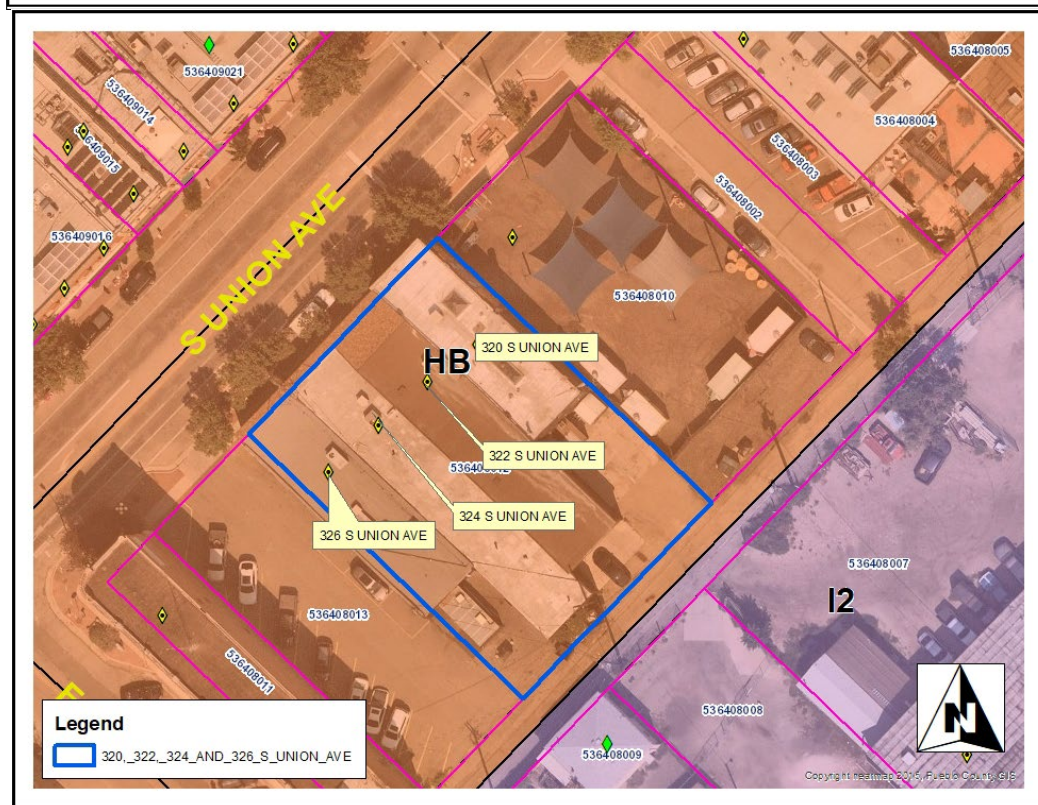


EXHIBIT B. SITE PHOTOGRAPHS





Photos of the storefronts Circa 2007 and November 2022 Conditions





EXHIBIT C. APPLICATIONS AND ATTACHEMNTS



City of Pueblo PLACE

09/19/2022

22-157

Historic Preservation Commission

Status: Active

Date Created: Sep 16, 2022

Applicant

Fred Gonzales
bucksenterprises67@gmail.com
PO Box 8534
Pueblo, Colorado 81008
719-252-5913

Primary Location

326 S UNION AVE
PUEBLO, CO 81003

Owner:

BORUNDA HENRY
1 ROCKBRIDGE LN PUEBLO , CO 81001-1306

Internal

Case Number

HPC-22-19

Planner Assigned

Planner 2

Continuances

--

Newspaper Notice Cost

--

Public Notice Costs must be paid by:

--

Public Notice zoning poster must be displayed by:

--

HPC Hearing Information

HPC Hearing Date

10/19/2022

HPC Hearing Results

--

Check box if hearing is a Special Requested Hearing

☐

Planning & Zoning Commission Information

City Council Information

Application Information

Application Type

Certificate of Appropriateness

Residential or Non-Residential?

Non-Residential

Certificate of Appropriateness

Name of historic resource:

Union Historic District

Provide a short description of the proposed work

New mural on sothern facade, Black paint on side and rear, front facade steel application over block

Type of Historic Registry

Local

New construction

☐

Modification

☒

Awning

☐

Sign installation

☐

Demolition

☐

Certificate of economic hardship

☐

Infill in a Historic District

☐

Scope of work:
(Mark all that apply)

Addition

☐

Paint

☒

Replace or add windows or doors

☐

Reroof

☐

Repair of stone or brick

☐

Lighting

☐

Other

☐

Scope of Work Details

Paint Scope of Work:

List the New Colors proposed

Black

Are the colors selected from a Historic Paint palette:

Yes

Repaint same colors

☐

New Colors

☒

Paint removal

☐

COA Building Information

Existing Building Information:

Storefront width?

--

Materials?

--

Proposed Construction Information:

Height?

--

Additional information regarding the specific request:

--

Area?

--

Height?

--

Year built?

--

Area?

--

Materials?

--

The End Goal and overall vision for this property is to help the downtown area become more alive and interactive, while representing Pueblo's community, culture, and history. The Steel on the front façade (on all properties) clearly stating a reminder of "The Steel City". On one end (318) we have the Mayen mask mural, the Mayen Mask is an artistic interpretation of a traditional Mayan mask. The mask has three sections: the outside, middle, and center, representing; mind, body, and spirit. This concept intends to serve the Pueblo community and culture in several ways. The image aims to provoke thoughts and introspections about its experience and meaning. It enhances and fixes a previously neglected and visually unappealing space and brings a sense of beauty through the vibrancy of the colors. The purpose of the mural is to create a colorful and attractive image which promotes a sense of wonder and pride in our community. By placing this artwork in the public space, we create an interesting destination to be enjoyed for the entire community. This encourages public activity, provides a setting for photo opportunities, and creates a place of social interactions for everyone to freely experience. On the other end (326 union) we have a color splash in the landscape of a "core" being created and formed. This representing all the different subjects, cultures, and differences that we have in our community "our core". As in the mural, like you would read a history book from left to right, it starts all over the place, trying to figure out what it is to become, then at the end to be a solid, unified, strong core. A core that is filled with all different things coming together as one beautiful piece. A Strong "Pueblo Proud" core.

Company: Iron Mountain Metal Works

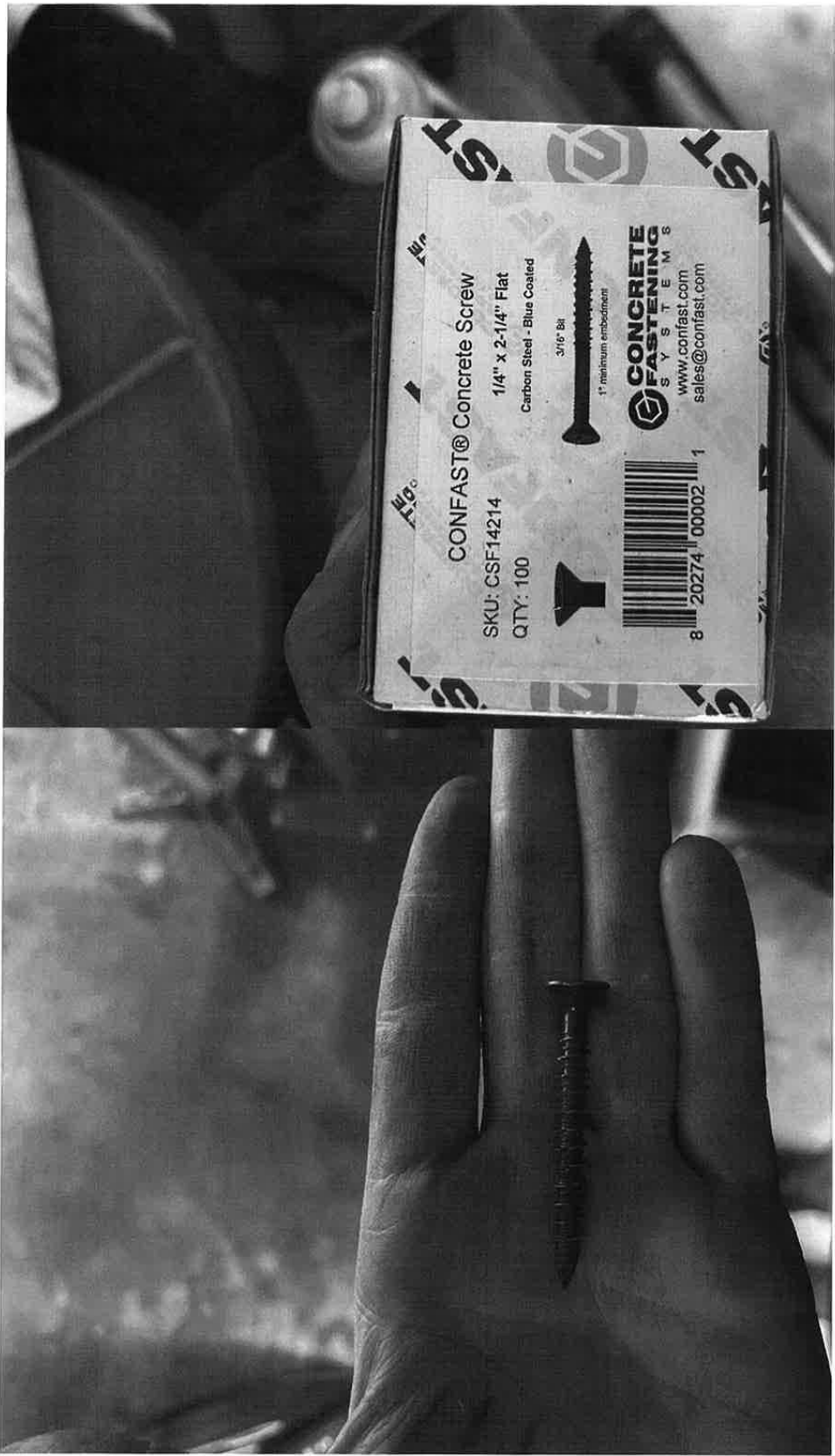
Welder: Marshall Brumfield

In the following document you will find a description on how the front facade on the 300 Block of South Union in Pueblo was fastened and installed, along with what materials were used:

- 1) Used Loctite PL375 Heavy Duty Construction Adhesive on back of steel
- 2) Used 12 anchors per panel
- 3) 1" Stitch welds every 16"
- 4) On the angle Trim I used Hilti 1/4"x 2 5/8" screw anchors as well
- 5) 14 Ga. 5'x 10' Sheeting for Façade
- 6) KBS clear coat for the finish

The combination of all three ways of anchoring/welding seems to be more than adequate for the mounting the façade. The Welding locks everything together essentially making it "One Piece"









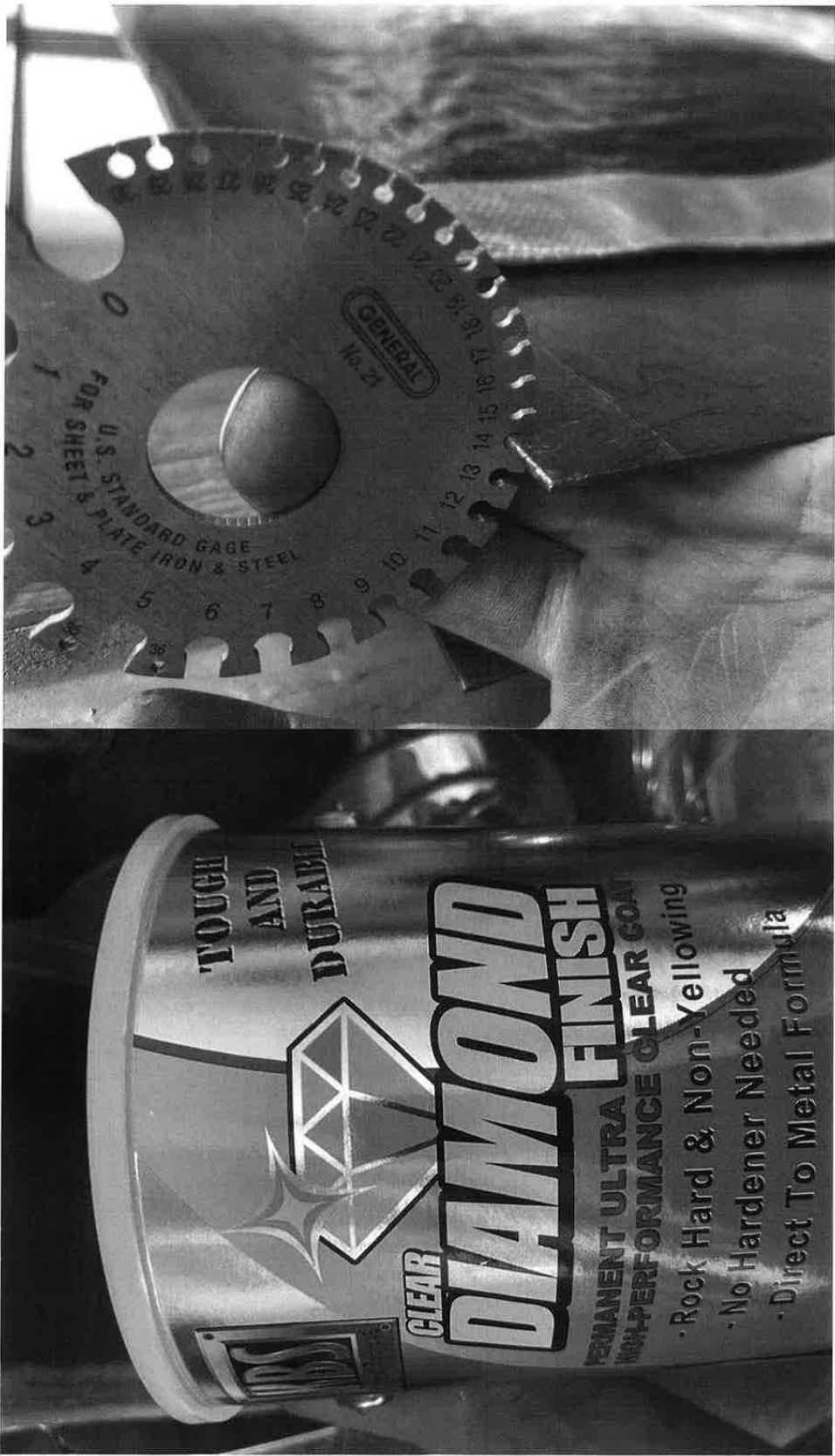


EXHIBIT D. Union Avenue National Register Nomination Excerpt

FHR-8-300 (11-78)

United States Department of the Interior
Heritage Conservation and Recreation Service

National Register of Historic Places
Inventory—Nomination Form

Continuation sheet Union Avenue Historic District Item number 7 Page 7

57. "C" Store (323 S. Union). c. 1900: two-story, red brick structure with brick piers; corbeling; and arched radiating voussoirs over windows. First story has been altered.
- ✓ 58. "C" Store & Apartment (325-325 1/2 S. Union), Tivoli Building--1896: two-story cut stone with piers; steel belt course and decorated concrete belt course.
- ✓ 59. "C" Stores (327-335 S. Union), William Strait Block, G. W. Roe Architect. c. 1893: two-story red brick structure with four store fronts; also pier and spandrel with plinth, two iron belt courses, stone belt course, corbeling, and 17 spaced windows across the front.
- ? 60. "C" Store (304-306 S. Union/Historic Address: 66-68 S. Union), Donnegan Block. c. 1883: two-story red brick structure. Brick piers with plinth, decorated. Three-center door openings with double transoms, decorated lintels.
- ? 61. "C" Vacant (303-308 1/2 S. Union), J.S. Glass Clothing Store--National Register Property. 1889: three-story, red-brick presently being restored. Two belt courses, boxed cornice with decorated frieze. Cast iron store front supports, etched and embossed glass, semi-circular and segmental window heads with connecting lintels.
- ? 62. "C" Tavern (310 S. Union/Historic Address: 72 S. Union). c. 1883: two-story red brick stone lug sills and lintels, rosettes on iron coursing, and corbeling.
63. "V" Vacant Lot (312-316 S. Union).
64. "C" Johnson Electric (318 S. Union/Historic Address: 80 S. Union), Beauchamp Block. c. 1883: two-story red brick, iron belt course with rosettes, stone belt course, pier and spandrel wall construction, recessed segmental window head with arched voussoirs.
65. "NC" Johnson Electric (320-324 S. Union). c. 1945: one-story red brick building; stuccoed; new glazed yellow brick front. constructed from two smaller structures in 1945.
66. "V" Vacant Lot (328 S. Union).



City of Pueblo
Code Enforcement Unit
200 South Main Street, Pueblo, CO 81003



Pueblo Police Department / 200 S. Main Street / Pueblo, CO 81003 / Tel 719-553-2592 / www.Pueblo.us

NOTICE OF VIOLATION AND ORDER TO CORRECT

September 5, 2022

BORUNDA HENRY
1 ROCKBRIDGE LN
PUEBLO CO 81001-1306

OCCUPANT
322 S UNION AVE
PUEBLO CO 81003

Violation Address: 322 S UNION AVE PUEBLO CO 81003,

Parcel: 536408012, legally described as LOTS 4-5-6-7 BLK 58 SOUTH PUEBLO FORMERLY 05-364-08-001 .

Notice of Violation and Order: Violation of Pueblo Municipal Code, at

322 S UNION AVE PUEBLO CO 81003

Pueblo Municipal Code, Title I through XVII

17-4-3
SEC 17-10-11, SEC 17-10-12, SEC 17-10-13
SEC 17-5-6

NOTICE IS HEREBY GIVEN that the Code Compliance Officer pursuant to the Pueblo Municipal Code has found that the property described above is in violation.

You are hereby ordered to bring the property into compliance by September 9, 2022.

All exterior work must cease immediately. No alterations to the outside of the building may continue without the required approvals and permits. The exterior of the building must be restored to it's original condition or Historic Preservation Commission must approve the changes. No alterations may be made to the commercial structure without the required building permit issued by Pueblo Regional Building.

Based on the violation(s) of the following City of Pueblo Ordinance(s):

Historic Business District

(5)(a) No building permits shall be issued nor shall any work be undertaken or commenced to construct, reconstruct, remodel, repair, paint, rehabilitate or in any way alter or modify the exterior of any building in any historic business district until the Historic Preservation Commission as established and described in Section 4-14-04 of this Code has reviewed, approved and issued a written certificate of compliance for such work.

(b) All exterior additions, alterations, and renovations shall be approved by the Historic Preservation Commission prior to the commencement of work or before the issuance of a building permit where one is required.

Sec. 17-10-11. - Administrative provisions.

(a) To ensure compliance with this Chapter, proposed signs or sign structures shall be required to receive a permit from the Department of Land Use Administration, except as exempted within this Chapter.

(b) An application for a sign permit shall be made to the Administrative Official on the forms provided by the Department of Land Use Administration and in the manner required herein. At a minimum, the following shall be submitted to the Department of Land Use Administration for approval:

(1) Easements and/or rights-of-way.

a. Setbacks - distance to property lines from buildings, parking areas and driveways;

b. Lighting plans as required in Section 17-4-52; and

c. Graphics, including:

1. Building signs shall include drawings or pictures, at a minimum size of 8.5" × 11", showing proposed building signs, sizes, square footages, placement, elevations and dimensions.

2. Freestanding and monument signs shall include drawings or pictures, at a minimum size of 8.5" × 11", showing proposed signs, sizes, square footages, height, placement and property lines.

3. The applicant shall provide drawings or pictures, at a minimum size of 8.5" × 11", showing proposed building signs, sizes, square footages, placement, elevations and dimensions for all existing signage.

4. Other requirements adopted by the Department of Land Use Administration to comply with this Section.

(2) The Administrative Official shall review and act on the sign applications for non temporary signs for which a permit is required to assure compliance with the standards set for thin this Chapter.

(c) The Administrative Official may grant exceptions to the provisions of this Chapter whenever a sign or property has been designated a Historic Sign pursuant to the eligibility criteria adopted by the Historic Preservation Commission. These criteria provide for Historic Sign status for signs that are:

(1) Associated with historic figures, events or places.

(2) Significant as evidence of the history of the product, business or service advertised.

(3) Significant as reflecting the history of the building or the development of the historic district. A sign may be the only indicator of a building's historic use.

(4) Characteristic of a specific historic period, such as gold leaf on glass, neon or stainless steel lettering.

(5) Integral to the building's design or physical fabric, as when a sign is part of a storefront made of Carrara glass or enamel panels, or when information is rendered in stone, metal or tile. In such cases, removal can harm the integrity of a historic property's design or cause significant damage to its materials.

(6) Outstanding examples of the sign maker's art, whether because of their excellent craftsmanship, use of materials or design.

(7) Local landmarks; that is, signs recognized as popular focal points in a community.

(8) Elements important in defining the character of a historic district, such as marquees in a theater district.

Sec. 17-10-12. - Variances and appeals.

(a) The Zoning Board of Appeals shall have power to authorize variances from the terms of this Chapter with respect to maximum sign area, maximum sign height, sign location and the number of signs located on a parcel.

(b) In evaluating a request for a variance to the maximum sign height, the Zoning Board of Appeals may consider whether there are special topographical circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the sign owner's or user's ability to communicate adequately and effectively with the public through the use of the sign.

(c) The Zoning Board of Appeals may not grant a variance which exceeds the specific requirement of this Chapter by more than twenty-five percent (25%).

(d) Any person aggrieved by any decision of the Administrative Official concerning the interpretation or administration of this Chapter may appeal such decision to the Zoning Board of Appeals in the time and manner provided in Section 17-5-22 of this Code.

Sec. 17-10-13. - Enforcement, violations and penalties.

(a) The Administrative Official is authorized to enforce a final order to remove, alter or repair a sign or sign structure. All costs incurred in enforcing such order shall be paid by the responsible party within thirty (30) days after notification of such costs. All unpaid costs, together with interest thereon at the rate of ten percent (10%) per annum, shall, upon recording in the offices of the County Clerk and Recorder a statement under oath of the Mayor showing the cost of such enforcement and describing the parcel upon which the sign or sign structure is located, be and constitute a perpetual lien on such parcel, having priority over all other liens except general property taxes. Such lien shall remain in full force and effect until such costs and interest have been paid in full. The remedies

of the City hereunder and under this Chapter and Title shall be cumulative.

(b) The sign owner and owner of the parcel upon which a sign is located shall be jointly and severally responsible for the sign and sign structure.

(c) Any person violating any provision of this Chapter shall be punished as provided in Section 17-7-3 of this Title.

17-5-6 Administration Construction and Use as Authorized

Certificates of zoning compliance issued on the basis of plans and applications approved by the Administrative Official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this Code.

If you have any questions or wish to discuss this Notice and Order, contact KAREN WILLSON at (719) 553-2592.

KAREN WILLSON

Code Enforcement Unit
Pueblo Police Department
200 South Main Street
Pueblo, CO 81003

Gregory Howell
Chair

Jocelyn Martinez
Vice Chair

Anthony Perko
Secretary



Historic Preservation Commission

Laurel Campbell

Amy Scoby

Susan McCarthy

Suzanne Kuehn

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

CASE NUMBER: **HPC-22-17**

HEARING DATE: **November 16, 2022**

APPLICATION DATE: **September 16, 2022**

APPEAL TERM END DATE: **December 16, 2022**

PROPERTY STREET ADDRESS:	322-326 S. Union Ave	ZONE DISTRICT:	Historic Business (HB zone) district
LEGAL DESCRIPTION:	Lot 4-6, Block 58, South Pueblo		
OWNER:	Hank Borunda	APPLICANT:	Fred Gonzales
ADDRESS:	1 Rockbridge Ln 81001	ADDRESS:	PO Box 8534, Pueblo, CO 81008
TELEPHONE:	NA	TELEPHONE:	719-252-5913
EMAIL:	NA	EMAIL:	ganzuini@comcast.net

PROJECT

DESCRIPTION: **Certificate of Appropriateness to install a steel facade**

Scott Hobson

Land Use Administrative Official

DECISION DATE: November 16, 2022

☐ Approved

☐ Approved with Attached Staff Conditions

☒ Denied

Your application to the City of Pueblo Historic Preservation Commission has been **DENIED**. Failure to comply will be grounds for injunction per § 4-14-19 of the *Pueblo Municipal Code*.

If you wish to appeal this decision, you may seek review by the Pueblo City Council of such decision in a manner provided by § 4-14-17 of the *Pueblo Municipal Code*. The appeal must be sought within 20 days after the decision of the Historic Preservation Commission.



NEWMOON LAW, P.C.

Business Counselors and Attorneys at Law

PO BOX 853, Pueblo, CO 81002, Fax: 215-220-2292

So. Colorado: 719-445-6572 Philadelphia: 215-821-9013

www.newmoonlaw.com

Jimmy Newmoon Roybal, Esq.
Attorney for Henry Borunda

December 16, 2022

Via Electronic Form Submission

Pueblo City Council
1 City Hall Place
Pueblo, CO 81003

APPEAL OF DECISION OF HISTORIC PRESERVATION COMMISSION

By this document, Mr. Borunda hereby respectfully requests that the Pueblo City Council considers this appeal and reverses the decision of the Pueblo Historic Preservation Commission to decline to issue a Certificate of Appropriateness for the properties located at 322, 324, and 327 S. Union Ave in Pueblo Colorado. By and through his attorney Jimmy Newmoon Roybal, Mr. Henry Borunda petitions Pueblo City Council as follows:

Brief Summary

Mr. Borunda hereby petitions City Council to reverse the Union Avenue Historic Commission's decision to disapprove the issuance of a Certificate of Appropriateness for the facade and mural improvements to his building at 322, 324, and 326 S. Union Avenue because the denial was made without sufficient consideration of evidence that demonstrates that the improvements at issue comply with the standards of the Union Avenue Historic District.

Background

On Nov 16, 2022, the City of Pueblo Historic Preservation Commission (hereafter, the Commission) discussed the recommended findings (hereafter, the Recommendations), submitted by Wade Broadhead, Senior Planner, through Scott Hobson, Acting Director of Planning and Community Development, regarding:

1. HPC-22-19-Core Mural Review: The Recommendations state, "The mural contains bright modern colors, and the content is modern abstract, which does not reflect the period of significance in the district (1880-1921), therefore a COA cannot be issued."
 - a. Mr. Borunda contests this finding and provides evidence below that was not discussed at the hearing.
2. HPC-22-17 Steel Facade: The Recommendations state that "the steel façade is in direct opposition of the guidelines the state projects should use similar textures and colors, do no harm to existing historic materials, and be independent of the original building" (3),

and recommended “The proposed steel façade does not conform to the Pueblo Historic Business District Guidelines or Standards of Appropriateness; therefore, a COA cannot be issued, and modifications shall be removed.”

- a. Mr. Borunda contests this finding and provides evidence below that was not discussed at the hearing.
3. HPC-22-21 Screen Fence: Mr. Borunda has already complied and removed the slats facing Union Ave.

Therefore, Henry Borunda, owner of the subject properties, appeals and requests reconsideration regarding HPC-22-19-Core Mural Review and HPC-22-17 Steel Facade.

Timing of this submission

This appeal is submitted to City Council on December 16, 2022 and should be considered timely because the Commission's decision has not yet been published in writing or confirmed in minutes. While Mr. Broadhead's recommended findings have been discussed in public, the Commission has not documented its intent to find in accordance with the Recommendations, the Recommendations have not been officially adopted by the Commission, and should not be viewed as the Commission's official findings until the Commission has followed its process for adoption of minutes, which shall be the first opportunity to constitute official written public notice of their decision.

Mr. Borunda submits this appeal at this time to preserve timeliness and to avoid questions in relation thereto. Mr. Borunda has petitioned the Commission for reconsideration at the same time, but it is unclear whether such petition would extend the timeline for submission of an appeal. Mr. Borunda respectfully suggests that Council delay this agenda item until the Commission has resolved the Client's request for reconsideration.

Mr. Borunda endeavored to fit within the neighborhood's environs.

Extended environs around the Union Historic District include the vibrant displays of “neon alley” and the stately, modern construction and dark colors of the Rawlings Library. Mr. Borunda's goal was to fit within the neighborhood's environs.

The steel facade installed upon 322, 324, and 326 S. Union Avenue is intended to reflect the beauty of the Rawlings Library's own bronze facade panels, which can be seen from the street area in front of the building. The intent was to make this building, which is noncontributing to the historic nature of Union Ave, a coherent contributor to the architectural environment that now dominates and characterizes the Union Ave district and the environs that impact its appearance. In fact, Mr. Borunda was concerned that the original yellow brick facade was detracting from the beauty of the area and that is why he was compelled to install the steel facade.

With specific regard to the Core Mural, the mural is an artistic depiction of an oil spill, which speaks to the industrial past and present of Union Avenue in its proximity to rail lines that can generate limited oil and grease spills into the surrounding land, which can create the same sort

of image when rains or water are mixed with those spills. The mural is meant to highlight the beauty that can be found in what many only consider in an unfortunate context.

Mr. Borunda's mural is within the scope of historical paint colors and styles.

The Commission's accepted lists of historical paint colors match historical exterior paints, not necessarily historical artist colors from the era, which included vibrant colors, such as cadmium yellows (see <https://www.winsornewton.com/na/articles/colours/spotlight-on-cadmium-yellow/>) and synthetic French Ultramarine (see <https://www.winsornewton.com/na/articles/colours/spotlight-on-ultramarine/>), among others.

Global art styles from the 1880s through 1920s, which match the historic period during which many of Union Avenue's historic buildings were constructed, included expressionism and cubism (<https://www.britannica.com/art/Expressionism>, & <https://www.britannica.com/art/Cubism>), using vibrant, unnatural colors, and abstract and surreal imaging. Well-known artists from the period include Edvard Munch, whose most famous painting is the surreal work, *The Scream* (1893), and Pablo Picasso.

The Core Mural, representing an oil spill, reflects Pueblo's history as an industrial powerhouse, and the fluid nature of a diverse population. Moreover, the style and colors are congruent with art styles and from the historical period.

Summary

Mr. Borunda's goal was and is to enhance the beauty of the Historic District, both by reflecting existing beauty in the extended environs, and through "contemporary architectural expression," in accordance with Section 4.14.11(b) of the PMC. These modifications reflect Pueblo's history, as an industrial powerhouse and the present environs of Union Avenue. Mr. Borunda asks the Council to please understand the work he has done to make his buildings comply with the rules and regulations of the Commission. Mr. Borunda prays for your relief by asking this Council to order the Union Avenue Historic Commission to issue a Certificate of Appropriateness now on the matters of HPC-22-19-Core Mural Review and HPC-22-17 Steel Facade.

Respectfully,


Jimmy Newmoon Roybal, Esq.
Attorney for Henry Borunda



Background Paper for Appeal

ISSUE:

Should the City Council uphold the decision of the Pueblo Historic Preservation Commission (HPC) to deny the Certificate of Appropriateness for the “Core” mural on the structure addressed 326 South Union Avenue, located in the Historic Business Zone District? Section 4-14-17, (a), of the Pueblo Municipal Code states, “any owner adversely affected by a final decision of HPC with respect to an application for a Certificate of Appropriateness may seek review by the City Council of such decision by filing with the City Clerk.”

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Following an in-person meeting with Gary Anzuini and Henry Borunda, on December 10, 2021, regarding redevelopment of properties within the Union Avenue Historic Business District, Mr. Borunda installed the “Core” mural on 326 South Union in August 2022. City of Pueblo Code Enforcement Unit issued a Notice of Violation and Order to Correct on September 5, 2022. Fred Gonzales applied for a Certificate of Appropriateness for the steel façade on September 16, 2022, on behalf of property owner Henry Borunda. On November 16, 2022, the HPC reviewed the application and denied the Certificate of Appropriateness based on the following findings:

1. The work does not meet the intent and purpose of the code.
2. The work does not preserve the special character, interest and value of the landmark or historic district.
3. The work has an adverse impact to the exterior feature of the landmark.
4. The work is not harmonious with the character of the historic district is not compatible with respect to scale, form, and composition of principal facades and relationships to street.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

The Historic Preservation Commission, at their November 16, 2022, Regular Meeting, voted 6-0 to deny Certificate of Appropriateness approval.

ALTERNATIVES:

The City Council shall sustain the decision of HPC if it finds that HPC did not exceed its jurisdiction or act in an arbitrary or capricious manner.

If the City Council finds that HPC exceeded its jurisdiction or acted in an arbitrary or capricious manner, the City Council shall return the matter back to the HPC for redetermination consistent with City Council’s written findings.

Attachments:

Minutes of the Historic Preservation Commission, November 16, 2022, public meeting.

Historic Preservation Staff Report, HPC-22-19 with Attachments and Exhibits

City of Pueblo Code Enforcement Unit, Notice of Violation and Order to Correct, September 5, 2022, 322 S. Union, Ave

Certificate of Appropriateness Denial

Appeal of Decision of Historic Preservation Commission, Jimmy Newmoon Roybal, Esq.
December 16, 2022

Gregory Howell
Chair

Jocelyn Martinez
Vice Chair

Anthony Perko
Secretary



Laurel Campbell

Amy Scoby

Susan McCarthy

Suzanne Kuehn

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

Minutes of Regular Meeting
City of Pueblo, Colorado
Thursday November 16, 2022
City Council Chambers, 1 City Hall Place

Join Zoom Meeting online:

<https://pueblo.zoom.us/j/92717867722?pwd=WUdnaHVGbnlCdHRrUHNhZnpPWG1Ydz09>

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 Howell. 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.

MEETING CALLED TO ORDER

Called to order at 1:35 p.m. with Gregory Howell Chairperson, presiding.

Commissioners Present: Amy Scoby, Laurel Campbell, Susanne Kuehn, Susan McCarthy and Jocelyn Martinez

Commissioners Absent: Anthony Perko

Staff Members Present: Wade Broadhead, Senior Planner, Scott Hobson, Acting Director of Planning and Community Development, Cindy Capritta, Land Use Technician, Daniel Kogovsek, City Attorney

Staff Members Absent: N/A

APPROVAL OF AGENDA: Motion by Scoby seconded by McCarthy, motion passes 6-0.

PUBLIC HEARING AND ACTION

REGULAR AGENDA

1. HPC-22-12 Certificate of Appropriateness, 320 S Union Ave, Mayan Mask Mural

Public Hearing:

- Applicant, Henry Barunda and Gary Anzuini, Anzuini Development and Design, were sworn in by City Attorney Kogovsek and testified in support of the application.

Commission Action: Scoby moved to approve the Certificate of Appropriateness, seconded by McCarthy.

Motion Passed: 4 - 2

2. HPC-22-15 Certificate of Appropriateness, 318 S Union Ave, Shade Structures

Public Hearing:

- Mr. Barunda and Mr. Anzuini remained under oath.

Broadhead gave a staff report recommending approval with one condition:

1. If the property is to be used for temporary mobile food vendors, the Certificate of Appropriateness shall not receive final approval and become effective until such time as a special use permit is approved by the City of Pueblo Zoning Board of Appeals.

Commission Action: Martinez moved to approve Certificate of Appropriateness subject to staff's one condition, seconded by Kuehn.

Motion Passed: 4 - 2

3. HPC-22-21 Certificate of Appropriateness, 318 S Union Ave, Screened Fence

Public Hearing:

- Mr. Barunda and Mr. Anzuini remained under oath.

Commission Action: Campbell moved to deny the Certificate of Appropriateness, seconded by Kuehn.

Motion Passed: 5-1

4. HPC-22-17 Certificate of Appropriateness, 322, 324, 326 S Union Ave, Steel Façade

Public Hearing:

- Mr. Barunda remained under oath.

Commission Action: Campbell moved to deny the Certificate of Appropriateness, seconded by Scoby.

Motion passed: 0 - 6.

5. HPC-22-18 Certificate of Appropriateness, 320, 322, 324, 326 S Union Ave, Paint Color

- **Public Hearing:** Mr. Barunda remained under oath.

Commission Action: McCarthy moved to deny the Certificate of Appropriateness, seconded by Campbell.

Motion Passes: 6 - 0

6. HPC-22-19 Certificate of Appropriateness, 326 S Union Ave, Core Mural

- **Public Hearing:** Mr. Barunda remained under oath

Commission Action: Campbell moved to deny the Certificate of Appropriateness, seconded by Scoby.

Motion Passed: 4 - 2

Approval of Minutes: October 27, 2022

Campbell moved to approve the minutes from September 27, 2022, seconded by Martinez.

Motion Passed: 6 - 0

Old/New Business: None

Adjourn: 3:46 PM

Respectfully Submitted,



Land Use Technician

Gregory Howell
Chair

Jocelyn Martinez
Vice Chair

Anthony Perko
Secretary



Laurel Campbell

Amy Scoby

Susan McCarthy

Suzanne Kuehn

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HPC-22-19-Core Mural Review

November 16, 2022

To: Historic Preservation Commission
From: Wade Broadhead, Senior Planner
Through: Scott Hobson, Acting Director of Planning and Community Development
Location: 326 S. Union Ave
Applicant: Fred Gonzales
Owner: Henry Borunda
Year Built: Remodeled 1945
Legal Description: Lot 4, Block 58, South Pueblo
Zone District: HB, Historic Business Zone District

Synopsis

The property at 326 S. Union is requesting Certificate of Appropriateness for a mural that was painted in August 2022. Section 17-4-5(a)(1)(a) of the PMC states that all alterations in the HB Zone District receive approval from the Historic Preservation Commission and subject to the Pueblo Historic Business District Guidelines, adopted by City Council in 2001, and the City of Pueblo Historic Preservation Commission, Standards of Appropriateness and Demolition Standards Adopted by City Council, 2005.

Analysis

The subject property, 326 S. Union, is a multi-tenant structure containing three separate addresses 326, 324, and 322 S. Union. The structure was originally constructed prior to 1905 as a red brick building with two addresses; around 1945 the structure was renovated; the glazed yellow brick and third address was added. This building is listed as a non-contributing resource in the Union Avenue National Register Historic District. The mural was painted in August 2022 without a Certificate of Appropriateness.

The mural is located on the northwest façade and measures 15 ft by 30 ft. The applicant has supplied a list of paint colors, twenty-four in all, which is attached in this staff report. The mural is called *Core* and refers to the site's location as the core of Pueblo and the mix of various cultures and traditions.

The property is located in the Union Avenue Historic District and Historic Business District which requires all exterior alterations to receive a Certificate of Appropriateness from HPC and is subject to the Pueblo Historic Business District Guidelines adopted by City Council in 2001 and the City of Pueblo Historic Preservation Commission, Standards of Appropriateness and Demolitions Standards, adopted by City Council in 2005.

Applicable standards:

While the Union Avenue Historic Business District Guidelines and Historic Preservation Code do not specifically regulate murals, the Historic Business District guidelines state that:

Pueblo Historic Business District Guidelines

Guideline: Use historical paint color from an approved paint list (p.18)

Finding: The colors were not from an commercially available historical paint palette.

Guideline: Color for signs should be selected to harmonize with the overall building scheme and historical character. Florescent or neon colors are not traditional and are inappropriate (P. 20)”

Finding: some of the colors on the mural are bright/neon, which, according to the HB Guidelines and Standards, are not appropriate for the Union Avenue Historic District.

City of Pueblo Historic Preservation Commission Standards of Appropriateness and Demolition Standards:

Section 3.1.9 “The HPC requires that an historical paint color be chosen from a commercially available palette”

Finding: The applicant used twenty-four (24) colors, none of which are on a commercially available manufacturers historic paint palette.

FINDINGS OF FACT FOR CERTIFICATE OF APPROPRIATENESS REQUIREMENTS SECTION 4-14-11(A):

1. Conform to the intent and purpose of this code.
 - **Comments:**
Neutral finding. The standards are silent on murals, but they have been allowed on facades where they are applied to compromised facades, such as those that have been stuccoed.
2. Preserve the special character, interest, and value of the landmark or historic district and its environs.
 - **Comments:**
Neutral Finding: Murals applied to already compromised facades allow for new contemporary special character and interest without degrading historic material.
3. Not be an adverse impact on the exterior features of the landmark.
 - **Comments:**
Affirmative finding. the work will be reversible and not negatively affect the landmark.
4. The extent to which proposed improvements would be harmonious with the character of a Historic District, and the relationship between the results of such work and the exterior features of other neighboring elements in such Historic District.
 - Comments:**
Negative: the mural faces a parking lot and rear of another historic building and from the street. Its presence does not overshadow other buildings or elements in the historic district.
4. Scale, form, and composition of principal facades and relationship to the street.
 - Comments:**
Negative: the mural occupies a 450 sq. ft. area of the façade close to Union Avenue. The mural is two and a half times the size of the allowable area of a wall sign in a standard business district.

Recommendations:

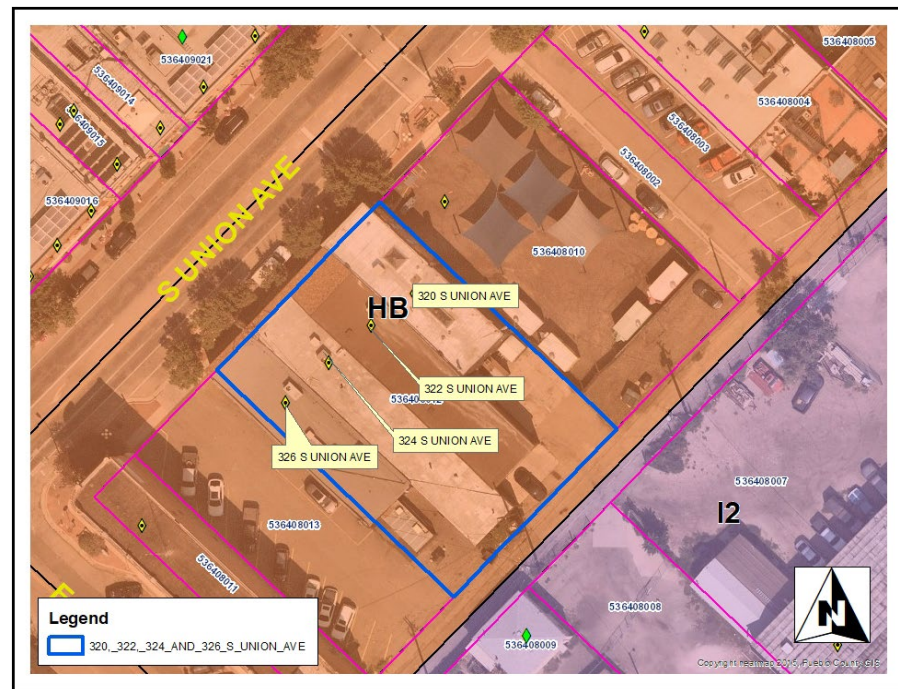
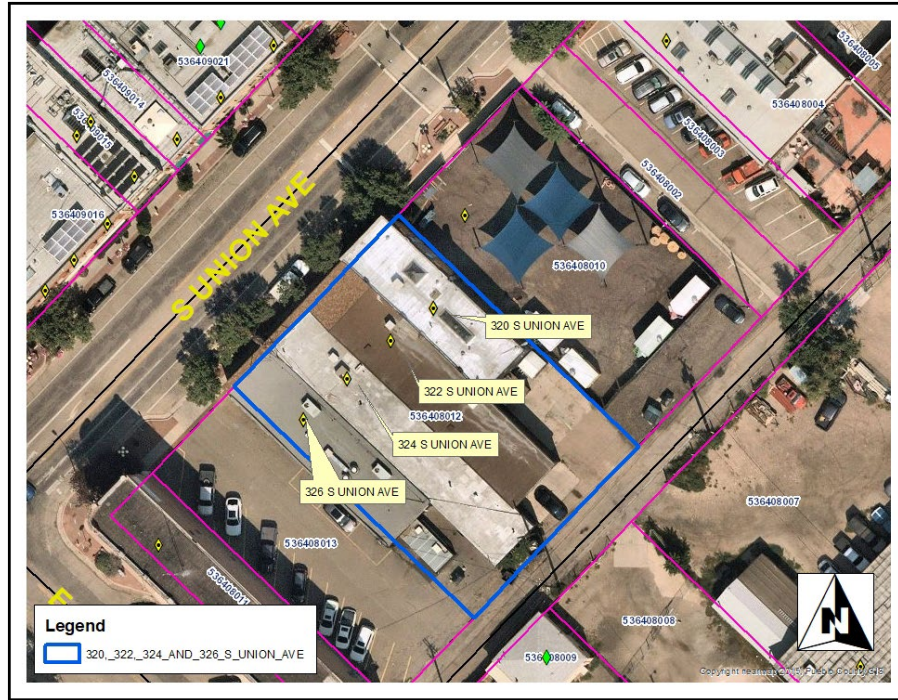
Section 4-14-12, (f), states, “if the proposed work does not conform with the Standards of Appropriateness, HPC shall deny the Certificate of Appropriateness, or continue action thereon for up to sixty days (60) with recommendation for amendments which the owner may wish to submit in a revised application.

The mural contains bright modern colors, and the content is modern abstract, which does not reflect the period of significance in the district (1880-1921), therefore a COA cannot be issued. The owner may submit a revised application with modifications to the mural to meet the criteria of the HB Guidelines and Standards of Appropriateness.

Exhibits

- A. Maps
- B. Photographs
- C. Applications and attachments
- D. Excerpt from the Union Avenue National Register Nomination

(A) MAPS



(B) SITE PHOTOGRAPHS



(C) APPLICATION AND ATTACHMENTS



City of Pueblo PLACE

09/19/2022

22-157

Historic Preservation Commission

Status: Active

Date Created: Sep 16, 2022

Applicant

Fred Gonzales
bucksenterprises67@gmail.com
PO Box 8534
Pueblo, Colorado 81008
719-252-5913

Primary Location

326 S UNION AVE
PUEBLO, CO 81003

Owner:

BORUNDA HENRY
1 ROCKBRIDGE LN PUEBLO , CO 81001-1306

Internal

Case Number

HPC-22-19

Planner Assigned

Planner 2

Continuances

--

Newspaper Notice Cost

--

Public Notice Costs must be paid by:

--

Public Notice zoning poster must be displayed by:

--

HPC Hearing Information

HPC Hearing Date

10/19/2022

HPC Hearing Results

--

Check box if hearing is a Special Requested Hearing

☐

Planning & Zoning Commission Information

City Council Information

Application Information

Application Type

Certificate of Appropriateness

Residential or Non-Residential?

Non-Residential

Certificate of Appropriateness

Name of historic resource:

Union Historic District

Provide a short description of the proposed work

New mural on southern facade, Black paint on side and rear, front facade steel application over block

Type of Historic Registry

Local

New construction

☐

Modification

☒

Awning

☐

Sign installation

☐

Demolition

☐

Certificate of economic hardship

☐

Infill in a Historic District

☐

Scope of work:
(Mark all that apply)

Addition

☐

Paint

☒

Replace or add windows or doors

☐

Reroof

☐

Repair of stone or brick

☐

Lighting

☐

Other

☐

Scope of Work Details

Paint Scope of Work:

List the New Colors proposed

Black

Are the colors selected from a Historic Paint palette:

Yes

Repaint same colors

☐

New Colors

☒

Paint removal

☐

COA Building Information

Existing Building Information:

Storefront width?

--

Materials?

--

Proposed Construction Information:

Height?

--

Additional information regarding the specific request:

--

Area?

--

Height?

--

Year built?

--

Area?

--

Materials?

--

The End Goal and overall vision for this property is to help the downtown area become more alive and interactive, while representing Pueblo's community, culture, and history. The Steel on the front façade (on all properties) clearly stating a reminder of "The Steel City". On one end (318) we have the Mayen mask mural, the Mayen Mask is an artistic interpretation of a traditional Mayan mask. The mask has three sections: the outside, middle, and center, representing; mind, body, and spirit. This concept intends to serve the Pueblo community and culture in several ways. The image aims to provoke thoughts and introspections about its experience and meaning. It enhances and fixes a previously neglected and visually unappealing space and brings a sense of beauty through the vibrancy of the colors. The purpose of the mural is to create a colorful and attractive image which promotes a sense of wonder and pride in our community. By placing this artwork in the public space, we create an interesting destination to be enjoyed for the entire community. This encourages public activity, provides a setting for photo opportunities, and creates a place of social interactions for everyone to freely experience. On the other end (326 union) we have a color splash in the landscape of a "core" being created and formed. This representing all the different subjects, cultures, and differences that we have in our community "our core". As in the mural, like you would read a history book from left to right, it starts all over the place, trying to figure out what it is to become, then at the end to be a solid, unified, strong core. A core that is filled with all different things coming together as one beautiful piece. A Strong "Pueblo Proud" core.



Paint Colors 300 Blk S. Union

Mayan Mask (318 S. Union) Core (326 S. Union)

Aqua	Turquoise
Turquoise	Cranberry
Waterfall	Marigold
Real orange	Key Lime
Marigold	Sun yellow
Sun Yellow	Tropical
Key lime	Eden
Seaside	French lilac
Sweet pea	Seaside
Golden sunset	Semi-gloss black
Auvergne	Sweet pea
Berry pink	Auvergne
Apple red	Apple red
Coral	Berry pink
Deep blue	Brilliant Blue
Grape	Colonial red
Hunter green	Purple
Meadow green	Real orange
Seaside	Spring green
Spring green	Fire orange
Semi-gloss black	Harvest patch
Navy blue	Lemon grass
Fire orange	Magenta
Harvest patch	Oasis
Magenta	
Oasis blue	
Paprika	

(D) EXERPTS FROM THE UNION AVENUE NATIONAL REGISTER NOMINATION

FHR-8-300 (11-78)

United States Department of the Interior
Heritage Conservation and Recreation Service

National Register of Historic Places
Inventory—Nomination Form

Continuation sheet Union Avenue Historic
District

Item number 7

Page 7

- 57.. "C" Store (323 S. Union). c. 1900: two-story, red brick structure with brick piers; corbeling; and arched radiating voussoirs over windows. First story has been altered.
- ✓ 58. "C" Store & Apartment (325-325 1/2 S. Union), Tivoli Building--1896: Two-story cut stone with piers; steel belt course and decorated concrete belt course.
- ✓ 59. "C" Stores (327-335 S. Union), William Strait Block, G. W. Roe Architect. c. 1893: two-story red brick structure with four store fronts; also pier and spandrel with plinth, two iron belt courses, stone belt course, corbeling, and 17 spaced windows across the front.
- ? 60. "C" Store (304-306 S. Union/Historic Address: 66-68 S. Union), Donnegan Block. c. 1883: two-story red brick structure. Brick piers with plinth, decorated. Three-center door openings with double transoms, decorated lintels.
- ? 61. "C" Vacant (303-308 1/2 S. Union), J.S. Glass Clothing Store--National Register Property. 1889: three-story, red-brick presently being restored. Two belt courses, boxed cornice with decorated frieze. Cast iron store front supports, etched and embossed glass, semi-circular and segmental window heads with connecting lintels
- ? 62. "C" Tavern (310 S. Union/Historic Address: 72 S. Union). c. 1883: two-story red brick stone lug sills and lintels, rosettes on iron coursing, and corbeling.
63. "V" Vacant Lot (312-316 S. Union).
64. "C" Johnson Electric (318 S. Union/Historic Address: 80 S. Union), Beauchamp Block. c. 1883: two-story red brick, iron belt course with rosettes, stone belt course, pier and spandrel wall construction, recessed segmental window head with arched voussoirs.
65. NC" Johnson Electric (320-324 S. Union). c. 1945: one-story red brick building; stuccoed; new glazed yellow brick front. constructed from two smaller structures in 1945.
66. V" Vacant Lot (328 S. Union).



City of Pueblo
Code Enforcement Unit
200 South Main Street, Pueblo, CO 81003



Pueblo Police Department / 200 S. Main Street / Pueblo, CO 81003 / Tel 719-553-2592 / www.Pueblo.us

NOTICE OF VIOLATION AND ORDER TO CORRECT

September 5, 2022

BORUNDA HENRY
1 ROCKBRIDGE LN
PUEBLO CO 81001-1306

OCCUPANT
322 S UNION AVE
PUEBLO CO 81003

Violation Address: **322 S UNION AVE PUEBLO CO 81003,**

Parcel: **536408012**, legally described as **LOTS 4-5-6-7 BLK 58 SOUTH PUEBLO FORMERLY 05-364-08-001 .**

Notice of Violation and Order: Violation of Pueblo Municipal Code, at

322 S UNION AVE PUEBLO CO 81003

Pueblo Municipal Code, Title I through XVII

*17-4-3
SEC 17-10-11, SEC 17-10-12, SEC 17-10-13
SEC 17-5-6*

NOTICE IS HEREBY GIVEN that the Code Compliance Officer pursuant to the Pueblo Municipal Code has found that the property described above is in violation.

You are hereby ordered to bring the property into compliance by September 9, 2022.

All exterior work must cease immediately. No alterations to the outside of the building may continue without the required approvals and permits. The exterior of the building must be restored to it's original condition or Historic Preservation Commission must approve the changes. No alterations may be made to the commercial structure without the required building permit issued by Pueblo Regional Building.

Based on the violation(s) of the following City of Pueblo Ordinance(s):

Historic Business District

(5)(a) No building permits shall be issued nor shall any work be undertaken or commenced to construct, reconstruct, remodel, repair, paint, rehabilitate or in any way alter or modify the exterior of any building in any historic business district until the Historic Preservation Commission as established and described in Section 4-14-04 of this Code has reviewed, approved and issued a written certificate of compliance for such work.

(b) All exterior additions, alterations, and renovations shall be approved by the Historic Preservation Commission prior to the commencement of work or before the issuance of a building permit where one is required.

Sec. 17-10-11. - Administrative provisions.

(a) To ensure compliance with this Chapter, proposed signs or sign structures shall be required to receive a permit from the Department of Land Use Administration, except as exempted within this Chapter.

(b) An application for a sign permit shall be made to the Administrative Official on the forms provided by the Department of Land Use Administration and in the manner required herein. At a minimum, the following shall be submitted to the Department of Land Use Administration for approval:

(1) Easements and/or rights-of-way.

a. Setbacks - distance to property lines from buildings, parking areas and driveways;

b. Lighting plans as required in Section 17-4-52; and

c. Graphics, including:

1. Building signs shall include drawings or pictures, at a minimum size of 8.5" × 11", showing proposed building signs, sizes, square footages, placement, elevations and dimensions.

2. Freestanding and monument signs shall include drawings or pictures, at a minimum size of 8.5" × 11", showing proposed signs, sizes, square footages, height, placement and property lines.

3. The applicant shall provide drawings or pictures, at a minimum size of 8.5" × 11", showing proposed building signs, sizes, square footages, placement, elevations and dimensions for all existing signage.

4. Other requirements adopted by the Department of Land Use Administration to comply with this Section.

(2) The Administrative Official shall review and act on the sign applications for non temporary signs for which a permit is required to assure compliance with the standards set for thin this Chapter.

(c) The Administrative Official may grant exceptions to the provisions of this Chapter whenever a sign or property has been designated a Historic Sign pursuant to the eligibility criteria adopted by the Historic Preservation Commission. These criteria provide for Historic Sign status for signs that are:

(1) Associated with historic figures, events or places.

(2) Significant as evidence of the history of the product, business or service advertised.

(3) Significant as reflecting the history of the building or the development of the historic district. A sign may be the only indicator of a building's historic use.

(4) Characteristic of a specific historic period, such as gold leaf on glass, neon or stainless steel lettering.

(5) Integral to the building's design or physical fabric, as when a sign is part of a storefront made of Carrara glass or enamel panels, or when information is rendered in stone, metal or tile. In such cases, removal can harm the integrity of a historic property's design or cause significant damage to its materials.

(6) Outstanding examples of the sign maker's art, whether because of their excellent craftsmanship, use of materials or design.

(7) Local landmarks; that is, signs recognized as popular focal points in a community.

(8) Elements important in defining the character of a historic district, such as marquees in a theater district.

Sec. 17-10-12. - Variances and appeals.

(a) The Zoning Board of Appeals shall have power to authorize variances from the terms of this Chapter with respect to maximum sign area, maximum sign height, sign location and the number of signs located on a parcel.

(b) In evaluating a request for a variance to the maximum sign height, the Zoning Board of Appeals may consider whether there are special topographical circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the sign owner's or user's ability to communicate adequately and effectively with the public through the use of the sign.

(c) The Zoning Board of Appeals may not grant a variance which exceeds the specific requirement of this Chapter by more than twenty-five percent (25%).

(d) Any person aggrieved by any decision of the Administrative Official concerning the interpretation or administration of this Chapter may appeal such decision to the Zoning Board of Appeals in the time and manner provided in Section 17-5-22 of this Code.

Sec. 17-10-13. - Enforcement, violations and penalties.

(a) The Administrative Official is authorized to enforce a final order to remove, alter or repair a sign or sign structure. All costs incurred in enforcing such order shall be paid by the responsible party within thirty (30) days after notification of such costs. All unpaid costs, together with interest thereon at the rate of ten percent(10%) per annum, shall, upon recording in the offices of the County Clerk and Recorder a statement under oath of the Mayor showing the cost of such enforcement and describing the parcel upon which the sign or sign structure is located, be and constitute a perpetual lien on such parcel, having priority over all other liens except general property taxes. Such lien shall remain in full force and effect until such costs and interest have been paid in full. The remedies

of the City hereunder and under this Chapter and Title shall be cumulative.

(b) The sign owner and owner of the parcel upon which a sign is located shall be jointly and severally responsible for the sign and sign structure.

(c) Any person violating any provision of this Chapter shall be punished as provided in Section 17-7-3 of this Title.

17-5-6 Administration Construction and Use as Authorized

Certificates of zoning compliance issued on the basis of plans and applications approved by the Administrative Official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this Code.

If you have any questions or wish to discuss this Notice and Order, contact KAREN WILLSON at (719) 553-2592.

KAREN WILLSON

Code Enforcement Unit
Pueblo Police Department
200 South Main Street
Pueblo, CO 81003

Gregory Howell
Chair

Jocelyn Martinez
Vice Chair

Anthony Perko
Secretary



Historic Preservation Commission

Laurel Campbell

Amy Scoby

Susan McCarthy

Suzanne Kuehn

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

CASE NUMBER: **HPC-22-19**

HEARING DATE: **November 16, 2022**

APPLICATION DATE: **September 16, 2022**

APPEAL TERM END DATE: **December 16, 2022**

PROPERTY STREET ADDRESS:	326 S. Union Ave	ZONE DISTRICT:	Historic Business (HB zone) district
LEGAL DESCRIPTION:	Lot 4, Block 58, South Pueblo		
OWNER:	Henry Borunda	APPLICANT:	Fred Gonzales
ADDRESS:	1 Rockbridge Ln 81001	ADDRESS:	PO Box 8534, Pueblo, CO 81008
TELEPHONE:	NA	TELEPHONE:	719-252-5913
EMAIL:	NA	EMAIL:	ganzuini@comcast.net

PROJECT

DESCRIPTION: **Certificate of Appropriateness to install the Core mural**

Scott Hobson

Land Use Administrative Official

DECISION DATE: November 16, 2022

- ☐ Approved
- ☐ Approved with Attached Staff Conditions
- ☒ Denied

Your application to the City of Pueblo Historic Preservation Commission has been **DENIED**. Failure to comply will be grounds for injunction per § 4-14-19 of the *Pueblo Municipal Code*.

If you wish to appeal this decision, you may seek review by the Pueblo City Council of such decision in a manner provided by § 4-14-17 of the *Pueblo Municipal Code*. The appeal must be sought within 20 days after the decision of the Historic Preservation Commission.



NEWMOON LAW, P.C.

Business Counselors and Attorneys at Law

PO BOX 853, Pueblo, CO 81002, Fax: 215-220-2292

So. Colorado: 719-445-6572 Philadelphia: 215-821-9013

www.newmoonlaw.com

Jimmy Newmoon Roybal, Esq.
Attorney for Henry Borunda

December 16, 2022

Via Electronic Form Submission

Pueblo City Council
1 City Hall Place
Pueblo, CO 81003

APPEAL OF DECISION OF HISTORIC PRESERVATION COMMISSION

By this document, Mr. Borunda hereby respectfully requests that the Pueblo City Council considers this appeal and reverses the decision of the Pueblo Historic Preservation Commission to decline to issue a Certificate of Appropriateness for the properties located at 322, 324, and 327 S. Union Ave in Pueblo Colorado. By and through his attorney Jimmy Newmoon Roybal, Mr. Henry Borunda petitions Pueblo City Council as follows:

Brief Summary

Mr. Borunda hereby petitions City Council to reverse the Union Avenue Historic Commission's decision to disapprove the issuance of a Certificate of Appropriateness for the facade and mural improvements to his building at 322, 324, and 326 S. Union Avenue because the denial was made without sufficient consideration of evidence that demonstrates that the improvements at issue comply with the standards of the Union Avenue Historic District.

Background

On Nov 16, 2022, the City of Pueblo Historic Preservation Commission (hereafter, the Commission) discussed the recommended findings (hereafter, the Recommendations), submitted by Wade Broadhead, Senior Planner, through Scott Hobson, Acting Director of Planning and Community Development, regarding:

1. HPC-22-19-Core Mural Review: The Recommendations state, "The mural contains bright modern colors, and the content is modern abstract, which does not reflect the period of significance in the district (1880-1921), therefore a COA cannot be issued."
 - a. Mr. Borunda contests this finding and provides evidence below that was not discussed at the hearing.
2. HPC-22-17 Steel Facade: The Recommendations state that "the steel façade is in direct opposition of the guidelines the state projects should use similar textures and colors, do no harm to existing historic materials, and be independent of the original building" (3),

and recommended “The proposed steel façade does not conform to the Pueblo Historic Business District Guidelines or Standards of Appropriateness; therefore, a COA cannot be issued, and modifications shall be removed.”

- a. Mr. Borunda contests this finding and provides evidence below that was not discussed at the hearing.
3. HPC-22-21 Screen Fence: Mr. Borunda has already complied and removed the slats facing Union Ave.

Therefore, Henry Borunda, owner of the subject properties, appeals and requests reconsideration regarding HPC-22-19-Core Mural Review and HPC-22-17 Steel Facade.

Timing of this submission

This appeal is submitted to City Council on December 16, 2022 and should be considered timely because the Commission's decision has not yet been published in writing or confirmed in minutes. While Mr. Broadhead's recommended findings have been discussed in public, the Commission has not documented its intent to find in accordance with the Recommendations, the Recommendations have not been officially adopted by the Commission, and should not be viewed as the Commission's official findings until the Commission has followed its process for adoption of minutes, which shall be the first opportunity to constitute official written public notice of their decision.

Mr. Borunda submits this appeal at this time to preserve timeliness and to avoid questions in relation thereto. Mr. Borunda has petitioned the Commission for reconsideration at the same time, but it is unclear whether such petition would extend the timeline for submission of an appeal. Mr. Borunda respectfully suggests that Council delay this agenda item until the Commission has resolved the Client's request for reconsideration.

Mr. Borunda endeavored to fit within the neighborhood's environs.

Extended environs around the Union Historic District include the vibrant displays of “neon alley” and the stately, modern construction and dark colors of the Rawlings Library. Mr. Borunda's goal was to fit within the neighborhood's environs.

The steel facade installed upon 322, 324, and 326 S. Union Avenue is intended to reflect the beauty of the Rawlings Library's own bronze facade panels, which can be seen from the street area in front of the building. The intent was to make this building, which is noncontributing to the historic nature of Union Ave, a coherent contributor to the architectural environment that now dominates and characterizes the Union Ave district and the environs that impact its appearance. In fact, Mr. Borunda was concerned that the original yellow brick facade was detracting from the beauty of the area and that is why he was compelled to install the steel facade.

With specific regard to the Core Mural, the mural is an artistic depiction of an oil spill, which speaks to the industrial past and present of Union Avenue in its proximity to rail lines that can generate limited oil and grease spills into the surrounding land, which can create the same sort

of image when rains or water are mixed with those spills. The mural is meant to highlight the beauty that can be found in what many only consider in an unfortunate context.

Mr. Borunda's mural is within the scope of historical paint colors and styles.

The Commission's accepted lists of historical paint colors match historical exterior paints, not necessarily historical artist colors from the era, which included vibrant colors, such as cadmium yellows (see <https://www.winsornewton.com/na/articles/colours/spotlight-on-cadmium-yellow/>) and synthetic French Ultramarine (see <https://www.winsornewton.com/na/articles/colours/spotlight-on-ultramarine/>), among others.

Global art styles from the 1880s through 1920s, which match the historic period during which many of Union Avenue's historic buildings were constructed, included expressionism and cubism (<https://www.britannica.com/art/Expressionism>, & <https://www.britannica.com/art/Cubism>), using vibrant, unnatural colors, and abstract and surreal imaging. Well-known artists from the period include Edvard Munch, whose most famous painting is the surreal work, *The Scream* (1893), and Pablo Picasso.

The Core Mural, representing an oil spill, reflects Pueblo's history as an industrial powerhouse, and the fluid nature of a diverse population. Moreover, the style and colors are congruent with art styles and from the historical period.

Summary

Mr. Borunda's goal was and is to enhance the beauty of the Historic District, both by reflecting existing beauty in the extended environs, and through "contemporary architectural expression," in accordance with Section 4.14.11(b) of the PMC. These modifications reflect Pueblo's history, as an industrial powerhouse and the present environs of Union Avenue. Mr. Borunda asks the Council to please understand the work he has done to make his buildings comply with the rules and regulations of the Commission. Mr. Borunda prays for your relief by asking this Council to order the Union Avenue Historic Commission to issue a Certificate of Appropriateness now on the matters of HPC-22-19-Core Mural Review and HPC-22-17 Steel Facade.

Respectfully,


Jimmy Newmoon Roybal, Esq.
Attorney for Henry Borunda



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Sarah Martinez, Councilor

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO THE PUEBLO COMMUNITY COLLEGE FOUNDATION IN THE AMOUNT OF \$1,000 TO SPONSOR THE PUEBLO HALL OF FAME EVENT ON SATURDAY, FEBRUARY 18, 2023 AT THE PCC FORTINO BALLROOM

SUMMARY:

Attached for consideration is a request for support of the PCC Foundation in the amount of \$1,000 to sponsor a table at the Pueblo Hall of Fame event on Saturday, February 18, 2023 at the PCC Fortino Ballroom.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In 1991, the Pueblo Hall of Fame was established to honor individuals who by their extraordinary effort, have contributed to the betterment or enhancement of Pueblo. Nominees are considered on the basis of contributions in the following areas: arts and humanities; business and labor; all facets of education; government; health and human services; law; philanthropy; and science and technology. This year's inductees are Mike Cafasso, Scott Richards, and Ralph Williams.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,000 would be paid from the Council Contingencies Account in the 2023 General Fund Budget to the Pueblo Community College Foundation.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

City Council could choose not to authorize funding for this purpose.

RECOMMENDATION:

This Resolution is at the request of Council Member Sarah Martinez.

ATTACHMENTS:

1. 1-23-23 PCC PHOF - 3 Panel Invitation
2. 2023 Contingencies (Council) PCC Foundation Hall of Fame Event

RESOLUTION NO. 15131

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO THE PUEBLO COMMUNITY COLLEGE FOUNDATION IN THE AMOUNT OF \$1,000 TO SPONSOR THE PUEBLO HALL OF FAME EVENT ON SATURDAY, FEBRUARY 18, 2023 AT THE PCC FORTINO BALLROOM

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$1,000 from the Council Contingencies Account in the 2023 General Fund Budget is authorized to be paid to the Pueblo Community College Foundation to sponsor the Pueblo Hall of Fame event on Saturday, February 18, 2023 at the PCC Fortino Ballroom.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED January 23, 2023

BY: Dennis Flores
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

[illegible]



Pueblo
Community College
FOUNDATION

The Pueblo Community College Foundation
invites you to the

31ST ANNUAL
PUEBLO HALL OF FAME
INDUCTION CEREMONY & DINNER
SATURDAY, FEBRUARY 18, 2023

Pueblo Community College · Fortino Ballroom
900 West Orman Avenue

5:30 pm: **Social Hour** | 7 pm: **Dinner**
Cocktail Attire

SPONSORSHIP LEVELS

Heroes Plaza · \$5,000
CORPORATE TABLE FOR 24 GUESTS
PLUS EXCLUSIVE EXTRAS

Historic Arkansas Riverwalk · \$2,500
CORPORATE TABLE FOR 12 GUESTS

Pueblo Reservoir · \$1,500
SEATING FOR 6 GUESTS

Union Depot Beverages · \$1,500
SEATING FOR 6 GUESTS

Memorial Hall · \$1,000
SEATING FOR 4 GUESTS

Mineral Palace · \$500
SEATING FOR 2 GUESTS

Individual Reservation · \$150

RSVP BY WEDNESDAY, FEB. 8, 2023

Call **719.544.0677**
or make reservations via email to
Martha.Simmons@pueblocc.edu

MENU CHOICES

Meat or Vegan/Gluten Free

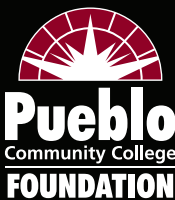
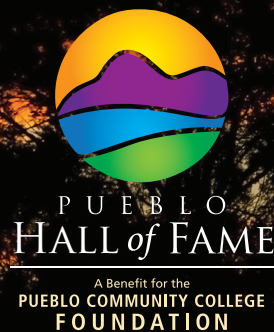
*Please indicate each guest's
menu preference on the
back of the reservation card*



PUEBLO
HALL of FAME
A Benefit for the
PUEBLO COMMUNITY COLLEGE
FOUNDATION

2023 INDUCTEES

MIKE CAFASSO
SCOTT RICHARDS
RALPH WILLIAMS



Established in 1981, the Pueblo Community College Foundation has supported learning for thousands of students. As education plays out on each of the PCC campuses, the foundation is committed to working with the college to bring about positive changes to the lives of individuals, families and communities.

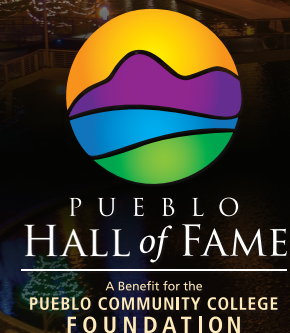
The foundation's mission is to provide funding to Pueblo Community College and its students through foundation-approved fundraising activities for student scholarships and special needs as identified by the college. Since its inception, the foundation has raised over \$50 million to support PCC, its students and programs of academic excellence.

The PCC Foundation is honored to have the opportunity to work with local citizens, alumni, businesses, community organizations and other grantors; each of whom are committed to lending their financial support to our foundation with the intent of advancing all aspects of Pueblo Community College.



In 1991, the Pueblo Hall of Fame was established to honor individuals who by their extraordinary effort, have contributed to the betterment or enhancement of Pueblo. Nominees are considered on the basis of contributions in the following areas: arts and humanities; business and labor; all facets of education; government; health and human services; law; philanthropy; and science and technology.

CELEBRATING THE BETTERMENT & ENHANCEMENT OF PUEBLO



2023 31ST ANNUAL
PUEBLO HALL OF FAME
INDUCTION CEREMONY
SATURDAY, FEBRUARY 18 · FORTINO BALLROOM



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Vicente Martinez Ortega, Councilor Martinez

SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO THE STEELWORKS CENTER OF THE WEST, DBA BESSEMER HISTORICAL SOCIETY, IN THE AMOUNT OF \$1,000 TO SPONSOR THE FACES OF CF&I DINNER ON SATURDAY, FEBRUARY 4, 2023 AT THE PUEBLO UNION DEPOT

SUMMARY:

Attached for consideration is a request for support of the Steelworks Center of the West, DBA Bessemer Historical Society, in the amount of \$1,000 to sponsor the Faces of CF&I Dinner on Saturday, February 4, 2023 at the Pueblo Union Depot.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The dinner and fundraising event will honor the following CF&I employees and be inducted into the CF&I Hall of Fame: Albert G. Neal, Albert Solano, John Martinez, Ramon A. Roldan, and Tim Flores. Kathrine Thomson & Linda L. Tremblay will be honored with the Award of Excellence.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,000 would be paid from the Council Contingencies Account in the 2023 General Fund Budget to the Bessemer Historical Society.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

City Council could choose not to authorize funding for this event.

RECOMMENDATION:

This Resolution is at the request of Council Member Vicente Martinez Ortega.

ATTACHMENTS:

1. Invitation Faces of CF&I Hall of Fame
2. Council Contingencies

RESOLUTION NO. 15132

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO THE STEELWORKS CENTER OF THE WEST, DBA BESSEMER HISTORICAL SOCIETY, IN THE AMOUNT OF \$1,000 TO SPONSOR THE FACES OF CF&I DINNER ON SATURDAY, FEBRUARY 4, 2023 AT THE PUEBLO UNION DEPOT

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$1,000 from the Council Contingencies Account in the 2023 General Fund Budget is authorized to be paid to Steelworks Center of the West, DBA Bessemer Historical Society, to sponsor the Faces of CF&I Dinner on Saturday, February 4, 2023 at the Pueblo Union Depot

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED January 23, 2023

BY: Larry Atencio
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

[illegible]

From: [Steelworks Center of the West](#)
To: [Alyssa Parga](#)
Subject: [External] You're Invited: Faces of CF&I Hall of Fame
Date: Tuesday, January 10, 2023 12:08:12 PM

External email. Please use caution.



You're invited!

Steelworks Center of the West
in partnership with

EVRAZ

cordially invite you to
Faces of CF&I

The dinner and fundraising event will honor the following CF&I employees and be inducted into the CF&I Hall of Fame.

Albert G. Neal
Albert Solano
John Martinez
Ramon A. Roldan
Tim Flores

Kathrine Thomson & Linda L. Tremblay Award of Excellence
Kathrine Thomson

Linda L. Tremblay

**DINNER, SILENT AUCTION
& FUNDRAISING EVENT**

Dinner: \$100 for non-members
\$90 for members

Cost of the meal is \$33.34 (including tax). The remainder of
the ticket cost may be tax deductible.

Don't miss the fun and festivities!

5:30 p.m., Saturday, February 4, 2023

5:30 p.m. Cocktails and Silent Auction
6:00 p.m. Welcome and Dinner
7:00 p.m. Induction

Reservations are sure to fill up fast!
RSVP due by February 1, 2023
Call us to book your table now at 719-564-9086

Purchase Tickets

Steelworks Center of the West, 215 Canal Street Pueblo, CO 81004,
www.steelworks.us



Steelworks Center of the West | 215 Canal Street, Pueblo, CO 81004
<https://www.steelworks.us/>

[Unsubscribe aparga@pueblo.us](mailto:unsubscribe_aparga@pueblo.us)

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Sent by christina.trujillo@steelworks.us powered by



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**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: January 23, 2023
TO: President Heather Graham and Members of City Council
CC: Mayor Nicholas A. Gradisar
VIA: Marisa Stoller, City Clerk
FROM: Heather Graham, President
SUBJECT: A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO CATHOLIC CHARITIES OF DIOCESE OF PUEBLO IN THE AMOUNT OF \$1,500 TO SPONSOR THE ESPIRITU DINNER ON FRIDAY, FEBRUARY 10, 2023 AT THE PUEBLO CONVENTION CENTER

SUMMARY:

Attached for consideration is a request for support of Catholic Charities in the amount of \$1,500 to sponsor the Espiritu Dinner on Friday, February 10, 2023 at the Pueblo Convention Center.

PREVIOUS COUNCIL ACTION:

Council sponsored a Catholic Charities fundraiser in 2019 for \$1,000.

BACKGROUND:

Catholic Charities of Southern Colorado presents a night of inspiring music at their annual fundraising event, "Espiritu: Music that Moves the Soul"! This musical event will be held at the Pueblo Convention Center Friday, February 10, 2023. Cocktail hour will start at 6:00 PM. Program and Dinner will follow at 7:00 PM with special musical performances by Most Reverend Stephen Berg Bishop of Pueblo, Reverend Carl Wertin, and Reverend Edmundo Valera.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,500 would be paid from the Council Contingencies Account in the 2023 General Fund Budget to Catholic Charities of Diocese of Pueblo.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

City Council could choose not to authorize funding for this event.

RECOMMENDATION:

This Resolution is at the request of Council Member Heather Graham.

ATTACHMENTS:

1. Espiritu Sponsorship Request
2. Council Contingencies

RESOLUTION NO. 15133

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO CATHOLIC CHARITIES OF DIOCESE OF PUEBLO IN THE AMOUNT OF \$1,500 TO SPONSOR THE ESPIRITU DINNER ON FRIDAY, FEBRUARY 10, 2023 AT THE PUEBLO CONVENTION CENTER

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Payment in the amount of \$1,500 from the Council Contingencies Account in the 2023 General Fund Budget is authorized to be paid to Catholic Charities of Diocese of Pueblo to sponsor Espiritu on Friday, February 10, 2023 at the Pueblo Convention Center.

SECTION 2.

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

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED January 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

[illegible]



iespiritu!

MUSIC THAT MOVES THE SOUL

6:00 PM COCKTAIL HOUR
7:00 PM PROGRAM & DINNER

FEB 10, 2023

PUEBLO CONVENTION CENTER
320 CENTRAL MAIN ST.
PUEBLO, CO 81003

Special musical performances by



Reverend
Carl Wertin



Most Reverend Stephen Berg
Bishop of Pueblo



Reverend
Edmundo Valera

Attire: Black Tie | Business Formal

Individual Ticket | \$100

Table Sponsor (table seats 10) | \$1,500

Tickets must be purchased by 1/31/23

Scan QR code to
purchase tickets



visit or
call:

<https://bit.ly/espíritu2023>
(719) 568 - 4190

For questions, please contact the Advancement Office at Catholic Charities of Southern Colorado



719-568-4190



marketing@ccsoco.org

PENDING

EXCLUSIVE

SOPRANO: \$15,000

- ♪ Prominent logo/name placed on all printed and promotional material
- ♪ Prominent placement of sponsor's logo, name, and web link on CCSoco's website
- ♪ Two (2) tables (20 tickets) at event
- ♪ Prominent logo/name placement on the flying screen at event
- ♪ Prominent placement of logo/name on digital event program
- ♪ One (1) professional photo (group or individual) with Bishop Berg
- ♪ Recognition on social media
- Verbal recognition at event
- ♪ Logo/Name on table at event
- ♪ Post-event recognition in CCSoco's newsletter
- ♪ Complimentary bottle of wine (per table) at table
- ♪ Listing on press release for event

SOLD
BH
Black Hills Energy
Brewery

EXCLUSIVE

ALTO: \$10,000

- ♪ Logo & name placed on all printed and promotional material
- ♪ Logo, name and web link on CCSoco's website
- ♪ One (1) table (10 tickets) at event
- ♪ Logo & name placement on the flying screen at event
- ♪ Logo & name on digital event program
- ♪ Recognition on social media
- Verbal recognition at event
- ♪ Logo & name on table at event
- ♪ Post-event recognition in CCSoco's newsletter
- ♪ Listing on press release for event

TENOR: \$5,000

- ♪ One (1) table (10 tickets) at event
- ♪ Logo (small) on the flying screen at event
- ♪ Logo (small) on digital event program
- ♪ Recognition on social media
- ♪ Name on table at event
- ♪ Post-event recognition in CCSoco's newsletter

BASS: \$2,500

- ♪ Five (5) tickets at event
- ♪ Name on the flying screen at event
- ♪ Name on digital event program
- ♪ Recognition on social media
- ♪ Name on table at event
- ♪ Post-event recognition in CCSoco's newsletter

HARMONY: \$1,500 (TABLE SPONSOR)

- ♪ One (1) table (10 tickets) at event
- ♪ Recognition on social media
- ♪ Name on table at event

MELODY: \$500 (DIPJAR SPONSOR)

- ♪ Logo/Name placed on every DipJar sponsored
- ♪ Recognition on social media



Please consider donating an item for the event's silent auction. Contact Crystal Estrada at 719-568-4190 for information.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 9, 2023
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 ESTABLISHING PROJECT PL2203 FOR COLORADO SMELTER REVITALIZATION PROJECT SUPPORT, AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$22,000 TO SAID PROJECT ACCOUNT.

SUMMARY:

This Ordinance establishes PL2203 - Colorado Smelter Revitalization Project Support and budgets and appropriates total funds in the amount of \$22,000 for various work items supporting the establishment of the Pueblo Art and History Walk as well as the installation of community gateway and neighborhood wayfinding signs in the Bessemer, Bojon Town, and Grove neighborhoods.

PREVIOUS COUNCIL ACTION:

On January 9, 2022, City Council is scheduled to hold a public hearing and vote on a proposed Ordinance to approve an Intergovernmental Agreement with the Pueblo Department of Public Health and Environment which outlines terms and conditions related to the City of Pueblo support of several work items in support of certain projects identified in the Colorado Smelter Revitalization Plan. On October 26, 2020, City Council passed Resolution No. 14496, adopting the Colorado Smelter Revitalization Plan, which approved a slate of improvement projects in the Bessemer, Bojon Town, and Grove neighborhoods that could be completed as funding became available.

BACKGROUND:

This Ordinance creates the project account PL2203 - Colorado Smelter Revitalization Project Support and budgets and appropriates funds in the amount of \$22,000.00 for completion of certain work tasks by the City of Pueblo in accordance with the Intergovernmental Agreement.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$22,000.00 shall be budgeted and appropriated for this Project, PL2203.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Not approving the Ordinance would preclude the City of Pueblo from performing work as specified in the Intergovernmental Agreement with the Pueblo Department of Public Health and Environment.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10373

AN ORDINANCE ESTABLISHING PROJECT PL2203 FOR COLORADO SMELTER REVITALIZATION PROJECT SUPPORT, AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$22,000 TO SAID PROJECT ACCOUNT

WHEREAS, City Council passed Resolution No. 14496 on October 26, 2020, adopting the Colorado Smelter Revitalization Plan; and

WHEREAS, City Council is scheduled to vote upon final passage of a proposed ordinance that would approve an Intergovernmental Agreement between the City of Pueblo and the Pueblo Department of Public Health and Environment, outlining the City of Pueblo's role in completing specified work associated with projects identified in the Colorado Smelter Revitalization Plan; NOW, THEREFORE,

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

SECTION 1.

Project No. PL2203 - Colorado Smelter Revitalization Project Support, is hereby established.

SECTION 2.

Contingent upon the final passage of a pending Ordinance to approve a related Intergovernmental Agreement between the City of Pueblo and the Pueblo Department of Public Health and Environment which specifies a scope of work to be performed by the City in support of the Colorado Smelter Revitalization Project, funds in the amount of \$22,000.00 are hereby budgeted and appropriated into Project No. PL2203 - Colorado Smelter Revitalization Project Support.

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 January 9, 2023.

Final adoption of Ordinance by City Council on January 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on January 25, 2023.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

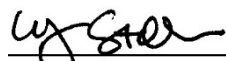
☐ Council did not act to override the Mayor's veto.

☐ 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: January 9, 2023

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 ESTABLISHING PROJECT PL2101 FOR SAFE ROUTES TO SCHOOL FOR HAAFF ELEMENTARY SCHOOL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, PROJECT: SAR M086-094 (24468), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$279,180 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance creates Project No. PL2101 for Safe Routes to School for Haaff Elementary School, approves an Intergovernmental Agreement ("IGA") between Pueblo, a Colorado Municipal Corporation ("City") and the State of Colorado, Colorado Department of Transportation ("CDOT") relating to Haaff Elementary Safe Routes to School and budgets and appropriates funds totaling \$279,180.00 for the Project.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This Ordinance establishes the Safe Routes to School, PL2101 for Haaff Elementary School and approves the grant agreement between the City and CDOT.

The City submitted a Safe Routes to Schools grant for improvements at Haaff Elementary School in 2021. This project provides safe and accessible routes to school by;

1) constructing multi-use sidewalks and connections to give students a direct route to the school entrance;

2) installation of high visibility crosswalks to alert motorists of pedestrian activity;

3) installation of ADA curb ramps to improve accommodation for all users. The project also includes consulting services for Phase 2 of the project: reconstruction of the intersection of Jerry Murphy Road and Chinook Lane.

FINANCIAL IMPLICATIONS:

Match funds are not required as this project is eligible for no match through COVID response.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Currently, there are no alternatives for completing the improvements without the funding from the CDOT Safe Routes to Schools Grant funds.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. Intergovernmental Agreement
2. Department Certification

ORDINANCE NO. 10374

AN ORDINANCE ESTABLISHING PROJECT PL2101 FOR SAFE ROUTES TO SCHOOL FOR HAAFF ELEMENTARY SCHOOL, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, PROJECT: SAR M086-094 (24468), BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$279,180 AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The PL2101, Safe Routes to School for Haaff Elementary School, is hereby established.

SECTION 2.

The Intergovernmental Agreement ("IGA") between the City of Pueblo ("City"), a Colorado Municipal Corporation, and the State of Colorado, acting with and through the Colorado Department of Transportation ("CDOT"), Project: SAR M086-094 (24468), Haaff Elementary Safe Routes to School, a copy of which is attached, having been approved as to form by the City Attorney, is hereby approved.

SECTION 3.

Subject to encumbrances by the Colorado State Department of Transportation, funds from the Haaff Elementary Safe Routes to School (24468) in the amount of \$279,180.00 are hereby budgeted and appropriated for the Safe Routes to School, No. PL2101 for Haaff Elementary School.

SECTION 4.

The Mayor is authorized to execute and deliver the IGA 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 5.

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

SECTION 6.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 9, 2023.

Final adoption of Ordinance by City Council on January 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on January 25, 2023.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

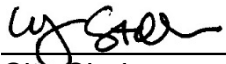
☐ Council did not act to override the Mayor's veto.

☐ 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 INTERGOVERNMENTAL AGREEMENT

Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 22-HA2-XC-00204	
Local Agency CITY OF PUEBLO		Agreement Effective Date The later of the effective date or June 10, 2022	
Agreement Description HAAFF ELEMENTARY SRTS		Agreement Expiration Date June 09, 2032	
Project # SAR M086- 094 (24468)	Region # 2	Contract Writer GMD	Agreement Maximum Amount \$348,975.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

LOCAL AGENCY CITY OF PUEBLO _____ Signature _____ By: (Print Name and Title) Date: _____	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Stephen Harelson, P.E., Chief Engineer Date: _____
2nd State or Local Agency Signature if Needed _____ Signature _____ By: (Print Name and Title) Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General _____ Assistant Attorney General _____ By: (Print Name and Title) Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Effective Date: _____	

TABLE OF CONTENTS

1. PARTIES.....	2
2. TERM AND EFFECTIVE DATE.....	2
3. AUTHORITY.....	3
4. PURPOSE.....	4
5. DEFINITIONS.....	4
6. STATEMENT OF WORK.....	7
7. PAYMENTS.....	11
8. REPORTING - NOTIFICATION.....	15
9. LOCAL AGENCY RECORDS.....	16
10. CONFIDENTIAL INFORMATION-STATE RECORDS.....	17
11. CONFLICTS OF INTEREST.....	18
12. INSURANCE.....	18
13. BREACH.....	20
14. REMEDIES.....	20
15. DISPUTE RESOLUTION.....	22
16. NOTICES AND REPRESENTATIVES.....	22
17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION.....	23
18. GOVERNMENTAL IMMUNITY.....	24
19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....	24
20. GENERAL PROVISIONS.....	24
21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).....	27
22. FEDERAL REQUIREMENTS.....	29
23. DISADVANTAGED BUSINESS ENTERPRISE (DBE).....	29

EXHIBIT A, SCOPE OF WORK	
EXHIBIT B, SAMPLE OPTION LETTER	
EXHIBIT C, FUNDING PROVISIONS (Budget)	
EXHIBIT D, LOCAL AGENCY RESOLUTION	
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 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)
Don Scanga, Local Agency Coordinator
CDOT Region 2
5615 Wills Blvd.
Pueblo, CO 81008
719-621-8340
donald.scanga@state.co.us

For the Local Agency

CITY OF PUEBLO
Kelly Grisham, Project Coordinator
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
SCOPE OF WORK

Name of Project: Haaff Elementary SRTS
Project Number: SAR M086-094
SubAccount #: 24468

The local agency shall be responsible for design and construction of safe and accessible routes to school by 1) constructing multi-use sidewalks and connections to give students a direct route to the school entrance; 2) installation of high visibility crosswalks to alert motorists of pedestrian activity; and 3) installation of ADA curb ramps to improve accommodations for all users. The project also includes consulting services for Phase 2 of the project: reconstruction of the intersection of Jerry Murphy and Chinook.

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.

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- FUNDING PROVISIONS**Pueblo SAR M086-094 (24468)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$279,180.00, which is to be funded as follows:

1. BUDGETED FUNDS			
a.	Federal Funds (100% of SAR Award)		\$279,180.00
TOTAL BUDGETED FUNDS			\$279,180.00
2. OMB UNIFORM GUIDANCE			
a.	Federal Award Identification Number (FAIN):		TBD
b.	Name of Federal Awarding Agency:		FHWA
c.	Local Agency Unique Entity Identifier		NJK3BNUDRHJ7
d.	Assistance Listing # Highway Planning and Construction		ALN 20.205
e.	Is the Award for R&D?		No
f.	Indirect Cost Rate (if applicable)		N/A
g.	Amount of Federal Funds Obligated by this Action:		\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):		\$0.00
3. ESTIMATED PAYMENT TO LOCAL AGENCY			
a.	Federal Funds Budgeted		\$279,180.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs		\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY			\$279,180.00
4. FOR CDOT ENCUMBRANCE PURPOSES			
a.	Total Encumbrance Amount		\$279,180.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS			\$279,180.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 24468.10.30	Performance Period Start*/End Date MM/DD/YYYY- MM/DD/YYYY	Design 3020	\$0.00
WBS Element 24468.20.10	Performance Period Start*/End Date MM/DD/YYYY- MM/DD/YYYY	Const. 3301	\$0.00

*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.

B. Matching Funds

The matching ratio for the federal funds for this Work is 100% federal funds to 0% Local Agency funds, and this ratio applies only to the \$279,180.00 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 \$279,180.00, 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 \$279,180.00, 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

The maximum amount payable to the Local Agency under this Agreement shall be \$279,180.00. For CDOT accounting purposes, the federal funds of \$279,180.00 and the Local Agency funds of \$0.00 will be encumbered for a total encumbrance of \$279,180.00, 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 matching 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. M086-094	STIP No.	Project Code 24468	Region 2
Project Location Intersection of Jerry Murphy Rd and Chinook Lane			Date 6/3/2021
Project Description Haalf Elementary SRTS			
Local Agency 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 AGREEMENT 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)		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 CDOT Resident Engineer (Signature on File) 6/3/2021 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	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 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		

EXHIBIT E - LOCAL AGENCY AGREEMENT 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, P.E.</u> 719-553-2271. Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. <u>Charles Roy, P.E.</u> 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. <u>Don Scanga</u> 719-546-5434 CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products 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 X	
9.6	Approve Sources of Materials	X	
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 AGREEMENT 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 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	✓	✓	✓

GRANT CERTIFICATION

To: Heather Graham, President of the City Council
Nicholas Gradisar, Mayor

Re: Safe Routes to School FY 2021, Grant for Haaff Elementary School_____

I hereby certify that I have reviewed and am familiar with the attached documents, and to the best of my knowledge and belief, the City has the present ability to comply with all special conditions, certifications and assurances therein contained.

Name (print) Kelly Grisham

12/27/22

Date

Title: Senior Planner



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 9, 2023

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 THE FOURTH AMENDMENT TO THE ANNEXATION AGREEMENT FOR THE AREA COMMONLY KNOWN AND DESCRIBED AS NORTH OF RED CREEK SPRINGS ROAD AND EAST OF THE GOODNIGHT ARROYO, AS APPROVED BY ORDINANCE NO. 7241

SUMMARY:

This Ordinance approves the fourth amendment to the Regency Crest West Agreement that was adopted by Ordinance No. 7241 on December 13, 2004. The proposed amendment modifies the phasing of the public improvements to Red Creek Springs Road pertaining to the construction of a drainage culvert for the Goodnight Arroyo that passes under Red Creek Springs Road and the timing of the final improvements of Red Creek Springs Road to the western boundary of the property.

PREVIOUS COUNCIL ACTION:

On December 13, 2004, by Ordinance No. 7241, City Council approved an Annexation Agreement for the Regency Crest West area containing 122.75 acres.

On May 23, 2005, by Ordinance No. 7308, City Council approved the first amendment to the Annexation Agreement for Regency Crest West.

On August 27, 2007, by Ordinance No. 7638, City Council approved the second amendment to the Annexation Agreement for Regency Crest West.

On April 28, 2014, by Ordinance No. 8730, City Council approved the third amendment to the Annexation Agreement for Regency Crest West.

BACKGROUND:

This Ordinance approves the fourth amendment to the Annexation Agreement ("Agreement") between the City of Pueblo, a municipal corporation, and The Proctor Family Partnership No. 2 LLLP and Domega Homes of Colorado, Inc., a Colorado Corporation (collectively the "Petitioners") related to the Regency Crest West Annexation. The amended Agreement provides for the following changes:

1. Subparagraphs (ii) and (iii) of Paragraph 3. of Exhibit C of the Third Amendment To Annexation Agreement dated April 28, 2014 at Reception No. 1974868 are amended in their entirety as follows:

(ii) Within 180 days after the issuance of any building permit within the Regency Crest Neighborhoods G4 or H1, Petitioners shall construct the Red Creek Springs Road arroyo drainage improvements and reconstruct the roadway to the current roadway width and layout in the location shown on Exhibit C-1. The re-alignment and installation of the 12" water main around the new culverts will also be included with this work. The installation of the 10" sanitary sewer main from the existing main east of the proposed culverts to the first manhole west of the culverts shall also be completed at this time. All required public improvements to be constructed under this subparagraph shall be designed and constructed in accordance with the City's Standard Construction Specifications and Standard Details (published April 11, 2022 or as same may be later amended), the City's Storm Drainage Design Criteria and Drainage Policies for the City of Pueblo (published June 9, 1997 or as same may be later amended), other standards and criteria adopted by City Council; as well as all relevant federal, state, and local laws and ordinances. All design documents shall be signed and stamped by a licensed professional engineer in the State of Colorado who is competent to perform such work. All project design documents are subject to approval of the Director of Public Works. Petitioner shall obtain a floodplain development permit from the City prior to constructing any drainage improvements in the 100-year floodway. A No-rise Certification, supported by technical data and stamped and signed by a licensed professional engineer in the State of Colorado who is competent to perform such work, must be submitted for review and approval by the Director of Stormwater. Supporting technical data shall be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the most recent Flood Insurance Rate Map (FIRM).

(iii) Within 180 days after the issuance of any building permit within Regency Crest Neighborhoods H2, H3 or I3, Petitioners shall have constructed the full width street improvements (44-feet, including curb and gutter) of Red Creek Springs Road between the western boundary of Regency Crest Filing No. 2 and the western boundary of the Property as shown on Exhibit C-1. Sidewalks and curb ramps shall also be constructed on the north side of Red Creek Springs Road from Hillcrest Drive west to the western boundary of the Property. The full width street improvements shall be located 22-feet on each side of the proposed centerline of Red Creek Springs Road as shown on Exhibit C-1. The centerline of the proposed improvements of Red Creek Springs Road must align with the centerline of Red Creek Springs Road as it is presently designed at the eastern boundary of the Property. Red Creek Springs Road shall be paved at full width to the western boundary of the Property. A transition shifting the alignment of traffic lanes to accommodate the change in roadway width shall be constructed on the Property unless the City acquires the right-of-way necessary to facilitate construction of the transition to the west of the Property in accordance with subsection A.3.a of the Annexation Agreement, in which case, Petitioner shall construct the transition as an off-site improvement. The installation of the remaining 10" sanitary sewer main from the manhole built in Phase 1 west of the culverts to the west property line shall also be completed at this time. All required public improvements to be constructed under this subparagraph shall be designed and constructed in accordance with the City's Standard Construction Specifications and Standard Details (published April 11, 2022 or as same may be later amended), the City's Storm Drainage Design Criteria and Drainage Policies for the City of Pueblo (published June 9, 1997 or as same may be later amended), other standards and criteria adopted by City Council; as well as all relevant federal, state, and local laws and ordinances. All design documents shall be signed and stamped by a licensed professional engineer in the State of Colorado who is competent to perform such work. All project design documents are subject to approval of the Director of Public Works. Except as modified by this Fourth Amendment, the Annexation Agreement, remains in full force and effect.

2. Exhibit C-1 issued 9/23/04 recorded under reception no. 1603123 (page 29 of 39) is hereby deleted in its entirety and replaced by the attached hereto Exhibit C-1 dated 10/21/22.

FINANCIAL IMPLICATIONS:

None.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

If City Council does not approve this Ordinance, the current Annexation Agreement will remain in effect. City Council could refer the proposed Annexation Agreement amendment back to City staff to address City Council's concerns with the applicants.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 4th Am. to Annexation Agreement
2. Regency Crest West Annexation ORD 7241

ORDINANCE NO. 10375

AN ORDINANCE APPROVING THE FOURTH AMENDMENT TO THE ANNEXATION AGREEMENT FOR THE AREA COMMONLY KNOWN AND DESCRIBED AS NORTH OF RED CREEK SPRINGS ROAD AND EAST OF THE GOODNIGHT ARROYO, AS APPROVED BY ORDINANCE NO. 7241

WHEREAS, The Proctor Family Partnership No. 2, LLLP and Domega Homes of Colorado, Inc., a Colorado Corporation (herein collectively referred to as "Petitioners") are the owners of the property in fee simple (other than for platted lots sold to third party purchasers) and are the successors in interest of The Proctor Family Partnership, LLP, Floyd E. Orr, Jr., The Orr Trust, Margaret L. Orr (formerly Margaret L. Diodosio), William R. Ferrier and Jeannine L. Bledsoe (formerly Jeannine L. Krueger) that was annexed into the City of Pueblo commonly known as the Regency Crest West Annexation, Case No. A-03-04, and described as North of Red Creek Springs Road and East of the Goodnight Arroyo; and,

WHEREAS, Petitioners desire to amend the Annexation Agreement that was previously approved pursuant to Ordinance No. 7241 of the Pueblo City Council dated December 13, 2004, and recorded with the Pueblo County Clerk and Recorder on January 19, 2005, at Reception No. 1603123, and amended pursuant to Ordinance No. 7308 of the Pueblo City Council the First Amendment to the Annexation Agreement dated May 23, 2005, and recorded with the Pueblo County Clerk and Recorder on October 14, 2005, at Reception No. 1643623, and pursuant to Ordinance No. 7638 of the Pueblo City Council the Second Amendment to the Annexation Agreement dated August 27, 2007 and recorded with the Pueblo County Clerk and Recorder on September 7, 2007, at Reception No. 1740938, and pursuant to Ordinance No. 8730 of the Pueblo City Council the Third Amendment to the Annexation Agreement dated April 28, 2014, and recorded with the Pueblo County Clerk and Recorder on May 15, 2014, at Reception No. 1974868; NOW, THEREFORE,

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

SECTION 1.

The Fourth Amendment to the Annexation Agreement approved by Ordinance No. 7241, dated December 13, 2004, 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 Fourth Amendment to the Regency Crest West Annexation Agreement on behalf of Pueblo, a Municipal Corporation, and the City Clerk shall affix the seal of the City thereto and attest to the same.

SECTION 3.

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

SECTION 4.

This Ordinance shall become effective immediately upon final action by the Mayor and City Council and upon Petitioner executing an Agreement approving the Fourth Amendment to the Annexation Agreement set forth in Section 1 and ratifying and confirming the Fourth Amendment to the Annexation Agreement which will thereafter be recorded by the City Clerk in the records of the Pueblo County Clerk and Recorder.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on January 9, 2023.

Final adoption of Ordinance by City Council on January 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on January 25, 2023.

☐ 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

FOURTH AMENDMENT TO ANNEXATION AGREEMENT
Case No. A-03-04

This Fourth Amendment To Annexation Agreement, Case No. A-03-04 (the “Fourth Amendment”) entered into as of October 24, 2022 by and between the City of Pueblo, a Municipal Corporation (the “City”) and The Proctor Family Partnership No. 2, LLLP, a Colorado limited liability limited partnership and Domega Homes of Colorado, Inc., a Colorado corporation (collectively the “Petitioners”), WITNESSETH

WHEREAS, the term “Property” as used herein means and includes the real property described in Exhibit A to the Annexation Agreement, Case No. A-03-04, dated December 13, 2004 and recorded January 19, 2005 at Reception No. 1603123, records of Pueblo County, as amended by an Amendment to Annexation Agreement dated May 9, 2005 and recorded October 14, 2005 at Reception No. 1643623, the Second Amendment To Annexation Agreement dated July 23, 2007 and recorded September 7, 2007 at Reception No. 1740938, and the Third Amendment To Annexation Agreement dated April 28, 2014 at Reception No. 1974868 (herein collectively the “Annexation Agreement”);

WHEREAS, Petitioners represent and warrant that they are the owners of the Property in fee simple (other than for platted lots sold to third party purchasers) and are the successors in interest of The Proctor Family Partnership, LLLP, Floyd E. Orr, Jr., The Orr Trust, Margaret L. Orr (formerly Margaret L. Diodosio), William R. Ferrier and Jeannine L. Bledsoe (formerly Jeannine L. Krueger) as owners of the Property;

WHEREAS, Petitioners have requested certain amendments be made to the Annexation Agreement in order to assist Petitioners in proceeding with their development of the annexed property, and City is willing to amend the Annexation Agreement for such purposes upon the terms and conditions hereinafter set forth.

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

1. Subparagraphs (ii) and (iii) of Paragraph 3. of Exhibit C of the Third Amendment To Annexation Agreement dated April 28, 2014 at Reception No. 1974868 are amended in their entirety as follows:

(ii) Within 180 days after the issuance of any building permit within the Regency Crest Neighborhoods G4 or H1, Petitioners shall construct the Red Creek Springs Road arroyo drainage improvements and reconstruct the roadway to the current roadway width and layout in the location shown on Exhibit C-1. The re-alignment and installation of the 12” water main around the new culverts will also be included with this work. The installation of the 10” sanitary sewer main from the existing main east of the proposed culverts to the first manhole west of the culverts shall also be completed at this time. All required public improvements to be constructed under this subparagraph shall be designed and constructed in accordance with the City’s Standard

Construction Specifications and Standard Details (published April 11, 2022 or as same may be later amended), the City's Storm Drainage Design Criteria and Drainage Policies for the City of Pueblo (published June 9, 1997 or as same may be later amended), other standards and criteria adopted by City Council; as well as all relevant federal, state, and local laws and ordinances. All design documents shall be signed and stamped by a licensed professional engineer in the State of Colorado who is competent to perform such work. All project design documents are subject to approval of the Director of Public Works. Petitioner shall obtain a floodplain development permit from the City prior to constructing any drainage improvements in the 100-year floodway. A No-rise Certification, supported by technical data and stamped and signed by a licensed professional engineer in the State of Colorado who is competent to perform such work, must be submitted for review and approval by the Director of Stormwater. Supporting technical data shall be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the most recent Flood Insurance Rate Map (FIRM).

(iii) Within 180 days after the issuance of any building permit within Regency Crest Neighborhoods H2, H3 or I3, Petitioners shall have constructed the full width street improvements (44 feet, including curb and gutter) of Red Creek Springs Road between the western boundary of Regency Crest Filing No. 2 and the western boundary of the Property as shown on Exhibit C-1. Sidewalks and curb ramps shall also be constructed on the north side of Red Creek Springs Road from Hillcrest Drive west to the western boundary of the Property. The full width street improvements shall be located 22 feet on each side of the proposed centerline of Red Creek Springs Road as shown on Exhibit C-1. The centerline of the proposed improvements of Red Creek Springs Road must align with the centerline of Red Creek Springs Road as it is presently designed at the eastern boundary of the Property. Red Creek Springs Road shall be paved at full width to the western boundary of the Property. A transition shifting the alignment of traffic lanes to accommodate the change in roadway width shall be constructed on the Property unless the City acquires the right-of-way necessary to facilitate construction of the transition to the west of the Property in accordance with subsection A.3.a of the Annexation Agreement, in which case, Petitioner shall construct the transition as an off-site improvement. The installation of the remaining 10" sanitary sewer main from the manhole built in Phase 1 west of the culverts to the west property line shall also be completed at this time. All required public improvements to be constructed under this subparagraph shall be designed and constructed in accordance with the City's Standard Construction Specifications and Standard Details (published April 11, 2022 or as same may be later amended), the City's Storm Drainage Design Criteria and Drainage Policies for the City of Pueblo (published June 9, 1997 or as same may be later amended), other standards and criteria adopted by City Council; as well as all relevant federal, state, and local laws and ordinances. All design documents shall be signed and stamped by a licensed professional engineer in the State of Colorado who is competent to perform such work. All project design documents are subject to approval of the Director of Public Works.

2. Exhibit C-1 issued 9/23/04 recorded under reception no. 1603123 (page 29 of 39) is hereby deleted in its entirety and replaced by the attached hereto Exhibit C-1 dated 10/21/22.

3. **No Other Amendments.** Except as modified by this Fourth Amendment, the Annexation Agreement, remains in full force and effect.

4. **Effective Date.** This Amendment will become effective upon execution of both parties and recording with the Pueblo County Clerk and Recorder.

5. The Annexation Agreement as amended by this Fourth Amendment shall continue in full force and effect, binding upon Petitioners and the City, and their respective successors and assigns.

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

THE CITY OF PUEBLO,
a municipal corporation

By: _____
Nicholas A. Gradisar, Mayor

Date: _____

Attest: _____
Marisa Stoller, City Clerk

APPROVED AS TO FORM:

City Attorney

State of Colorado)
) ss:
County of _____)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ as _____ for the City of Pueblo.

Witness my hand and official seal.

Notary Public

My commission expires _____.
The Proctor Family Partnership No. 2, LLLP,
a Colorado limited liability limited partnership

By: _____

Date: _____

Title: General Partner

State of Colorado)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2022, by C.T. Proctor, General Partner of The Proctor Family Partnership No. 2, LLLP,
a Colorado limited liability limited partnership.

Witness my hand and official seal.

Notary Public

My commission expires _____.

Domega Homes of Colorado, Inc., a Colorado corporation

By: _____

Date: _____

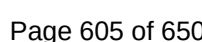
Title: President

State of Colorado)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2022, by C.T. Proctor, President of Domega Homes of Colorado, Inc., a Colorado corporation.

Witness my hand and official seal.

Notary Public
My commission expires _____.





Ord. # 7241

**Background Paper for Proposed
ORDINANCE**

AGENDA ITEM #

33
~~23~~

DATE: NOVEMBER 22, 2004

**DEPARTMENT: COMMUNITY DEVELOPMENT/JIM MUNCH
PLANNING DEPARTMENT/JIM MUNCH**

TITLE

AN ORDINANCE ANNEXING THE AREA COMMONLY KNOWN AS REGENCY CREST WEST ANNEXATION AND DESCRIBED AS APPROXIMATELY 122.7533 ACRES LOCATED NORTH OF RED CREEK SPRINGS ROAD AND EAST OF THE GOODNIGHT ARROYO

ISSUE

Shall the City Council approve the proposed annexation of property that is located north of Red Creek Springs Road and east of the Goodnight Arroyo?

RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 6-0-0.

BACKGROUND

The Regency Crest West Annexation submitted by The Proctor Family Partnership, LLC and Floyd E. Orr, Jr., The Orr Trust, Margaret L. Orr, William R. Ferrier and Jeannine L. Bledsoe comprises 122.7533 acres located north of Red Creek Springs Road and east of the Goodnight Arroyo. The property is currently zoned in an (A-4) Agricultural Zone District within Pueblo County. The applicant has agreed to have the property zoned Agricultural (A-1) for a period not to exceed 120 months from the date of the approval of the annexation. However, no building or occupancy permit shall be approved by the City or issued by the Pueblo Regional Building Department for any portion of the property until after the property is zoned in the land use classification most nearly corresponding to the land use classification under the City's comprehensive plan. The Pueblo Regional Development Plan identifies the future land use as "Suburban Residential".

FINANCIAL IMPACT

The Petitioners acknowledge and agree that upon the annexation, the area shall become subject to the Charter, ordinances, resolutions, rules and regulations of the City. Provided the petitioners comply with the terms, covenants and conditions of the

annexation agreement, the City will provide municipal services (but not infrastructure) to the property on the same general terms and conditions as the rest of the City receives.

This includes the provision of police and fire protection services to the property, in addition the public roads and sanitary sewer main extensions will be maintained by the City of Pueblo once they have been constructed and accepted by the City.

ORDINANCE NO. 7241

AN ORDINANCE ANNEXING THE AREA COMMONLY KNOWN AS REGENCY CREST WEST ANNEXATION AND DESCRIBED AS APPROXIMATELY 122.7533 ACRES LOCATED NORTH OF RED CREEK SPRINGS ROAD AND EAST OF THE GOODNIGHT ARROYO

WHEREAS, the City Planning and Zoning Commission has recommended that the area described in Section 1 hereof be annexed to the City of Pueblo; and

WHEREAS, the City Council has heretofore found and determined by Resolution that the Petition for Annexation and the area described in Section 1 hereof to be in compliance with the notice and other applicable provisions of the Municipal Annexation Act of 1965 and C.R.S. §31-12-104, 105 and 107(1); and

WHEREAS, the City Council has by Resolution found and determined that an election is not required under C.R.S. §31-12-107 (2) and no additional terms and conditions are to be imposed upon the area described in Section 1 other than those set forth in the Petition for Annexation and the Annexation Agreement;

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

SECTION 1.

The following described area situated in Pueblo County, Colorado, is hereby annexed to Pueblo, a Municipal Corporation, subject to the terms and conditions set forth in the Petition For Annexation, and the Annexation Agreement which is hereby approved, and the official map of the City shall be amended to show such annexation:

A portion of the West Half (W/2) of Section Four (4), Township Twenty-one (21) South, Range Sixty-five (65) West of the Sixth Principal Meridian, County of Pueblo, State of Colorado, being described as follows:

Basis of Bearings: The west line of Regency Crest Subdivision, A Special Area Plan, according to the recorded plat thereof, being monumented on both ends by a No. 6 rebar with a 2-1/2" aluminum cap marked "M2 Surveying PLS 34587" is assumed to bear North 03 degrees 18 minutes 38 seconds East a distance of 1641.38 feet.



ChrisC.Munoz PuebloCtyClk&Rec ORD

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Page: 1 of 4

01/19/2005 11:19P

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COMMENCING at the southeast corner (SE/COR) of the Northeast Quarter of the Southwest Quarter (NE/4 SW/4) of said Section Four (4); THENCE, North 88 degrees 07 minutes 38 seconds West, along the south line of said Northeast Quarter of the Southwest Quarter (NE/4 SW/4), a distance of 160.40 feet to the POINT OF BEGINNING; THENCE,

Continuing North 88 degrees 07 minutes 38 seconds West, along said south line, a distance of 1153.23 feet to the southeast corner (SE/COR) of the Northwest Quarter of the Southwest Quarter (NW/4 SW/4) of said Section Four (4); THENCE, North 88 degrees 35 minutes 53 seconds West, along the south line of said Northwest Quarter of the Southwest Quarter (NW/4 SW/4), a distance of 1163.64 feet; THENCE, North 04 degrees 01 minutes 08 seconds East a distance of 610.83 feet; THENCE, North 88 degrees 35 minutes 53 seconds West a distance of 150.00 feet to the west line of the Southwest Quarter (SW/4) of said Section Four (4); THENCE, North 04 degrees 01 minutes 08 seconds East, along said west line, a distance of 779.56 feet to the southwest corner (SW/COR) of the Northwest Quarter (NW/4) of said Section Four (4); THENCE, North 04 degrees 05 minutes 55 seconds East, along the west line of said Northwest Quarter (NW/4), a distance of 433.21 feet; THENCE, South 60 degrees 11 minutes 44 seconds East a distance of 162.85 feet; THENCE, South 84 degrees 38 minutes 44 seconds East a distance of 300.00 feet; THENCE, South 51 degrees 57 minutes 44 seconds East a distance of 169.00 feet; THENCE, South 21 degrees 02 minutes 44 seconds East a distance of 172.00 feet; THENCE, North 07 degrees 28 minutes 16 seconds East a distance of 115.00 feet; THENCE, North 34 degrees 25 minutes 44 seconds West a distance of 213.00 feet; THENCE, North 61 degrees 38 minutes 44 seconds West a distance of 370.00 feet; THENCE, North 03 degrees 50 minutes 16 seconds East a distance of 96.00 feet; THENCE, North 63 degrees 25 minutes 16 seconds East a distance of 233.00 feet; THENCE, North 15 degrees 12 minutes 16 seconds East a distance of 185.00 feet; THENCE, North 26 degrees 57 minutes 44 seconds West a distance of 243.00 feet; THENCE, North 06 degrees 01 minutes 16 seconds East a distance of 144.65 feet to the north line of the Southwest Quarter of the Northwest Quarter (SW/4 NW/4) of said Section Four (4); THENCE, South 88 degrees 12 minutes 59 seconds East, along said north line, a distance of 1372.58 feet to the northwest corner (NW/COR) of Regency Crest Subdivision, Filing No. 3, A Special Area Plan; THENCE, southerly along the boundary of said Regency Crest Subdivision, Filing No. 3 the following fourteen (14) courses:

- 1) South 01 degrees 43 minutes 57 seconds West a distance of 100.40 feet; THENCE,
- 2) South 01 degrees 44 minutes 19 seconds East a distance of 60.52 feet; THENCE,
- 3) South 01 degrees 43 minutes 57 seconds West a distance of 91.05 feet; THENCE,
- 4) South 19 degrees 21 minutes 51 seconds West a distance of 97.56 feet; THENCE,
- 5) South 40 degrees 41 minutes 00 seconds West a distance of 58.41 feet; THENCE,



ChrisC.Munoz PuebloCtyClk&Rec ORD

1603121

Page: 2 of 4
01/19/2005 11:19A

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6) South 38 degrees 16 minutes 06 seconds West a distance of 64.46 feet;
THENCE,
7) South 35 degrees 55 minutes 05 seconds West a distance of 55.11 feet;
THENCE,
8) South 33 degrees 45 minutes 13 seconds West a distance of 55.05 feet;
THENCE,
9) South 45 degrees 51 minutes 53 seconds West a distance of 56.17 feet;
THENCE,
10) South 43 degrees 08 minutes 43 seconds West a distance of 46.07 feet;
THENCE,
11) South 14 degrees 19 minutes 22 seconds West a distance of 108.34 feet;
THENCE,
12) South 07 degrees 36 minutes 53 seconds West a distance of 60.83 feet;
THENCE,
13) South 02 degrees 26 minutes 20 seconds West a distance of 184.37 feet;
THENCE,
14) South 87 degrees 23 minutes 29 seconds East a distance of 1018.94 feet;
THENCE,

South 02 degrees 33 minutes 59 seconds West a distance of 111.22 feet;
THENCE, South 87 degrees 26 minutes 01 seconds East a distance of 18.51 to
the westerly boundary of Regency Crest Subdivision, Filing No. 2, A Special Area
Plan; THENCE, South 03 degrees 18 minutes 38 seconds West, along said
westerly boundary, a distance of 1541.72 feet to the northerly right-of-way line of
Red Creek Springs Road; THENCE, North 88 degrees 07 minutes 38 seconds
West, along said northerly right-of-way line, a distance of 56.16 feet; THENCE,
South 02 degrees 01 minutes 19 seconds West a distance of 30.00 feet to the
POINT OF BEGINNING.

Containing a calculated 122.7533 acres.

SECTION 2.

Within thirty (30) days after the effective date of the Ordinance, the City Clerk
shall:

- (a) File one copy of the annexation map with the original of this ordinance in the
office of the City Clerk;
- (b) File for recording three certified copies of this Ordinance and annexation map
with the Pueblo County Clerk and Recorder;
- (c) File one certified copy of the annexation map and this Ordinance with the
Southeastern Colorado Water Conservancy District.



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1603121

Page: 3 of 4

01/19/2005 11:19P

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SECTION 3.



1603121

Page: 4 of 4

01/19/2005 11:19

ChrisC.Munoz PuebloCityClk&Rec ORD

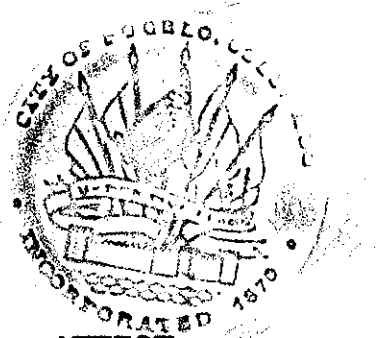
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The City Council hereby consents to the inclusion of the annexed area in the Southeastern Water Conservancy District pursuant to C.R.S. § 37-45-136 (3.6).

SECTION 4.

This ordinance shall become effective immediately upon final passage and the annexation shall be effective for ad valorem tax purposes on and after January 1, 2005.



INTRODUCED November 22, 2004

BY Michael Occhiato
COUNCIL PERSON

APPROVED [Signature]
PRESIDENT OF CITY COUNCIL

ATTEST:

[Signature]
CITY CLERK

PASSED AND APPROVED: December 13, 2004

ANNEXATION AGREEMENTCASE NO. A-03-04

This Annexation Agreement entered into as of December 13, 2004, by and between the City of Pueblo, a Municipal Corporation, (the "City") and The Proctor Family Partnership, LLLP, Floyd E. Orr, Jr., The Orr Trust, Margaret L. Orr (formerly Margaret L. Diodosio), William R. Ferrier and Jeannine L. Bledsoe (formerly Jeannine L. Krueger) (herein collectively the "Petitioner"), WITNESSETH

WHEREAS, the Petitioner is the owner of the real property located in Pueblo County, Colorado, and described in Exhibit "A" attached hereto and incorporated herein (the "Property");

WHEREAS, the Petitioner has submitted a petition for the annexation of the Property to the City; and

WHEREAS, as a condition precedent to the annexation of the Property, Petitioner has agreed to enter into an annexation agreement with the City setting forth certain terms and conditions with respect to such annexation.

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions set forth herein, the City and Petitioner agree as follows:

I. REPRESENTATION AND WARRANTIES OF PETITIONER

Petitioner hereby represents and warrants to, and covenants with, the City as follows:

(1) The Proctor Family Partnership, LLLP and the Orr Trust are duly organized and validly existing under the laws of Colorado. All other persons who constitute the Petitioner are individuals.

(2) Petitioner has good and marketable fee simple title to the Property subject only to Permitted Encumbrances attached hereto as Exhibit "B."

(3) Petitioner is authorized to, and has taken all action required by it (a) to annex the Property to the City and (b) to execute, deliver and perform its obligations under this Annexation Agreement, and (c) to carry out and consummate all of its transactions contemplated by this Annexation Agreement.

(4) This Annexation Agreement when executed and delivered, constitutes a valid and legally binding obligation of the Petitioner and except as provided in Article XV enforceable against Petitioner according to its terms.

(5) Neither the execution and delivery of this Annexation Agreement nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions or any restriction or any agreement or instrument to which the Petitioner is bound, or constitutes a default under any of the foregoing.



ChrisC.Munoz PuebloCityClk&Rec ANNEX AG R 196.00

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Page: 1 of 39

01/19/2005 11:19A

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(6) There is no litigation pending, or to the knowledge of Petitioner threatened, against the Petitioner or any person affecting the right of the Petitioner to execute this Annexation Agreement or to comply with the provisions hereof.

(7) The representations and warranties of Petitioner contained herein will be true and correct in all material respects as of the date of recording the annexation plat and Ordinance of the City Council approving the annexation of the Property, as if made on the date of such recording.

II. MASTER DEVELOPMENT PLAN

Petitioner will prepare and submit or cause to be prepared and submitted to the Planning and Zoning Commission for approval a Master Development Plan for the Property. The Master Development Plan shall be prepared in consultation with the City's Subdivision Review Committee and Department of Planning and Development and submitted in its entirety to the Planning and Zoning Commission. The Master Development Plan will comply with the policies of the Pueblo Regional Comprehensive Development Plan existing as of the date the Master Development Plan is approved, and will be designed to address, identify and resolve all development, drainage, utilities, traffic and other infrastructure needs and requirements and the wide range of planning and development issues involved in and with respect to the development of the Property. The Master Development Plan as submitted and approved by the Planning and Zoning Commission will have the flexibility to adapt to changing conditions over the estimated time period for the development of the Property and shall consist of the following: (a) Development Plan, (b) Drainage Plan, (c) Sanitary Sewer Plan, (d) Transportation Plan, and (e) Environmental Study:

(1) Development Plan. The Development Plan shall be prepared in accordance with the requirements of Sections 12-4-5(a)(2) and 12-4-6(a) of the Pueblo Municipal Code. A development plan establishing the anticipated phasing of the development of the Property shall be prepared as part of the Development Plan.

(2) Drainage Plan. The Drainage Plan shall be prepared in accordance with the Storm Drainage Design Criteria and Drainage Policies for the City of Pueblo, Colorado, published June 9, 1997, or as same may hereafter be amended (MANUAL) and be certified by a Professional Engineer competent in the field of surface water drainage engineering and registered in the State of Colorado. The Drainage Plan shall address surface water drainage within the Property and onto the Property from other areas, as well as the effects of the development of the Property upon downstream properties and drainage facilities. Water quality management and erosion control measures will be incorporated in the Drainage Plan to meet current and future NPDES requirements. Associated impacts on City's existing and proposed surface water drainage system shall be identified in the Drainage Plan, and those impacts which are reasonably attributable to the development of the Property as determined by the City, in its sole discretion, shall be mitigated through surface water drainage improvements installed by and at the expense of the Petitioner. The Drainage Plan shall include a phasing plan or schedule for such improvements. Storm water detention facilities, designed and constructed in accordance with the MANUAL, may be used to mitigate the increased runoff due to development of the Property.

(3) Sanitary Sewer Plan. The Sanitary Sewer Plan shall be prepared in accordance with the Sanitary Sewer Design Criteria and Policies for City of Pueblo published May 12, 1999, or as same may hereafter be amended, and be certified by Professional Engineers competent in the field of sanitary



1603123

Page: 2 of 39

01/19/2005 11:19A

ChrisC.Munoz PuebloCtyClk&Rec ANNX AG R 196.00

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sewer engineering and registered in the State of Colorado. The Sanitary Sewer Plan shall address the needs of the entire gravity-fed sanitary sewer drainage basin of which the Property is a part. The sewer drainage basin shall be approved by the Director of Public Works. Associated impacts on City's existing non-backbone system (less than 15-inch diameter) and proposed sanitary sewer system shall be identified in the Sanitary Sewer Plan, and those impacts which are reasonably attributable to the development of the Property as determined by the City, in its sole discretion, shall be mitigated through the installation of sanitary sewer improvements installed by and at the expense of the Petitioner. The Sanitary Sewer Plan shall include a phasing plan or schedule for such sanitary sewer improvements.

If sanitary sewers within the Property are oversized to serve future development outside the Property but within the sewer drainage basin, an Agreement to partially recover cost of constructing oversized or off-site sewer collection system improvements ("Agreement") will be entered into between the Petitioner and the City in accordance with Chapter 5, Title XVI of the Pueblo Municipal Code or as same may hereafter be amended.

If sanitary sewers are constructed downstream from the Property which will serve future development outside the Property but within the sewer drainage basin, the Agreement may include provisions allowing the Petitioner to be reimbursed in accordance with said Chapter 5 of the City's ordinances.

The Agreement will comply with the City's then existing applicable ordinances but shall not require any cost recovery from the City except to the extent that funds therefore are made available by Resolution of the City Council pursuant to Section 16-11-4 of the Pueblo Municipal Code or as same may hereafter be amended for upgrading the existing off-site sanitary sewer system serving the Property.

(4) Transportation Plan. The Transportation Plan shall be prepared in accordance with the criteria and general outline specified by the City Traffic Engineer and shall be supported by studies and reports prepared by Professional Engineers competent in the field of transportation and registered in the State of Colorado. Associated impacts on City's existing and proposed traffic and roadway systems shall be identified in the Transportation Plan and studies, and those impacts which are reasonably attributable to the development of the Property as determined by the City, in its sole discretion, shall be mitigated through traffic improvements constructed and installed by and at the expense of the Petitioner (such as, but not limited to, traffic signals, signal interconnect, conduit and wire, deceleration/acceleration lanes, and median islands). The Transportation Plan shall include a phasing plan or schedule of such traffic improvements. If street improvements through or adjacent to property outside the Property are required to be constructed, the Petitioner will pay the entire cost of such improvements and thereafter be eligible for such cost recovery as may be provided under Section 12-4-12 of the Pueblo Municipal Code or as same may hereafter be amended, but shall not be eligible for any cost recovery from the City.

(5) Environmental Studies. In addition to the requirements of Section 12-4-6(b)(3) of the Pueblo Municipal Code, if the Property includes any land that is adjacent to or has previously been used for solid waste disposal by land filling, the Petitioner at its expense, shall provide the City with a Phase I Environmental Study of the Property and a further in-depth study of any potential methane gas presence on, or migration from or to the Property. Such studies shall be performed by Professional Engineers competent in environmental engineering. The boundaries of the landfill area shall be identified on the Master Development Plan and shall be tested for the presence of methane



1603123

Page: 3 of 39

01/19/2005 11:19A

ChrisC.Munoz PuebloCityClk&Rec ANNX AG R 196.00 D 0.00

Page 614 of 650

gas in accordance with procedures approved by the appropriate State Agencies and the results summarized as a comparison to State and Federal regulatory limits of the landfill area and at the exterior boundary of the landfill area.

Petitioner may submit the Master Development Plan to the Planning and Zoning Commission for approval any time after the City Council has found the petition for annexation of the Property to be valid in accordance with the provisions of section 31-12-107, C.R.S.; provided however, that the proposed Master Development Plan shall not be approved prior to the time the ordinance annexing the Property is approved on final presentation. The City may refuse to approve any building or occupancy permit for any portion or all of the Property until after a Master Development Plan is approved.

III. ZONING AND SUBDIVISION

(1) No application for subdivision of all or any part of the Property shall be submitted to or considered by the City until after the Master Development Plan has been approved by the Planning and Zoning Commission; provided, however, that if the Property is intended to be included in a single subdivision, the application for such subdivision may be submitted at the time the Master Development Plan is submitted to the Planning and Zoning Commission. No subdivision of the Property shall be approved prior to the time the ordinance annexing the Property is approved on final presentation.

(2) Petitioner must approve and initial one of the following:

_____ The Property shall be zoned _____, the land use classification most nearly corresponding to the land use classification into which Property has been classified under the City's comprehensive plan.

CP
Initial
EO
Initial
X The property shall be zoned Agricultural One (A-1) for a period not to exceed one hundred and twenty months from the date of this Annexation Agreement. However, no building or occupancy permit shall be approved by the City or issued by the Pueblo Regional Building Department for any building or structure within any portion of the Property classified as Agricultural One (A-1) zone district until after that portion of the Property is zoned in the land use classification most nearly corresponding to the land use classification into which such land has been classified under the City's comprehensive plan.

_____ Petitioner will file an application to rezone the Property to a _____ District (_____) no later than ninety (90) days after the time of approval of the annexation ordinance. If the Property is not so zoned, no building or occupancy permit shall be approved by the City or issued by the Pueblo Regional Building Department for any part of the Property.

(3) A petition to zone the Property may be filed at any time after the petition for annexation has been found to be valid in accordance with the provisions of Section 31-12-107, C.R.S. The Planning and Zoning Commission may hear the petition for rezoning and make its recommendations thereon prior to annexing the Property, but the proposed zoning ordinance shall not be passed on final presentation prior to the date the ordinance annexing the Property is approved on final presentation.



ChrisC.Munoz PuebloCityCik&Rec ANNEX AG R 196.00 D 0.00

1603123

Page: 4 of 39

01/19/2005 11:19

IV. PUBLIC FACILITIES

The Petitioner shall dedicate land and right-of-way for public uses and facilities necessary and required to serve the Property or required as a result of the development of the Property as determined by the City, in its sole discretion, including, but not limited to, sanitary and storm sewers, drainage ways and facilities, utilities, streets, roadways, trail systems and parks and open space. The Petitioner at its expense shall construct and install all on-site and off-site improvements necessary and required to serve the Property or required as a result of the development of the Property as determined by the City, in its sole discretion, including, but not limited to, trail systems, parks, streets, street lights, curbs and gutters, sidewalks, bridges, traffic control devices, sanitary sewers, storm sewers, drainage and channel improvements and facilities, but excluding public buildings such as fire stations. All such improvements shall meet and comply with applicable City Ordinances in effect at the time of installation of such improvements. The parties agree that, with respect to the Property, Petitioner's obligation to acquire and dedicate land and rights-of-way and to construct facilities, with regard to Red Creek Springs Road, the Red Creek Springs Road arroyo crossing, Bandera Parkway, the Bandera Parkway arroyo crossing and St. Clair Avenue are set forth in Exhibit C attached hereto and made a part hereof, and shall not be changed without the mutual consent of the parties. The parties further agree that, with respect to the Property, Petitioner's obligation to pay impact fees and/or construct improvements in lieu of paying impact fees in support of costs associated with the Bandera Corridor Improvements described in Exhibit C-3, is as set forth in Exhibit C, and shall not be changed without mutual consent of the parties.

V. UTILITIES

The Petitioner shall comply with all applicable City of Pueblo (sanitary and storm sewers), Public Service Company (natural gas), Aquila (electric), TCI Cablevision (cablevision), Pueblo Board of Water Works (water), and Qwest (telephone/data transmission) requirements for the installation of mains, lines, stations, and any other appurtenant utility facilities in effect at the time of such installation. All existing and new power lines less than 30,000 volts and all overhead utilities (1) within the Property, (2) within the public rights-of-way adjoining the Property, and (3) within the areas adjacent to the Property which serve the Property shall be placed underground.

VI. COMPLIANCE WITH ORDINANCES

The development, subdivision and zoning of the Property shall meet and comply with all applicable ordinances, resolutions, regulations, and standards of the City now existing or hereinafter enacted or amended.

VII. BINDING EFFECT

The covenants, restrictions, and agreements herein set forth are covenants running with the Property, shall run with and bind the Property, and shall extend to and be binding upon the Petitioner and Petitioner's heirs, legal representatives, successors, assigns and transferees. The Petitioner expressly accepts and agrees to the covenants, restrictions, and agreements set forth herein by execution of this Annexation Agreement and by the filing of its petition for annexation. If Petitioner defaults in any of its obligations under this Annexation Agreement, including, without limitation, land dedication obligations, City, upon notice given to Petitioner specifying the default, may withhold all subdivision, special area plan, and other development approvals as well as building and occupancy permits for any building or structure within the Property until such default has been corrected to the



1603123

Page: 5 of 39
01/19/2005 11:19F
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ChrisC.Munoz PuebloCityCik&Rec ANNEX AG R 196.00

satisfaction of the City.

VIII. AMENDMENTS



1603123

Page: 6 of 39

01/19/2005 11:19

ChrisC.Munoz PuebloCtyClk&Rec ANNEX AG R 196.00 D 0.00

Amendments to this Annexation Agreement may only be made through formal petition to and approval by Resolution of the City Council after such amendment has been submitted to and reviewed by the appropriate City Departments and such Departments have submitted their findings and recommendations to the City Council. All amendments to the Master Development Plan must be approved by the Planning and Zoning Commission after review and recommendation by the appropriate City Departments.

IX. SEVERABILITY

If any section, clause, or other provision of this Annexation Agreement is for any reason determined to be invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect any of the remaining provisions of this Annexation Agreement.

X. VESTED RIGHTS

As a condition of and in consideration of the City annexing the Property, the Petitioner, for itself, its heirs, personal representatives, successors and assigns waives and releases all previously acquired or existing vested property rights attached to or established with respect to the Property.

The Petitioner acknowledges and agrees that neither this Annexation Agreement nor any provision hereof, nor the annexation of the Property to the City, nor the approval of the Master Development Plan, either separately or jointly (a) creates or establishes a vested property right in or for the benefit of the Petitioner or its heirs, personal representatives, successors or assigns, or with respect to the Property; or (b) constitutes a site-specific development plan. The terms "vested property right" and "site-specific development plan" shall have the same meaning as set forth in Section 17-12-2 of the Pueblo Municipal Code and §24-68-101, et seq., C.R.S.

XI. BUILDING PERMITS

No building or occupancy permit shall be approved by the City or issued by the Pueblo Regional Building Department to occupy, construct or install any building, structure or other improvement on the Property except within a subdivision approved by the City after adoption of the ordinance annexing the Property which meets and complies with this Annexation Agreement and City's ordinances, standards, and regulations.

XII. DISCONNECTION

(1) Disconnection by Petitioner. Petitioner acknowledges and agrees that upon annexation of the Property, the Property shall become subject to this Annexation Agreement, the Charter, ordinances and rules and regulations of the City. Provided Petitioner complies with the terms, covenants and conditions of this Annexation Agreement, the City shall provide municipal services (but not infrastructure) to the Property on the same general terms and conditions as the rest of the City receives.

(2) Disconnection by City. If, for any reason, the Master Development Plan is not approved and adopted by the Planning and Zoning Commission within three (3) years from date of

this Annexation Agreement, proceedings may be instituted by the City to disconnect the Property from the City, and for such purpose, the Petitioner irrevocably consents to such disconnection proceedings and waives any and all rights to contest such disconnection.

XIII. CONTRACTUAL NATURE OF ANNEXATION AGREEMENT

The terms, conditions and obligations of this Annexation Agreement are and shall be construed to be purely contractual in nature, as terms, conditions and obligations voluntarily agreed to by City and Petitioner prior to annexation of the Property to the City. The terms, conditions and obligations imposed on Petitioner and the Property by this Annexation Agreement are not nor shall they individually or cumulatively be construed to be conditions upon granting land-use approvals within the meaning of sections 29-20-201 to 29-20-204, C.R.S.

XIV. SPECIAL IMPROVEMENTS, DEDICATIONS AND IMPACT FEES

In addition to the on-site and off-site improvements and land dedications required to be made by the provisions of this Annexation Agreement, Petitioner will construct and install the improvements, dedicate the land, and pay or cause to be paid the impact fees described in Exhibit C attached hereto and incorporated herein. The improvements, dedication, and impact fees described in said Exhibit C are in addition to and not in substitution for any improvements or dedications otherwise required by this Annexation Agreement.

XV. LIMITED RESTRICTION ON PERSONAL LIABILITY

Petitioner, Floyd E. Orr, Jr., the Orr Trust, Margaret L. Orr (formerly Margaret L. Diodosio), William R. Ferrier and Jeannine L. Bledsoe (formerly Jeannine L. Krueger) (herein collectively the "Orrs") have represented to the City that they are the owners of a large portion of the Property, that the Property they own is under contract or option to sell to The Proctor Family Partnership, LLLP, and that they will not and do not intend to develop the Property, or become the developers of the Property.

Therefore, so long as the Orrs do not individually or jointly develop or become the developers of the Property and notwithstanding any contrary provision in this Annexation Agreement, the Orrs shall not be personally liable to perform the financial obligations of Petitioner set forth in the Annexation Agreement.

Neither this Article XV nor any provisions hereof shall be or be deemed to be a release or impairment of any of the covenants, restrictions, obligations and agreements set forth in this Annexation Agreement with respect to the Property, The Proctor Family Partnership, LLLP, and, except as provided in the preceding paragraph, the Orrs, or preclude, or in any manner hinder the City from enforcing any and all rights, covenants, restrictions, obligations and agreements under this Annexation Agreement against the Property, The Proctor Family Partnership, LLLP, and, except as provided in the preceding paragraph, the Orrs.

XVI. MISCELLANEOUS

(1) Notice. All notices or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, or mailed by registered or certified mail, postage prepaid, addressed as follows:



1603123

Page: 7 of 39

01/19/2005 11:19

ChrisC.Munoz PuebloCtyCik&Rec ANNX AG R 196.00 D 0.00

(a) if to the City: Department of Public Works - City of Pueblo
211 East "D" Street, Pueblo, Colorado
Attention: Director of Public Works

(b) if to the Petitioner: The Proctor Family Partnership, LLLP
Attention: C.T. Proctor
Drawer 3430
Pueblo, CO 81005-0430

or to such other address as either party by written notice given hereunder may designate.

(2) Governing Law. This Annexation Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to conflict of law principles. Venue for any action arising out of this Annexation Agreement shall be Pueblo County, Colorado.

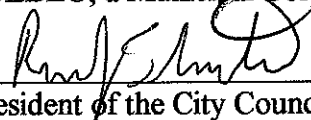
(3) No Third Party Beneficiaries. Nothing in this Annexation Agreement expressed or implied is intended to or shall be construed to confer upon, or to give to, any person other than the City and the Petitioner any right, remedy or claim under or by reason of this Annexation Agreement or any covenant, condition or stipulation hereof; and all the covenants, agreements and stipulations in this Annexation Agreement contained by and on behalf of the City or the Petitioner shall be for the exclusive benefit of the City and the Petitioner.

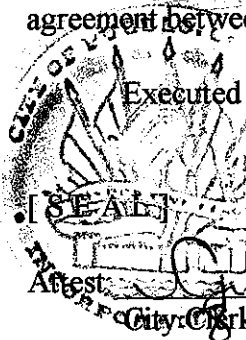
(4) Singular, Plural. Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural. Words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting the other gender, if applicable.

(5) Entire Agreement. All prior discussions, representations, understandings and agreements, whether oral or written, between the parties with respect to the subject matter of this Annexation Agreement are merged in this Annexation Agreement, which constitutes the entire agreement between the parties.

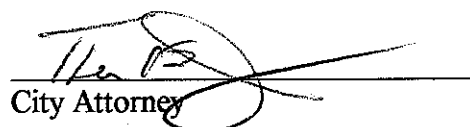
Executed at Pueblo, Colorado as of the day and year first above written.

PUEBLO, a Municipal Corporation

By 
President of the City Council


Attest: 
City Clerk

APPROVED AS TO FORM:


City Attorney



ChrisC.Munoz PuebloCtyCik&Rec ANNX AG R 195.00 D 0.00

1603123

Page: 8 of 39
01/19/2005 11:19

PETITIONER:

THE PROCTOR FAMILY PARTNERSHIP,
LLLP

By C.T. Proctor
Title: C.T. Proctor, General Partner

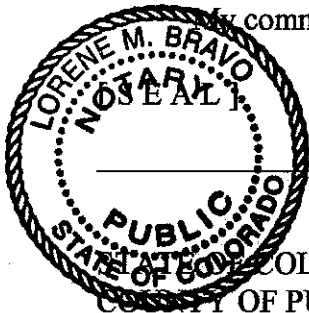
Floyd E. Orr, Jr.
Floyd E. Orr, Jr., individually; as trustee of the
Orr Trust; and as agent and attorney in fact for
Margaret L. Orr (formerly Margaret L.
Diodosio), William R. Ferrier and Jeannine L.
Bledsoe (formerly Jeannine L. Krueger)

STATE OF COLORADO)
COUNTY OF PUEBLO) ss.

The foregoing instrument was acknowledged before me this 15th day of December
2004, by Randy Thurston as President of City Council and Gina Dutcher as City Clerk of Pueblo, a
Municipal Corporation.

Witness my hand and official seal.

My commission expires: 8-21-2007



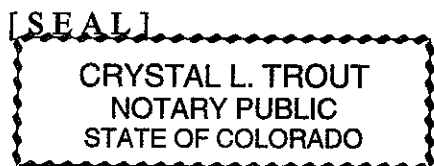
Lorene M. Bravo
Notary Public

STATE OF COLORADO)
COUNTY OF PUEBLO) ss.

The foregoing instrument was acknowledged before me this 10 day of November
2004, by C.T. Proctor as general partner of The Proctor Family Partnership, LLLP.

Witness my hand and official seal

My commission expires: 5-13-08



My Commission Expires 05/13/2008

Crystal L. Trout
Notary Public



ChrisC.Munoz PuebloCtyClk&Rec ANNEX AG R 196.00

1603123

Page: 9 of 39
01/19/2005 11:19
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STATE OF COLORADO)
COUNTY OF PUEBLO) ss.



1603123
Page: 10 of 39
01/19/2005 11:19
ChrisC.Munoz PuebloCtyCik&Rec ANNEX AG R 196.00 D 0.00

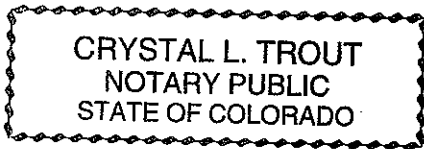
The foregoing instrument was acknowledged before me this 10 day of November, 2004, by Floyd E. Orr, Jr., who executed this instrument individually; as Trustee of the Orr Trust; and as agent and attorney in fact for Margaret L. Orr (formerly Margaret L. Diodosio), William R. Ferrier and Jeannine L. Bledsoe (formerly Jeannine L. Krueger).

Witness my hand and official seal

My commission expires: 5-13-08

[SEAL]

Crystal L. Trout
Notary Public



My Commission Expires 05/13/2008

EXHIBIT "A"

Regency Crest Subdivision Annexation Boundary Description

A portion of the West Half (W/2) of Section Four (4), Township Twenty-one (21) South, Range Sixty-five (65) West of the Sixth Principal Meridian, County of Pueblo, State of Colorado, being described as follows:

Basis of Bearings: The west line of Regency Crest Subdivision, A Special Area Plan, according to the recorded plat thereof, being monumented on both ends by a No. 6 rebar with a 2-1/2" aluminum cap marked "M2 Surveying PLS 34587" is assumed to bear North 03 degrees 18 minutes 38 seconds East a distance of 1641.38 feet.

COMMENCING at the southeast corner (SE/COR) of the Northeast Quarter of the Southwest Quarter (NE/4 SW/4) of said Section Four (4); THENCE, North 88 degrees 07 minutes 38 seconds West, along the south line of said Northeast Quarter of the Southwest Quarter (NE/4 SW/4), a distance of 160.40 feet to the POINT OF BEGINNING; THENCE,

Continuing North 88 degrees 07 minutes 38 seconds West, along said south line, a distance of 1153.23 feet to the southeast corner (SE/COR) of the Northwest Quarter of the Southwest Quarter (NW/4 SW/4) of said Section Four (4); THENCE, North 88 degrees 35 minutes 53 seconds West, along the south line of said Northwest Quarter of the Southwest Quarter (NW/4 SW/4), a distance of 1163.64 feet; THENCE, North 04 degrees 01 minutes 08 seconds East a distance of 610.83 feet; THENCE, North 88 degrees 35 minutes 53 seconds West a distance of 150.00 feet to the west line of the Southwest Quarter (SW/4) of said Section Four (4); THENCE, North 04 degrees 01 minutes 08 seconds East, along said west line, a distance of 779.56 feet to the southwest corner (SW/COR) of the Northwest Quarter (NW/4) of said Section Four (4); THENCE, North 04 degrees 05 minutes 55 seconds East, along the west line of said Northwest Quarter (NW/4), a distance of 433.21 feet; THENCE,

South 60 degrees 11 minutes 44 seconds East a distance of 162.85 feet; THENCE, South 84 degrees 38 minutes 44 seconds East a distance of 300.00 feet; THENCE, South 51 degrees 57 minutes 44 seconds East a distance of 169.00 feet; THENCE, South 21 degrees 02 minutes 44 seconds East a distance of 172.00 feet; THENCE, North 07 degrees 28 minutes 16 seconds East a distance of 115.00 feet; THENCE, North 34 degrees 25 minutes 44 seconds West a distance of 213.00 feet; THENCE, North 61 degrees 38 minutes 44 seconds West a distance of 370.00 feet; THENCE, North 03 degrees 50 minutes 16 seconds East a distance of 96.00 feet; THENCE, North 63 degrees 25 minutes 16 seconds East a distance of 233.00 feet; THENCE, North 15 degrees 12 minutes 16 seconds East a distance of 185.00 feet; THENCE, North 26 degrees 57 minutes 44 seconds West a distance of 243.00 feet; THENCE, North 06 degrees 01 minutes 16 seconds East a distance of 144.65 feet to the north line

M² Surveying, LP
1200 S. Calle Arroyito Dr.
Pueblo West, CO 81007
(719)647-9463

6/11/2003
1 of 2



1603123

Page: 11 of 39
01/19/2005 11:19:19
ChrisC.Munoz PuebloCtyClk&Rec ANNX AG R 196.00 D 0.00

EXHIBIT "A"

Regency Crest Subdivision Annexation Boundary Description

of the Southwest Quarter of the Northwest Quarter (SW/4 NW/4) of said Section Four (4); THENCE, South 88 degrees 12 minutes 59 seconds East, along said north line, a distance of 1372.58 feet to the northwest corner (NW/COR) of Regency Crest Subdivision, Filing No. 3, A Special Area Plan; THENCE, southerly along the boundary of said Regency Crest Subdivision, Filing No. 3 the following fourteen (14) courses:

- 1) South 01 degrees 43 minutes 57 seconds West a distance of 100.40 feet; THENCE,
- 2) South 01 degrees 44 minutes 19 seconds East a distance of 60.52 feet; THENCE,
- 3) South 01 degrees 43 minutes 57 seconds West a distance of 91.05 feet; THENCE,
- 4) South 19 degrees 21 minutes 51 seconds West a distance of 97.56 feet; THENCE,
- 5) South 40 degrees 41 minutes 00 seconds West a distance of 58.41 feet; THENCE,
- 6) South 38 degrees 16 minutes 06 seconds West a distance of 64.46 feet; THENCE,
- 7) South 35 degrees 55 minutes 05 seconds West a distance of 55.11 feet; THENCE,
- 8) South 33 degrees 45 minutes 13 seconds West a distance of 55.05 feet; THENCE,
- 9) South 45 degrees 51 minutes 53 seconds West a distance of 56.17 feet; THENCE,
- 10) South 43 degrees 08 minutes 43 seconds West a distance of 46.07 feet; THENCE,
- 11) South 14 degrees 19 minutes 22 seconds West a distance of 108.34 feet; THENCE,
- 12) South 07 degrees 36 minutes 53 seconds West a distance of 60.83 feet; THENCE,
- 13) South 02 degrees 26 minutes 20 seconds West a distance of 184.37 feet; THENCE,
- 14) South 87 degrees 23 minutes 29 seconds East a distance of 1018.94 feet; THENCE,

South 02 degrees 33 minutes 59 seconds West a distance of 111.22 feet; THENCE, South 87 degrees 26 minutes 01 seconds East a distance of 18.51 to the westerly boundary of Regency Crest Subdivision, Filing No. 2, A Special Area Plan; THENCE, South 03 degrees 18 minutes 38 seconds West, along said westerly boundary, a distance of 1541.72 feet to the northerly right-of-way line of Red Creek Springs Road; THENCE, North 88 degrees 07 minutes 38 seconds West, along said northerly right-of-way line, a distance of 56.16 feet; THENCE, South 02 degrees 01 minutes 19 seconds West a distance of 30.00 feet to the POINT OF BEGINNING.

Containing a calculated 122.7533 acres.



ChrisC.Munoz PuebloCtyCik&Rec ANNX AG R 196.00 D 0.00

1603123

Page: 12 of 39
01/19/2005 11:19

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1200 S. Calle Arroyito Dr.
Pueblo West, CO 81007
(719)647-9463

6/11/2003
2 of 2

**1603123**Page: 13 of 39
01/19/2005 11:19

ChrisC.Munoz PuebloCtyClk&Rec ANNEX AG R 195.00 D 0.00

**EXHIBIT B TO
ANNEXATION AGREEMENT
CASE NO. A-03-04**

The Property to which this Annexation Agreement applies and that is described on Exhibit A hereto is currently free and clear of encumbrances and other liens, except the lien now accruing, but not yet due, for 2004 ad valorem taxes.

Petitioner may in the future place one or more deeds of trust on the Property to secure acquisition and construction financing. Any such deed of trust will be subordinate to this Annexation Agreement.

EXHIBIT "C"

SPECIAL IMPROVEMENTS, DEDICATIONS AND IMPACT FEES

REGENCY CREST MASTER PLAN (A-03-04) ANNEXATION AGREEMENT

A. Roadways

1. Off-Site Roadways

In compliance with the Pueblo Area Transportation System Plan, the City of Pueblo has identified for the Petitioner the alignment of off-site freeways, arterials and collectors, which provide connectivity to the Property. Petitioner will cause all local roadways within the Property to connect with all adjoining local roadways. Petitioner agrees to the centerline alignment and the right of way width of Red Creek Springs Road, St. Clair Avenue, and Bandera Parkway as shown on the Regency Crest Master Plan and included on Exhibit "C-1." "Identify" does not mean or include surveying or engineering services.

2. Construction of Minor Arterial Roadways

a. Petitioner shall, at its expense, construct Red Creek Springs, Bandera Parkway, the Red Creek Springs Road arroyo crossing and St. Clair Avenue (the "Road Improvements") as described herein and as shown on attached Exhibit C-1. The Road Improvements will be constructed in conjunction with the development of each Neighborhood as shown on attached Exhibit C-2 and as otherwise provided in the Annexation Agreement.

b. Petitioner acknowledges and agrees that, if Petitioner fails to construct the Roadway Improvements as herein agreed or defaults on any other provision of this Exhibit "C" or the Annexation Agreement, the City shall have all legal remedies



ChrisC.Munoz PuebloCtyClk&Rec ANNEX AG R 196.00 D 0.00

1603123

Page: 14 of 39
01/19/2005 11:19

C-1

available at law or in equity to enforce Petitioner's construction obligation and any other obligations including but not limited to a legal action against Petitioner for breach of contract and/or default on an indebtedness. In addition, and as set forth elsewhere in the Annexation Agreement, the City may withhold building permits, occupancy permits, subdivision approvals, zoning approvals and all other governmental grants of authority until such time as Petitioner shall have cured any default in performance under the Exhibit C or the Annexation Agreement.

As further security to the City for Petitioner's timely performance of its obligations hereunder, the parties have agreed that Petitioner will establish an interest bearing non-transactional account (the "Account") with Legacy Bank, a federally insured depository institution having an office at 1201 Paseo Del Norte, Pueblo, Colorado ("Bank"). City shall be granted and have a first position perfected security interest in the Account and all funds on deposit in the Account including interest earned thereon under Article 9 of the Colorado Uniform Commercial Code (C.R.S. §4-9-101 *et seq.*). In connection with the Account, the parties further agree as follows:

i. Until such time as all of the Roadway Improvements have been completed and accepted by the City in writing, each time a building permit is applied for by Petitioner or any other party for the construction of a dwelling unit within the boundaries of the Property, and as a condition precedent to the issuance of a building permit, Petitioner shall deposit into the Account the sum of \$2,200. (Petitioner may make advance deposits if it so elects and apply such advanced deposits against the obligation to make deposits in connection with future applications for building permits.)



ii. At such time as certain portions of the Road Improvements as set forth in the following schedule have been completed and accepted by the City, Petitioner may, upon written application to Bank (with a copy to the City) signed under oath and containing written confirmation from the City of the City's acceptance of the subject portion of the Road Improvements, withdraw funds including earned interest from the Account in accordance with the following schedule (which schedule has been derived from the City's estimate of roadway and arroyo costs within the Bandera Corridor Project Area, as shown of Exhibit C-3 hereto):

(a) Red Creek Springs Road from Property's easterly boundary to west right of way of Suncrest Lane: \$237,750 (1,585 linear feet at \$150/foot)

(b) Red Creek Springs Road from west right of way of Suncrest Lane to westerly boundary of Property, excluding Red Creek Springs arroyo crossing: \$117,750 (785 linear feet at \$150/foot)

(c) Red Creek Springs Road arroyo crossing: \$450,000

(d) East half of Bandera Parkway plus median: \$95,940 (50% of 780 feet at \$186/foot , plus \$30/foot for 780 feet of median)

(e) West half of Bandera Parkway: \$72,540 (50% of 780 feet at \$186/foot)

If, at the time of any authorized withdrawal described above, the funds in the Account are not sufficient to fully satisfy the withdrawal request, Petitioner shall be allowed to withdraw the shortfall amount in connection with Petitioner's next authorized withdrawal hereunder.

iii. In the event Petitioner should default in Petitioner's obligation to construct the Roadway Improvements in accordance with this Annexation



C-3

Agreement, the City may, upon 75 days prior written notice of default to Petitioner (during which 75 days Petitioner shall have a right to cure its default) withdraw funds from the Account in an amount sufficient, in the reasonable opinion of the City's Director of Public Works, to cure Petitioner's default. A request for payment by the City to Bank hereunder shall be in writing, shall affirm that Petitioner is in default and has failed to cure its default in the time allowed, and shall be signed under oath by the City's Director of Public Works. A copy of such payment request shall be submitted to Petitioner at the same time it is submitted to Bank.

iv. At such time as all of the Roadway Improvements have been completed and accepted by the City, and Petitioner shall have made all withdrawals from the Account authorized above, any and all funds including earned interest remaining in the Account shall be paid to the City and the Account shall be closed. Funds paid to the City from the Account shall be deposited by the City into the Bandera Corridor Improvements Account and shall be used by the City in accordance with the guidelines and restrictions applicable to that account.

v. The City's security interest in the Account shall be evidenced by a security agreement in the form attached hereto as Exhibit C-4 and the security interest shall be perfected by a control agreement, to which Bank is a party and by which Bank subordinates its interest in the Account to the City's security interest in the Account, in the form attached hereto as Exhibit C-5. The city may perfect its security interest in any other manner authorized by Article 9 of the Colorado Uniform Commercial Code and Petitioner and Bank shall execute all documents reasonably required therefor.



ChrisC.Munoz PuebloCtyCik&Rec ANNEX AG R 196.00 D 0.00

1603123

Page: 17 of 39

01/19/2005 11:19

C-4

vi. All fees imposed by Bank for the set up of the Account and its maintenance thereafter shall be paid by Petitioner and the City shall have no obligation therefore.

c. If the total number of dwelling units within the Property should ever exceed the 439 dwelling units identified in Exhibit C-2, Petitioner shall, as a condition precedent to the issuance of a building permit for each dwelling unit in excess of such 439 units, pay a development fee of \$2,200.00 ("Fee"). The Fee shall be paid to the City at the time a building permit is issued and shall be deposited in the Bandera Corridor Improvement Account. Monies on deposit in the Bandera Corridor Improvements Account shall be used only for the improvements described and shown on the attached Exhibit "C-3" ("Bandera Corridor Improvements"), and shall not fund infrastructure or utility improvements located within the rights-of-way of Bandera Parkway, Red Creek Springs Road, or St. Clair Avenue. .

d. Petitioner, for itself and its successors and assigns, including all subsequent owners of land within the Property, stipulate and agree that there is an essential nexus between the costs imposed on Petitioner hereunder for the construction of the Road improvements, together with the Fee, and the City's legitimate interest in providing for the construction and development of the Bandera Corridor Improvements, and that the cost of the Road Improvements and the Fee are roughly proportional both in nature and extent to the impact of the proposed development of the Property.



1603123

Page: 18 of 39
01/19/2005 11:19

ChrisC.Munoz PuebloCtyCik&Rec ANNX AG R 196.00 D 0.00

3. Acquisition of Right-of-Way

a. Red Creek Springs Road

The Petitioner at its sole cost and expense shall acquire and dedicate forty (40') feet of right of way north of the proposed centerline of Red Creek Springs Road and additional property necessary to complete the 44' roadway improvements (22 feet on each side of the centerline) to insure that the full 44' in width improvements of Red Creek Springs Road adjacent to the Property can be constructed in an alignment as shown on Exhibit "C-1". (Petitioner shall not, however, be responsible for acquiring and dedicating any additional land on the south side of Red Creek Springs Road that may be necessary to achieve an 80' right-of-way for this road.) In addition, the Petitioner, shall at its sole cost and expense acquire and dedicate any additional property that may be required to construct the transition of Red Creek Springs Road as shown on Exhibit "C-1" from the western boundary of the Property to the centerline of the roadway as it presently exists. If Petitioner, after reasonable good faith efforts, is not able to acquire from property owners the right-of-way for Red Creek Springs Road specifically described above in this subparagraph 3.a. from the eastern to the western boundary of the Property and the property necessary for the construction of the transition of the roadway from the western boundary of the Property to the centerline of the roadway as it presently exists in an alignment as shown on Exhibit "C-1", the City will, to the extent legally authorized, exercise its power of eminent domain to acquire the right-of-way.

Petitioner shall, in that event, be responsible for all compensation for the land taken, damages, if any, to the residue of the owner's property, cost and expense of condemnation, including reasonable appraisal, expert witness, and



C-6

attorney fees (Condemnation Costs). Petitioner will deposit an estimate of Condemnation Costs as determined by the City Attorney before the City will commence condemnation proceedings. Petitioner shall have the right to accept or reject any proposed settlement arising out of a condemnation action hereunder, provided that such acceptance or rejection shall not be unreasonably withheld or delayed.

b. Bandera Parkway

If not already dedicated to the public or deeded to the City, Petitioner shall at the time of the first subdivision within Neighborhoods H or J and at its cost and expense, acquire and dedicate additional right of way for the Bandera Parkway arroyo crossing in an alignment as shown on Exhibit C-1. In addition, Petitioner shall, at its cost and expense, acquire and dedicate any additional property that may be required to construct the transition of Bandera Parkway as shown on Exhibit C-1 from the northern boundary of the Property to the centerline of the roadway as it presently exists. Bandera Parkway is identified as a minor arterial roadway on the Pueblo Area Transportation System Map. The width of the right of way shall be 104' wide in compliance with the General Provisions for Roadway Classification Design Standards and Policies.

If the Petitioner, after reasonable good faith efforts, is not able to acquire from the intervening property owners the above described two rights of way as shown on Exhibit C-1, the City will, to the extent legally authorized, exercise its power of eminent domain to acquire the right of way.

Petitioner shall, in that event, be responsible for all compensation for the land taken, damages, if any, to the residue of the owner's property, cost and



C-7

expense of condemnation, including reasonable appraisal, expert witness, and attorney fees (Condemnation Costs). Petitioner will deposit an estimate of Condemnation Costs, as determined by the City Attorney, before the City will commence condemnation proceedings. Petitioner shall have the right to accept or reject any proposed settlement arising out of a condemnation action hereunder, provided such acceptance or rejection shall not be unreasonably withheld or delayed.

c. **Acquire and Dedicate**

The term acquire and dedicate as used herein means to acquire marketable fee simple title to the property free of liens and encumbrances and dedicate the property to the public in perpetuity for roadway purposes.

d. If any portion of Red Creek Springs Road, Bandera Parkway, the Red Creek Springs Road arroyo crossing, Bandera Parkway arroyo crossing, or St. Clair Avenue is located within the Property, Petitioner shall dedicate marketable fee simple title thereto to the public for roadway purposes.

4. **Roadway Construction**

a. **Red Creek Springs Road**

Red Creek Springs Road is one of the primary access roads to the Property. Red Creek Springs Road is a minor arterial with an eighty (80) foot right-of-way and will be designed and constructed according to the most current adopted roadway standards at the time of subdivision. Petitioner shall in accord with Exhibit C-2, the schedule of improvements for Neighborhoods A through J, be solely responsible at its costs for the following:



i. Within 180 days after the issuance of the first building permit in Neighborhood D and prior to approval of any subdivision of any portion of Neighborhoods G, H & I, Petitioner shall construct the full width street improvements (44 feet, including curb and gutter) of Red Creek Springs Road between the western boundary of Regency Crest Filing No. 2 and the western right of way of Suncrest Lane as shown on Exhibit C-1. The full width street improvements shall be located 22 feet on each side of the proposed centerline of Red Creek Springs Road as shown on Exhibit C-1. The centerline of the proposed improvements of Red Creek Springs Road must align with the centerline of Red Creek Springs Road as it is presently designed at the eastern boundary of the Property. At the western right-of-way of Suncrest Lane, Red Creek Springs Road must transition, as approved by the Director of Public Works, from the full width improvements to the existing roadway width west of Suncrest Lane.

ii. Within 180 days after the issuance of the first building permit in Neighborhood H Petitioner shall construct the full width street improvements (44 feet, including curb and gutter) of Red Creek Springs Road between the western right-of-way of Suncrest Lane and the western boundary of the Property as shown on Exhibit C-1, excluding the Red Creek Springs Road arroyo crossing. The full width street improvements shall be located 22 feet on each side of the proposed centerline of Red Creek Springs Road as shown on Exhibit C-1. The centerline of the proposed improvements of Red Creek Springs Road must align with the centerline of Red Creek Springs Road as it is presently designed at the eastern boundary of the Property. At the western boundary of the property, Red Creek Springs Road must transition, as approved by the Director of Public Works, from the full width improvements to the existing roadway width. If Petitioner is unable



C-9

after reasonable good faith efforts to acquire the right of way for the transition and Petitioner has deposited the Condemnation Costs therefor, Petitioner's obligation to construct the transition at the west end of the Property shall be contingent on the City's acquisition of the necessary right of way for this transition, as stated above in subsection A.3.a.

iii. Within 180 days after the issuance of the first building permit in Neighborhood I, Petitioner shall construct the Red Creek Springs Road arroyo crossing as shown on Exhibit C-1, which will be designed and constructed according to the most current adopted roadway standards at the time of subdivision.

Because Petitioner will be reimbursed out of the Account for costs of construction for Red Creek Springs Road, Petitioner assigns and transfers to the City all Cost Recovery Petitioner may be entitled to receive from adjoining property owners for off-site improvements to Red Creek Springs Road made by Petitioner, as provided in Section 12-4-12 of the Pueblo Municipal Code. Petitioner shall prepare and file with the City all documents and information required to effect such Cost Recovery and cooperate with the City in obtaining same. All such Cost Recovery collected by the City shall be deposited into the Bandera Corridor Improvements Account.

b. Bandera Parkway

Bandera Parkway is one of the primary access roads to the Property. Bandera Parkway is a minor arterial with a one hundred four (104) foot right-of-way shown on Exhibit C-1 and will be designed and constructed according to the most current adopted roadway standards at the time of subdivision.



C-10

Petitioner shall in accord with Exhibit C-2, the schedule of improvements for Neighborhoods A through J, be solely responsible within 180 days after the issuance of the first building permit in Neighborhood F for construction of the east half of Bandera Parkway (29 feet, including curb and gutter along the east side of the roadway and a 16-foot wide median along the west side of the roadway) from the north boundary of the Property to the south right-of-way of St. Clair Avenue as shown on Exhibit C-1. At the northern boundary of the Property, Bandera Parkway must transition, as approved by the Director of Public Works, to the existing roadway width north of the Property.

Petitioner shall in accord with Exhibit C-2, the schedule of improvements for Neighborhoods A through J, be solely responsible within 180 days after the issuance of the first building permit in Neighborhood J for construction of the west half of Bandera Parkway (29 feet, including curb and gutter along the west side of the roadway) from the north boundary of the Property to the south right-of-way of St. Clair Avenue as shown on Exhibit C-1. At the northern boundary of the Property, Bandera Parkway must transition, as approved by the Director of Public Works, to the existing roadway width north of the Property. If Petitioner is unable after reasonable good faith efforts to acquire the right of way for the transition and Petitioner has deposited the Condemnation Costs therefor, Petitioner's obligation to construct such transition shall be contingent on the City's acquisition of the necessary right of way for this transition, as stated above in subsection A.3.b.

c. St. Clair Avenue

St. Clair Avenue is one of the primary access roads to the Property. St. Clair Avenue is a minor arterial with an eighty (80) foot right-of-way shown on



C-11

Exhibit C-1 and will be designed and constructed according to the most current adopted roadway standards at the time of subdivision.

Within 180 days after the issuance of the first building permit in Neighborhood E, F or G, as applicable, Petitioner shall dedicate all land required for and construct St. Clair Avenue from the eastern boundary of the Property to the centerline of the Bandera Parkway right-of-way as shown on Exhibit "C-1".

5. Bandera Boulevard Special Improvement Maintenance District

Petitioner shall, at the request of the City, sign a petition pursuant to Chapter 9, Title XII, of the Pueblo Municipal Code to include the Property within a special district for the purpose of providing for the maintenance of all landscaping within the right-of-way along Bandera Parkway as presently established and as located and constructed in the future. In order to implement this covenant, Petitioner shall place restrictions of record sufficient to bind all the land within the Property and subsequent owners thereof to this covenant.

6. Stormwater System

Petitioner agrees to divert storm water flows from the Property to the Goodnight Arroyo in accordance with the "Master Development Drainage Report for Regency Crest West Annexation" dated July, 2003. Petitioner will prepare plans and specifications to be approved by the Director of Public Works in accordance with the design contained in the Master Development Drainage Report for the Property. The Petitioner shall be responsible to acquire and dedicate at its sole expense all easements for such purposes.

The Petitioner also shall construct at its sole expense, according to the schedule of improvements for Neighborhood A, a stormwater drainage system and



ChrisC.Munoz PuebloCtyCik&Rec ANNEX AG R 196.00 D 0.00

1603123

Page: 25 of 39

01/19/2005 11:19

C-12

detention facility in compliance with the City's Drainage Criteria Manual (June 9, 1997) and the City's Standard Construction Specifications and Standard Details (February 26, 2001) or as same may be hereafter amended and as shown on construction plans approved by the Director of Public Works.

7. Park Dedication and Construction

a. Orr Park

The Petitioner has previously deeded to the City by warranty deed land within the Property for Orr Park to serve the residents of Regency Crest Subdivisions No. 2, No. 3, and the Property. Prior to the issuance of the first building permit within the first subdivision in the Property, the Petitioner shall submit a Detention Pond/Orr Park Phasing Plan for Neighborhood A to be approved by the Director of Parks and the Director of Public Works. Prior to the approval of any subdivision of any portion of Neighborhoods D-J, the Petitioner shall construct, at its sole expense, Orr Park as shown on construction plans prepared by the Petitioner and approved by the Director of Parks and the Director of Public Works.

Any funds previously deposited by Petitioner into the City's Park Escrow account for the construction of a park within the developed Regency Crest subdivisions shall be used to develop Orr Park.

The dedication of the property for Orr Park, construction of the park as shown on construction plans prepared by the Petitioner and approved by the Director of Parks and the Director of Public Works, and the acceptance of the park by the Director of Parks shall fulfill the requirements of Section 12-4-7(e) of the



ChrisC.Munoz PuebloCityClk&Rec ANNX AG R 196.00 D 0.00

1603123

Page: 26 of 39
01/19/2005 11:19

C-13

Pueblo Municipal Code for Regency Crest Subdivisions No. 2, No. 3, and the Property.

b. Sidewalks Bordering Park

In addition to any other sidewalks required to be constructed within the Property, Petitioner, as part of the improvements listed on the schedule of improvements for Neighborhood A, shall, within 180 days after the issuance of the first building permit in Neighborhood A, construct at its sole expense a 5' wide concrete sidewalk along the north side of Orr Park adjacent to St. Clair Avenue in compliance with the City's Standard Construction Specifications and Standard Details (February 26, 2001) or as same may be hereafter amended.

The Director of Public Works shall approve the design and specifications of the sidewalk, prepared by the Petitioner, prior to the construction of the sidewalk.

D. Incorporation.

This Exhibit C and all provisions and covenants hereof are incorporated in the Annexation Agreement as if set out therein in full and shall be enforceable as provided in the Annexation Agreement. The provisions and requirements of this Exhibit C are in addition to the provisions and requirements of City's subdivision ordinances, rules, regulations and standards and not in substitution thereof.

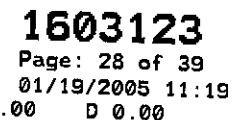


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Page: 27 of 39

01/19/2005 11:19

ChrisC.Munoz PuebloCtyCik&Rec ANNEX AG R 196.00 D 0.00



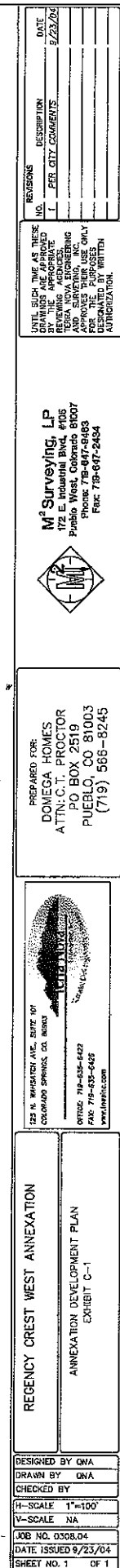


Exhibit C-2
September 27, 2004
Regency Crest West Master Plan Development Schedule

NEIGHBORHOOD A	
Area	11.3551 AC
# of Dwelling Units	51
Proposed Use	Single-Family Residence
Schedule of Improvements:	
1. Storm water outfall from Filing 3 to Goodnight Arroyo	
2. Grade Drainage Facility/Orr Park site	
3. Construct detached sidewalk along north side of Orr Park adjacent to St. Clair Avenue	
NEIGHBORHOOD B	
Area	7.0602 AC
# of Dwelling Units	29
Proposed Use	Single-Family Residence
Schedule of Improvements:	
1. Commence construction of Orr Park according to park plan approved by Parks Department and begin draw down of funds in park escrow fund for the construction of Orr Park.	
NEIGHBORHOOD C	
Area	11.3431 AC
# of Dwelling Units	60
Proposed Use	Single-Family Residence
Schedule of Improvements:	
1. Complete construction of Orr Park according to park plan approved by Parks Department and draw balance of funds in the park escrow fund for the construction of Orr Park.	
NEIGHBORHOOD D	
Area	5.4386 AC
# of Dwelling Units	31
Proposed Use	Single-Family Residence
Schedule of Improvements:	
1. Construct Red Creek Springs Road from eastern boundary of property to the west right-of-way of Suncrest Lane.	
NEIGHBORHOOD E	
Area	7.3845 AC
# of Dwelling Units	38
Proposed Use	Single-Family Residence
Schedule of Improvements:	
1. If not already constructed as a requirement of Neighborhoods F and G, construct St. Clair Avenue from eastern boundary of property to the west boundary of Neighborhood E.	

1603123
 Page: 30 of 39
 01/19/2005 11:19
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NEIGHBORHOOD F	
Area	7.7802 AC
# of Dwelling Units	37
Proposed Use	Single-Family Residence
Schedule of Improvements:	
- Construct St. Clair Avenue from eastern boundary of the Property and connect with Bandera Parkway. - Construct east half of Bandera Parkway and median with a transition at north end of roadway to align with existing pavement. The road shall be constructed from north boundary of property to the south right-of-way of St. Clair Avenue.	
NEIGHBORHOOD G	
Area	12.7903 AC
# of Dwelling Units	63
Proposed Use	Single-Family Residence
Schedule of Improvements:	
If Neighborhood G is built prior to Neighborhoods E & F, then St. Clair Avenue will be constructed from the eastern boundary of the Property and connect with Bandera Parkway.	
NEIGHBORHOOD H	
Area	11.3439 AC
# of Dwelling Units	37
Proposed Use	Single-Family Residence
Schedule of Improvements:	
Construct Red Creek Springs Road from west boundary of Suncrest Lane to western boundary of property, excluding the Red Creek Springs Road Arroyo Crossing.	
NEIGHBORHOOD I	
Area	10.9643 AC
# of Dwelling Units	46
Proposed Use	Single-Family Residence
Schedule of Improvements:	
Construct Red Creek Springs Road Arroyo Crossing	
NEIGHBORHOOD J	
Area	7.2172 AC
# of Dwelling Units	47
Proposed Use	Multi-Family Housing
Schedule of Improvements:	
Construct west half of Bandera Parkway and, if not already constructed as part of Neighborhood F, a median with a transition at north end of roadway to align with existing pavement. The road shall be constructed from north boundary of property to the south right-of-way of St. Clair Avenue.	

1603123
Page: 31 of 39
01/19/2005 11:19
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EXHIBIT C-3

Bandera Corridor Project Area Cost Estimate Roadway and Arroyo Crossings

Roadway Improvement Costs

Bandera Parkway (48' of asphalt with landscaped median) **\$2,164,500**

Curb & Gutter	\$40 per ft	10000 ft	\$400,000
48' wide Asphalt	\$100 per ft	10000 ft	\$1,000,000
Median	\$30 per ft	10000 ft	\$300,000
Cut & Fill	\$25 per ft	10000 ft	\$250,000
Design/Engineering (11%)			\$214,500

Total \$216.00/ft. \$2,164,500

Red Creek Springs/Lehigh Ave. (East of Bandera Parkway) **\$896,103**

Curb & Gutter	\$20 per ft	5980 ft	\$119,600
44' wide Asphalt	\$90 per ft	5980 ft	\$538,200
Cut & Fill	\$25 per ft	5980 ft	\$149,500
Design/Engineering (11%)			\$88,803

Total \$150.00/ft. \$896,103

Red Creek Springs/Lehigh Ave. (West of Bandera Parkway) **\$741,591**

Curb & Gutter	\$20 per ft	3930 ft	\$78,600
60' wide Asphalt	\$125 per ft	3930 ft	\$491,250
Cut & Fill	\$25 per ft	3930 ft	\$98,250
Design/Engineering (11%)			\$73,491

Total \$189.00/ft. \$741,591



1603123

Page: 32 of 39
01/19/2005 11:19

ChrisC.Munoz PuebloCtyClk&Rec ANNX AG R 196.00 D 0.00

Bardera Corridor Project Area

Cost Estimate

Roadways and Arroyo Crossings

Roadway Crossings Costs

Bandera Parkway (north)		\$1,100,000
Red Creek Springs Road		\$450,000
Lehigh Avenue		\$450,000
Bandera Parkway (south)		\$500,000
Estimated Total Cost for Roadway Crossings		\$2,500,000
 TOTAL COST FOR ROADWAYS AND CROSSINGS		 \$6,302,194
 Cost Per Lot (714 acres x 4 lots/acre)	2856 lots	 \$2,200

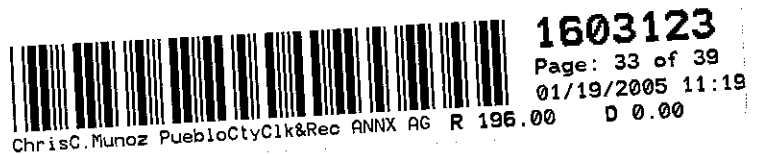


Exhibit C-4

SECURITY AGREEMENT

1. **Debtor:** The Proctor Family Partnership, LLLP
Attention: CT Proctor
Drawer 3430
Pueblo, CO 81005-0430
2. **Secured Party:** City of Pueblo, Colorado
Attention: Director of Public Works
211 East D Street
Pueblo, CO 81003
3. **Collateral:** All funds on deposit including interest earned thereon
at any time in non-transactional Account No. _____
at Legacy Bank ("Bank")
4. **Collateral Location:** Legacy Bank
1201 Paseo Del Norte
Pueblo, CO 81008
5. **Primary Use of Collateral:** Business purposes/collateral security
6. **Obligations.** All obligations of Debtor to Secured Party under that certain Annexation Agreement ("Annexation Agreement") bearing Case No. A-03-04 and dated 12/13, 2004, between Debtor as Petitioner and Secured Party as the annexing City, together with all other obligations of Debtor to Secured Party arising under the terms of this Security Agreement.
7. **Security Interest.** To secure payment and performance of the Obligations, Debtor hereby grants to Secured Party a security interest in the Collateral and in its proceeds. Debtor warrants and represents that Debtor has title to the Collateral free and clear of all liens, security interests and encumbrances, other than interests Bank may have in the Collateral that are wholly subordinate to the security interest herein granted to Secured Party, and Debtor has the right to grant this security interest.
8. **Covenants of Debtor.** Unless Secured Party consents in writing to another course of action, Debtor agrees: (a) Debtor will keep the Collateral free of liens, security interests and encumbrances (other than the security interest created by this Agreement); (b) At its option, Secured Party may discharge taxes, liens, security interests and any encumbrances against the Collateral. Any sums so advanced, together with interest at the statutory rate of 8% per annum, compounded annually, will become a part of the Obligations, due and owing at time of advance; (c) Debtor will from time to time execute financing statements, control agreements and other documents (and pay costs of filing and recording) and perform such other acts as Secured Party



1603123

Page: 34 of 39
01/19/2005 11:19

ChrisC.Munoz PuebloCityClk&Rec ANNX AG R 196.00 D 0.00

may reasonably request to perfect and maintain a valid first position security interest in the Collateral; (d) Upon reasonable prior notice and at reasonable times, Secured Party may inspect Debtor's books and records pertaining to the Collateral, wherever located.

9. Events of Default. The occurrence of any of the following events shall constitute an event of default under this Agreement: (a) failure to pay or perform any of the Obligations when due; (b) failure to perform or observe any other covenant contained in this Agreement or any other agreement given by Debtor to Secured Party in connection with the Obligations.

10. Remedies. Upon the occurrence of any event of default and at any time thereafter Secured Party shall have, in addition to all other rights and remedies, the right to withdraw funds from the Account in accordance with the provisions of the Annexation Agreement and the Control Agreement in effect among and between Secured Party, Debtor and Bank, and the remedies of a secured party under the Uniform Commercial Code as then in effect in Colorado ("UCC"). Debtor shall pay Secured Party all expenses incurred in realizing on the Collateral, including reasonable attorneys' fees.

11. General. (a) No default shall be waived by Secured Party except in writing and no waiver of any payment or other right under this Agreement shall operate as a waiver of any other payment or right; (b) This Agreement shall be construed under and governed by the laws of Colorado; (c) All of the rights of Secured Party under this Agreement shall be cumulative and shall inure to the benefit of Secured Party's successors and assigns. All obligations of Debtor hereunder shall be binding upon the successors and assigns of Debtor.

Dated: December 13, 2004

Debtor:

The Proctor Family Partnership, LLLP

by



C.T. Proctor, General Partner



1603123

Page: 35 of 39

01/19/2005 11:19

ChrisC.Munoz PuebloCtyClk&Rec ANNEX AG R 196.00 D 0.00

Exhibit C-5

**CONTROL AGREEMENT UNDER ARTICLE 9
OF THE COLORADO UNIFORM
COMMERCIAL CODE**

This Agreement is dated December 13, 2004 and is between the City of Pueblo, Colorado, a municipal corporation ("city"); The Proctor Family Partnership, LLLP ("PFP"); and Legacy Bank ("Bank").

1. **Background and purpose of Agreement.** PFP and City are parties to an Annexation Agreement dated _____, 2004, a copy of which is attached hereto as Exhibit 1. Under the terms of the Annexation Agreement, PFP is to construct certain public facilities, as therein described (the "Road Improvements"). As collateral security for PFP's obligation to construct the Road Improvements, PFP and City have agreed that PFP will establish a deposit account at Bank (the "Account") into which payments in the nature of impact fees will be deposited as building permits are issued for lots within the property being annexed into City pursuant to the Annexation Agreement (the "Property"). Under the terms of the Annexation Agreement, City is to have a first position perfected security interest in the Account. A copy of the Security Agreement establishing City's security interest in the Account is attached as Exhibit 2. Under the terms of the Annexation Agreement, and provided PFP is not in default thereunder, PFP may withdraw funds from the Account as phases of the Road Improvements are completed and accepted by City. If PFP defaults in its obligations under the Annexation Agreement, City may withdraw funds from the Account to perform the obligations PFP has failed to perform. The purpose of this Agreement is to set forth the understandings of the parties with regard to these matters; to perfect City's security interest in the Account by "control" as described in Sections 104, 312, 314 and 327 of Article 9 of the Colorado Uniform Commercial Code (C.R.S. §4-9-104, 312, 314 a327); and to confirm that Bank's interest in the Account is wholly subordinate to City's interest in the Account.

2. **Deposits into the Account.** Until such time as all of the Roadway Improvements have been completed and accepted by City in writing, each time a building permit is applied for by PFP or any other party for the construction of a dwelling unit within the boundaries of the Property, PFP shall deposit into the Account the sum of \$2,200.00. (PFP may make advanced deposits if it so elects and apply such advanced deposits against the obligation to make deposits in connection with future applications for building permits.)

3. **Withdrawals from the Account.**

(i) At such time as certain portions of the Road Improvements as set forth in the following schedule have been completed and accepted by City, and provided PFP is not in default under the Annexation Agreement, PFP may, upon written application to Bank (with a copy to City) signed under oath and containing written confirmation from City of City's acceptance of the subject portion of the Road Improvements, withdraw funds from the Account in accordance with the following schedule:

(a) Red Creek Springs Road from Property's easterly boundary to west right of way of Suncrest Lane: **\$237,750** (1,585 linear feet at \$150/foot)



ChrisC.Munoz PuebloCtyClk&Rec ANNEX AG R 196.00 D 0.00

1603123

Page: 36 of 39
01/19/2005 11:19

(b) Red Creek Springs Road from west right of way of Suncrest Lane to westerly boundary of Property, excluding Red Creek Springs arroyo crossing: **\$117,750** (785 linear feet at \$150/foot)

(c) Red Creek Springs Road arroyo crossing: **\$450,000**

(d) East half of Bandera Parkway plus median: **\$95,940** (50% of 780 feet at \$186/foot, plus \$30/foot for 780 feet of median)

(e) West half of Bandera Parkway: **\$72,540** (50% of 780 feet at \$186/foot)

(If, at the time of any authorized withdrawal described above, the funds in the account are not sufficient to fully satisfy the withdrawal request, PFP shall be allowed to withdraw the shortfall amount in connection with PFP's next authorized withdrawal hereunder.)

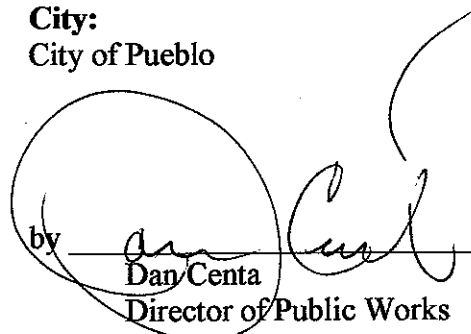
(ii) In the event PFP should default in PFP's obligation to construct the Roadway Improvements in accordance with the Annexation Agreement, City may, upon 75 days prior written notice of default to PFP (during which 75 days PFP shall have a right to cure its default) withdraw funds from the Account in an amount sufficient, in the reasonable opinion of City's Director of Public Works, to cure PFP's default. A request for payment by City to Bank hereunder shall be in writing, shall affirm that PFP is in default and has failed to cure its default in the time allowed, and shall be signed under oath by City's Director of Public Works. A copy of such payment request shall be submitted to PFP at the same time it is submitted to Bank. PFP's consent to a withdrawal by City in the circumstance described in this subparagraph (ii) is **not** required.

(iii) At such time as all of the Roadway Improvements have been completed and accepted by City, and PFP shall have made all withdrawals from the Account authorized above, any and all funds remaining in the Account shall be paid to City and the Account shall be closed.

(iv) Except as hereinabove stated, or the order of a court having jurisdiction over the matter, funds shall not be withdrawn from the Account.

4. Subordination of Bank's interest in Account. By joining in this Agreement, Bank confirms that withdrawals from the Account are subject to the conditions herein set forth and that, under C.R.S. §4-9-327, Bank's interest in the Account, including its right of setoff, is subordinate to City's interest in the Account as a party holding a first position security interest in the Account perfected by control.

City:
City of Pueblo

by 
Dan Centa
Director of Public Works



1603123

Page: 37 of 39
01/19/2005 11:19

ChrisC.Munoz PuebloCtyCik&Rec ANNX AG R 196.00 D 0.00

PFP:

The Proctor Family Partnership, LLLP

by CT Proctor
C.T. Proctor
General Partner

Bank:

Legacy Bank

by Andrew Trainor
Andrew Trainor
Exel Vice-President

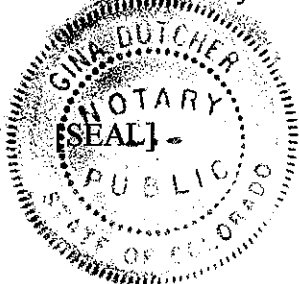
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Page: 38 of 39
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Acknowledgements

STATE OF COLORADO)
)ss.
COUNTY OF PUEBLO)

Acknowledged before me this 13th day of DECEMBER, 2004 by Dan Centa,
Director of Public Works, City of Pueblo.

Witness my hand and official seal:



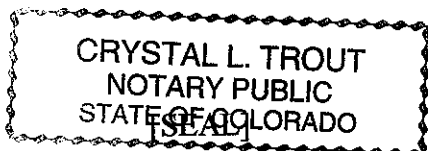
Gina Dutcher
Notary Public

My commission expires: August 18, 2007

STATE OF COLORADO)
)ss.
COUNTY OF PUEBLO)

Acknowledged before me this 10 day of November, 2004 by C.T. Proctor,
General partner, The Proctor Family Partnership, LLLP.

Witness my hand and official seal:



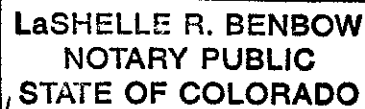
Crystal L. Trout
Notary Public

My commission expires: 5-13-08

STATE OF COLORADO)
)ss.
COUNTY OF PUEBLO)

Acknowledged before me this 10TH day of November, 2004 by
Andrew Trainor ~~EXC~~-vice-president, Legacy Bank.

Witness my hand and official seal:



LaShelle R. Benbow
Notary Public

[SEAL]

My Commission Expires April 12, 2005

My commission expires: _____



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Page: 39 of 39
01/19/2005 11:19