



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

**MONDAY, OCTOBER 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 Steve Chavez, Praise Assembly

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

E. SPECIAL RECOGNITIONS

E1 Proclamation Presentation: "National Veterans Small Business Week: October 30 - November 3, 2023" - Aikta Marcoulter, Regional Administrator, U.S. Small Business Administration and Kia Palmer, Executive Director, Colorado Veterans Business Outreach Center

F. PUBLIC FORUM

G. COUNCIL MEMBER AND MAYOR COMMENTARY

H. REVIEW AND APPROVAL OF AGENDA

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

I. READING AND APPROVAL OF MINUTES

Motion to dispense with the reading and approve the Minutes of the Regular Meeting dated October 10, 2023, as distributed.

I1 City Council Minutes October 10, 2023

J. COMMUNICATIONS

J1 A Citizen Filed an Ethics Complaint against Mayor Nicholas Gradisar
Required Council Action: Motion to Receive the Communication.

K. PUBLIC HEARINGS

K1 Proposed 2024 Annual Budget

This Public Hearing is held for the purpose of receiving public testimony as it pertains to

the 2024 Proposed Annual Budget per the requirements of Section 7-9 of the Charter for the City of Pueblo.

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

L. CONSENT AGENDA

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

L1 Minutes of the Planning and Zoning Commission Regular Meeting for 09/23/2023

M. RESOLUTIONS

- M1 A Resolution awarding a construction contract in the amount of \$195,602.85 to Rocky Mechanical, L.L.C., a Colorado Limited Liability Company, for Project No. 23-125, Mechanical Improvements - Mineral Palace Atrium, setting forth \$29,340.15 for contingencies, and authorizing the Purchasing Agent to execute same
- M2 A Resolution awarding contract amendment NO. 1 in the amount of \$85,988.59 for Project NO. 21-061 (WWAN01), 2021 Small Main Remove and Replace Project, and authorizing the purchasing agent to execute the same
- M3 A Resolution reestablishing the Pueblo Memorial Airport Advisory Committee ("Committee") and repealing Resolution No. 14575.
- M4 A Resolution ratifying PACOG's Joint Appointment of Steven Contreras to the Pueblo Regional Building Commission
- M5 A Resolution ratifying PACOG's Joint Appointment of Dakota Lamoureaux and Tanna Schut to the Community Services Advisory Commission (CSAC)
- M6 A Resolution accepting a grant award of \$120,000 from the Colorado Department of Agriculture, to support the Pueblo Food Project staff community food pantry No. CI2328

N. ORDINANCES – FIRST PRESENTATION

- N1 An Ordinance establishing the 2024-2025 pueblo Urban Transportation Planning Project and budgeting and appropriating funds in the amount of \$932,107 in 2024 for said Project
- N2 An Ordinance approving an agreement for Professional Engineering services in the amount of \$556,897.60 between the City of Pueblo, a Colorado Municipal Corporation, and Brown and Caldwell, Inc., for consulting engineering and project management services with respect to a pilot project to identify issues contributing to groundwater infiltration and inflow to the city's sewer sanitary system and authorizing the mayor to execute the same
- N3 An Ordinance accepting a small dollar grant from the Colorado Energy Office in the amount of \$45,000.00, establishing finance account Project No. CI2217 - Charge Ahead Colorado, budgeting and appropriating \$45,000.00 into said project account, and authorizing the Mayor to execute the purchase order on behalf of the City
- N4 An Ordinance accepting funds in the amount of \$16,742.00 from H.W. Houston, LLC, a Colorado Limited Liability Company, for costs associated with the repair of W. 20th Street, and budgeting and appropriating said funds to Account CI2309 - Road & Street Repairs
- N5 An Ordinance establishing 2024 Pueblo Rural Transportation Planning Project, TP2401,

and budgeting and appropriating funds in the amount of \$7,400 for said Project

- N6 An Ordinance approving a Delegation Agreement between the City of Pueblo, a Colorado Municipal Corporation, and the Pueblo Area Council of Governments for 2024 transportation planning services and authorizing the Mayor to execute same

O. APPROVAL OF CONSENT AGENDA

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

P. REGULAR AGENDA

Q. RESOLUTIONS

- Q1 A Resolution authorizing payment from the Council Contingencies account in the 2023 general fund budget to Pueblo Friends of the Arkansas River in the amount of \$1,000 to sponsor the You Don't Stand Alone sculpture
- Q2 A Resolution authorizing a transfer of funds in the amount of \$1,000 from the Council Contingencies account in the 2023 general fund budget to the Pueblo Police Department for sponsorship of the 7th Annual Charity Ice Cup Hockey game between the Fire Department and Police Department on October 21, 2023 at 3 pm

R. ORDINANCES – FINAL PRESENTATION

- R1 An Ordinance authorizing a site lease and lease purchase agreement between the City, and BOKF, N.A. (solely in its capacity as trustee) for the purpose of financing the construction, improvement and equipping of three fire stations; approving not to exceed \$37,000,000 principal amount of Certificates of Participation, Series 2023 in connection therewith; authorizing officials of the City to take all action necessary to carry out the transactions contemplated hereby; and related matters - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R2 An Ordinance Transferring funds in the amount of \$9,942.85 from Pueblo Transit ARPA Award No. CO-2023-019-00, into Project Number PT2201 Shop Truck Replacement Project to purchase a new Maintenance Vehicle - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R3 An Ordinance approving a license for communication line, television cable, and/or fiber optic line across or along railway property between the City of Pueblo and BNSF Railway Company, a Delaware Corporation, and authorizing the Mayor to execute same - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R4 An Ordinance approving and authorizing the Mayor to execute a Hardware Rental, Software License and Services Agreement between the City of Pueblo, a Colorado Municipal Corporation and Dominion Voting Systems, Inc., as required for any potential Mayoral Runoff Election - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R5 An Ordinance electing to certify Abatement Assessment Roll No. 2023-1 to the County Treasurer and to have the County Treasurer collect in the same manner as other taxes - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R6 An Ordinance approving amendment of two Solar Production Agreements between the City of Pueblo and CEC Solar #1117, LLC. and CEC Solar #1118, LLC relating to and updating the power purchase agreement rate schedules for each agreement, and

authorizing execution thereof by the Mayor - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*

- R7 An Ordinance approving an Agreement for the Purchase and Sale of Real Property known as lots 8 & 9 blk 70 Mattice & Gibson ad, and lot 19 blk 71 Mattice & Gibson ad between the City of Pueblo, a Colorado Municipal Corporation and Mr. Fred F. Jones and Mrs. Melva Jean Jones and authorizing the Mayor to execute the same - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R8 An Ordinance approving and accepting a U. S. Department of Justice 2023 Edward Byrne Memorial Justice Assistance (2023 Jag) Grant, Award No. 15PBJA-23-GG-03201-JAGX, and applicable conditions pertaining thereto, establishing Project Number PS2314, budgeting and appropriating funds not to exceed \$111,507, authorizing the Mayor to execute same and related certifications, assurances and other documents, approving and ratifying the July 17, 2023 Memorandum Of Understanding concerning receipt and disbursement of funds, and authorizing the Mayor to execute same and ratifying his signature thereto - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R9 An Ordinance approving an amendment to the rental agreement for the use of an office space and the Fire Fighting Reload Base at the Pueblo Memorial Airport between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado Department of Public Safety, Division of Fire Prevention and Control, and authorizing the Mayor to execute the same. - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R10 An Ordinance accepting a Bargain and Sale Deed from Pueblo Historical Aircraft Society, a Colorado nonprofit, for a hangar located at 508 Skyway Street at the Pueblo Memorial Airport, and authorizing the Mayor to execute same. - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R11 An Ordinance approving an amendment to the Collective Bargaining Agreement between The City of Pueblo and The Pueblo Association of Government Employees relating to salary classification and pay range adjustments and increases for eight specified and enumerated classifications - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R12 An Ordinance approving an agreement for research and arts study services between the City of Pueblo, a Colorado Municipal Corporation, and Roxanne Pignanelli and authorizing the Mayor to execute same - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*
- R13 An Ordinance approving a subrecipient agreement authorizing payment in an amount of up to \$400,000 of Community Development Block Grant – COVID-19 funds to the Pueblo Rescue Mission through a subrecipient agreement to purchase real property located at 710 West 4th Street, Pueblo, CO and make certain improvements to the property to provide a warming shelter for the Pueblo community during weather emergencies declared by the City and authorizing the Mayor to execute the same - *Introduced October 10,2023 by Councilor Vicente Martinez Ortega*

S. EMERGENCY ORDINANCES

- S1 An Emergency Ordinance amending Ordinance No. 10058 to authorize the Mayor to enlarge the time frame within which the Mayor may declare temporary housing and shelter emergencies before November 1st of each year subject to council ratification

T. COUNCIL MEMBER CONFLICT OF INTEREST

President Heather Graham may ask to be excused from the meeting due to a conflict of interest with agenda item numbers U-1, U-2.

U. COMMUNICATIONS

U1 A Citizen Filed an Ethics Complaint against President Heather Graham

Required Council Action: Motion to Receive the Communication

U2 A Citizen Filed an Ethics Complaint against President Heather Graham

Required Council Action: Motion to Receive the Communication

V. ADJOURN



**REGULAR CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS – CITY HALL
#1 CITY HALL PLACE
TUESDAY, OCTOBER 10, 2023 - 7:00 PM
MINUTES**

A. CALL TO ORDER

President Graham called the meeting to order at 7:04 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: Chief of Staff Laura Solano, City Attorney George Hypolite, City Clerk Marisa Stoller.

E. SPECIAL RECOGNITIONS

E1 PROCLAMATION PRESENTATION: "PUEBLO LATINO VETERANS PROFILES IN COURAGE DAY: OCTOBER 14, 2023" - GLORIA GUTIÉRREZ, PUEBLO LATINO VETERANS PROFILES IN COURAGE COMMITTEE

F. PUBLIC FORUM

- Sandra Sherrer - Council Salary Increases
- Steve Villegas - Pueblo
- Ted Freeman - Repurpose 1/2 cent sales and use tax fund

G. COUNCIL MEMBER AND MAYOR COMMENTARY

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

H. REVIEW OF AGENDA

The agenda was reviewed page by page.

I. APPROVAL OF AGENDA

Councilor Martinez, seconded by Councilor Martinez Ortega, 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 092523

Councilor Martinez Ortega, seconded by Councilor Flores, moved to dispense with the reading and approve the Minutes of the Regular Meeting dated **September 25, 2023** 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. COMMUNICATIONS

K1 MINUTES OF THE PLANNING AND ZONING COMMISSION REGULAR MEETING FOR 8/9/2023

Councilor Martinez Ortega, seconded by Councilor Martinez, moved to approve the Minutes of the Planning & Zoning Commission dated **August 9, 2023** 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.

K2 SUBMISSION OF THE MAYOR'S RECOMMENDED BUDGET FOR THE FISCAL YEAR 2024

Councilor Martinez, seconded by Councilor Martinez Ortega, moved to receive the 2024 Proposed Budget, set the Budget Public Hearing for Monday, October 23, 2023, and Order the Notice of Budget Public Hearing to be Published.

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

L. CONSENT AGENDA

M. RESOLUTIONS

M1 A RESOLUTION AUTHORIZING THE TRANSFER OF \$750,000 TO PROJECT ED0801, LEASE PROCEEDS ESCROW/RMS, PREVIOUSLY ESTABLISHED IN THE 1992 - 2026 SALES AND USE TAX CAPITAL IMPROVEMENTS PROJECTS FUND

This Resolution was assigned as 15384.

M2 A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE

AMOUNT OF \$296,381.97 TO REBUILD-IT, A SENTRY EQUIPMENT COMPANY., FOR PROJECT NO. 23-102 (WW2002) & (WWAN04) FY2023 GRAVITY THICKENER REHABILITATION PROJECT AT THE JAMES R. DIORIO WATER RECLAMATION FACILITY, SETTING FORTH \$29,638.20 FOR CONTINGENCIES AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME.

This Resolution was assigned as 15385.

- M3 A RESOLUTION AWARDING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES IN THE AMOUNT OF \$415,230 TO BROWN AND CALDWELL, INC., FOR PROJECT NO. 23A-038 DESIGN WEST SIDE INTERCEPTOR UPSIZE, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**

This Resolution was assigned as 15386.

- M4 A RESOLUTION AWARDING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES IN THE AMOUNT OF \$295,035 TO BROWN AND CALDWELL, INC., FOR PROJECT NO. 23A-039 DESIGN OF SANITARY SEWER EXTENSION AT NORTHERN AVENUE, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**

This Resolution was assigned as 15387.

- M5 A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$264,435.90 TO TONY J BELTRAMO & SONS, INC. AND SETTING FORTH \$26,443.59 FOR CONTINGENCIES AND ADDITIONAL WORK FOR PROJECT NO. 23-115 ILLINOIS AVENUE STORM SEWER IMPROVEMENTS AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**

This Resolution was assigned as 15388.

- M6 A RESOLUTION RATIFYING THE AWARD OF A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$82,551 TO K.R. SWERDFEGER CONSTRUCTION, INC., FOR AN EMERGENCY STORM SEWER POINT REPAIR AT DREW DIX PARK AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**

This Resolution was assigned as 15389.

- M7 A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$64,638.45 TO A5 CONSTRUCTION FOR PROJECT NO. 23-124, CONCRETE IMPROVEMENTS - 1100TH BLOCK OF ACERO AVENUE (CDBG), SETTING FORTH \$20,000 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**

This Resolution was assigned as 15390.

- M8 A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$55,268.30 TO A5 CONSTRUCTION FOR PROJECT NO. 23-123, CONCRETE IMPROVEMENTS - 200TH BLOCK OF VAN BUREN STREET (CDBG), SETTING FORTH \$20,000 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME**

This Resolution was assigned as 15391.

M9 A RESOLUTION AWARDED A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$34,807.80 TO POTTER COMMERCIAL WALLS AND CEILINGS, INC., FOR PROJECT NO. 23-129, PUEBLO MEMORIAL AIRPORT TERMINAL HANGAR PARTITION REPAIR, SETTING FORTH \$15,192.20 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

This Resolution was assigned as 15392.

M10 A RESOLUTION RATIFYING AN EMERGENCY CONSTRUCTION CONTRACT IN THE AMOUNT OF \$33,449.94 TO TONY J BELTRAMO & SONS, INC., FOR PROJECT NO. 23-132, ASPHALT IMPROVEMENTS - WEST 20TH STREET, AND APPROVING THE PURCHASING AGENT'S EXECUTION OF SAME

This Resolution was assigned as 15393.

M11 A RESOLUTION CONFIRMING THE APPOINTMENT BY THE MAYOR OF PATRICK HURLEY AND OREN OLSON TO COMPLETE A THREE-YEAR TERM EXPIRING DECEMBER 30, 2025 ON THE COMMUNITY COMMISSION ON HOUSING AND HOMELESSNESS

This Resolution was assigned as 15394.

M12 A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-23-35) TO PUEBLO COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, FOR THE USE OF WEST 11TH STREET FROM SANTA FE AVENUE TO GRAND AVENUE; WEST 10TH STREET FROM SANTA FE AVENUE TO GRAND AVENUE; WEST 9TH STREET FROM SANTA FE AVENUE TO MAIN STREET; MAIN STREET FROM WEST 9TH STREET TO WEST 12TH STREET; AND COURT STREET FROM WEST 12TH STREET TO WEST 8TH STREET FOR THE PURPOSE OF FACILITATING THE COURTHOUSE LIGHTING CEREMONY

This Resolution was assigned as 15395.

M13 A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-23-40) TO THE PUEBLO DIVERSIFIED INDUSTRIES FOR THE USE OF ALAN HAMEL DRIVE FROM SANTA FE AVENUE TO MAIN STREET FOR THE PURPOSE OF FACILITATING THEIR 5K WALK/RUN EVENT

This Resolution was assigned as 15396.

M14 A RESOLUTION AUTHORIZING THE ISSUANCE OF A REVOCABLE PERMIT (REV-23-44) TO THE HARP AUTHORITY FOR THE USE OF VICTORIA STREET FROM THE HARP PARKING LOT AT 101 SOUTH VICTORIA AVENUE TO GREENWOOD FOR THE PURPOSE OF FACILITATING A "FRIGHT NIGHT" EVENT

This Resolution was assigned as 15397.

M15 A RESOLUTION AUTHORIZING PAYMENT OF FUNDS IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000) TO THE PARKS AND RECREATION DEPARTMENT OF THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, FOR THE MITCHELL PARK MURAL PROJECT, TO BE PAID FROM PROJECT NO. CI-2113 - AMERICAN RESCUE PLAN ACT, AS AUTHORIZED BY SECTION 603 (A) OF THE AMERICAN RESCUE PLAN

ACT AND U.S. TREASURY FINAL RULE 31 CFR 35.6

This Resolution was assigned as 15398.

N. ORDINANCES – FIRST PRESENTATION

- N1 AN ORDINANCE AUTHORIZING A SITE LEASE AND LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AND BOKF, N.A. (SOLELY IN ITS CAPACITY AS TRUSTEE) FOR THE PURPOSE OF FINANCING THE CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF THREE FIRE STATIONS; APPROVING NOT TO EXCEED \$37,000,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION, SERIES 2023 IN CONNECTION THEREWITH; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS**
- N2 AN ORDINANCE TRANSFERRING FUNDS IN THE AMOUNT OF \$9,942.85 FROM PUEBLO TRANSIT ARPA AWARD NO. CO-2023-019-00, INTO PROJECT NUMBER PT2201 SHOP TRUCK REPLACEMENT PROJECT TO PURCHASE A NEW MAINTENANCE VEHICLE**
- N3 AN ORDINANCE APPROVING A LICENSE FOR COMMUNICATION LINE, TELEVISION CABLE, AND/OR FIBER OPTIC LINE ACROSS OR ALONG RAILWAY PROPERTY BETWEEN THE CITY OF PUEBLO AND BNSF RAILWAY COMPANY, A DELAWARE CORPORATION, AND AUTHORIZING THE MAYOR TO EXECUTE SAME**
- N4 AN ORDINANCE APPROVING AN AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE PUEBLO ASSOCIATION OF GOVERNMENT EMPLOYEES RELATING TO SALARY CLASSIFICATION AND PAY RANGE ADJUSTMENTS AND INCREASES FOR EIGHT SPECIFIED AND ENUMERATED CLASSIFICATIONS**
- N5 AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND DOMINION VOTING SYSTEMS, INC., AS REQUIRED FOR ANY POTENTIAL MAYORAL RUNOFF ELECTION**
- N6 AN ORDINANCE ELECTING TO CERTIFY ABATEMENT ASSESSMENT ROLL NO. 2023-1 TO THE COUNTY TREASURER AND TO HAVE THE COUNTY TREASURER COLLECT IN THE SAME MANNER AS OTHER TAXES**
- N7 AN ORDINANCE APPROVING AMENDMENT OF TWO SOLAR PRODUCTION**

AGREEMENTS BETWEEN THE CITY OF PUEBLO AND CEC SOLAR #1117, LLC. AND CEC SOLAR #1118, LLC RELATING TO AND UPDATING THE POWER PURCHASE AGREEMENT RATE SCHEDULES FOR EACH AGREEMENT, AND AUTHORIZING EXECUTION THEREOF BY THE MAYOR

- N8 AN ORDINANCE APPROVING AN AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY KNOWN AS LOTS 8 & 9 BLK 70 MATTICE & GIBSON AD, AND LOT 19 BLK 71 MATTICE & GIBSON AD BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND MR. FRED F. JONES AND MRS. MELVA JEAN JONES AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME**
- N9 AN ORDINANCE APPROVING AND ACCEPTING A U. S. DEPARTMENT OF JUSTICE 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE (2023 JAG) GRANT, AWARD NO. 15PBJA-23-GG-03201-JAGX, AND APPLICABLE CONDITIONS PERTAINING THERETO, ESTABLISHING PROJECT NUMBER PS2314, BUDGETING AND APPROPRIATING FUNDS NOT TO EXCEED \$111,507, AUTHORIZING THE MAYOR TO EXECUTE SAME AND RELATED CERTIFICATIONS, ASSURANCES AND OTHER DOCUMENTS, APPROVING AND RATIFYING THE JULY 17, 2023 MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME AND RATIFYING HIS SIGNATURE THERETO**
- N10 AN ORDINANCE APPROVING AN AMENDMENT TO THE RENTAL AGREEMENT FOR THE USE OF AN OFFICE SPACE AND THE FIRE FIGHTING RELOAD BASE AT THE PUEBLO MEMORIAL AIRPORT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE PREVENTION AND CONTROL, AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME.**
- N11 AN ORDINANCE ACCEPTING A BARGAIN AND SALE DEED FROM PUEBLO HISTORICAL AIRCRAFT SOCIETY, A COLORADO NONPROFIT, FOR A HANGAR LOCATED AT 508 SKYWAY STREET AT THE PUEBLO MEMORIAL AIRPORT, AND AUTHORIZING THE MAYOR TO EXECUTE SAME.**
- N12 AN ORDINANCE AMENDING ZONING RESTRICTIONS TO REZONE APPROXIMATELY 70.89-ACRES LOCATED IN THE WESTERN PORTION OF THE VENTANA MASTER PLAN, 2002, AND WITHIN THE PROPOSED VENTANA ESTATES OVERALL DEVELOPMENT PLAN FROM A-4, AGRICULTURAL FOUR ZONE DISTRICT TO R-2, SINGLE FAMILY RESIDENTIAL ZONE DISTRICT**

O. APPROVAL OF CONSENT AGENDA

Councilor Martinez Ortega, seconded by Councilor Martinez, moved to approve all Resolutions Set Forth in the Consent Agenda, Pass the Ordinances of the Consent Agenda, Setting the Public Hearings for October 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 THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO PUEBLO DOWNTOWN ASSOCIATION IN THE AMOUNT OF \$1,250 TO SPONSOR THE PARADE OF LIGHTS ON SATURDAY, NOVEMBER 25, 2023 IN DOWNTOWN PUEBLO

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 15399.

Q2 A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO PUEBLO AREA AGENCY ON AGING IN THE AMOUNT OF \$2,000 TO SPONSOR THE SENIOR OF THE YEAR EVENT

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 15400.

Q3 A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO LATINO CHAMBER DEVELOPMENT CORP IN THE AMOUNT OF \$1,000 TO SUPPORT THE 16TH ANNUAL LIFETIME ACHIEVEMENT AWARD CEREMONY

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

Councilor Flores, seconded by Councilor Martinez Ortega, 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 15401.

R. ORDINANCES – FINAL PRESENTATION

R1 AN ORDINANCE ACCEPTING A SMALL DOLLAR GRANT FROM THE COLORADO ENERGY OFFICE IN THE AMOUNT OF \$40,000 AND ESTABLISHING A FINANCE ACCOUNT PROJECT CI2325 ELECTRIC VEHICLE READINESS PLAN, TRANSFERRING \$10,000 FROM THE UNAPPROPRIATED FUND BALANCE OF THE GENERAL FUND INTO ACCOUNT PROJECT CI2325, BUDGETING AND APPROPRIATING \$50,000 INTO SAID PROJECT ACCOUNT, AND AUTHORIZING THE MAYOR TO EXECUTE THE PURCHASE ORDER AGREEMENT ON BEHALF OF THE CITY OF PUEBLO

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

PUBLIC HEARING:

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

Councilor Martinez Ortega, seconded by Councilor 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 10563.

R2 AN ORDINANCE APPROVING AND ACCEPTING A COLORADO DEPARTMENT OF LAW PEACE OFFICER STANDARDS AND TRAINING (POST) GRANT, JULY 1, 2023 THROUGH MARCH 31, 2024, ESTABLISHING PROJECT NUMBER PS2310, TRANSFERRING FUNDS NOT TO EXCEED THE AMOUNT OF \$5,347.20; TRANSFERRING \$4,947.20 FROM PROJECTS-TO-BE-DETERMINED IN THE PUBLIC SAFETY GRANTS FUND, AND TRANSFERRING \$400.00 FROM THE POLICE DEPARTMENT'S GRANT MATCH BUDGET IN THE PUBLIC SAFETY FUND

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

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 10564.

R3 AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF PUEBLO AND HEALTH SOLUTIONS OF PUEBLO, A NON-PROFIT ORGANIZATION, RELATING TO THE DELIVERY OF SERVICES VIA THE SOLUTIONS OUTREACH SERVICES TEAM (S.O.S. TEAM), AND AUTHORIZING THE MAYOR'S SIGNATURE THERETO

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

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 10565.

R4 AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL INSURANCE CRIME BUREAU (NICB) AND THE CITY OF PUEBLO RELATING TO AUTHORIZED ACCESS TO NICB RESOURCES TO ASSIST IN THE INVESTIGATION OF THEFT AND FRAUD-RELATED CRIMES, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

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 10566.

R5 AN ORDINANCE APPROVING AND ADOPTING A SUBSTANTIAL AMENDMENT TO THE CITY OF PUEBLO'S FY2020 ACTION PLAN TO ADD AN ADDITIONAL PROJECT TO THE FY2020 ANNUAL ACTION PLAN TO ACQUIRE AND REHABILITATE 710 W. 4TH STREET, PUEBLO, CO TO PROVIDE A WARMING SHELTER UTILIZING CASE MANAGEMENT AND

NAVIGATION SERVICES FOR THE HOMELESS AND AUTHORIZING THE MAYOR TO EXECUTE AND SUBMIT THE SUBSTANTIAL AMENDMENT TOGETHER WITH ALL REQUIRED AND NECESSARY CERTIFICATIONS, ASSURANCES, AND DOCUMENTATION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

A staff report and detailed review of the Ordinance was given by Bryan Gallagher, Director of Housing & Human Services.

PUBLIC HEARING:

- Augustine Garcia appeared in person to speak against this ordinance
- Sabrina Areanello appeared in person to speak against this ordinance
- Charles William Rayes, III appeared in person to speak against this ordinance
- Dave DeCenzo appeared in person to speak against this ordinance
- Melissa Sealie appeared in person to speak against the ordinance
- Joseph A. Latino appeared in person to speak against this ordinance

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

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

Roll Call - **Ayes:** 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 **10567.**

R6 AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND THE COUNTY OF PUEBLO, A POLITICAL SUBDIVISION OF THE STATE OF COLORADO, RELATING TO THE 2024 SPECIAL ELECTION – MAYORAL RUNOFF

A staff report and detailed review of the Ordinance was given by Marisa Stoller, City Clerk.

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 **10568.**

R7 AN ORDINANCE FIXING THE MONTHLY SALARIES OF THE MEMBERS AND PRESIDENT OF THE CITY COUNCIL AT \$2,100 AND \$2,700 RESPECTIVELY

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

PUBLIC HEARING:

- Elvis Martinez appeared in person to speak against this ordinance
- Samuel Hernandez Jr appeared in person to speak against this ordinance
- Dave DeCenzo appeared in person to speak against this ordinance
- Michelle Gray appeared in person to speak against this ordinance

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

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

Roll Call - **Ayes:** Councilor Flores, Councilor Martinez Ortega, Councilor Winner. **Nays:** Councilor Atencio, President Graham, Councilor Maestri, Councilor Martinez. Motion Failed 3-4.

R8 AN ORDINANCE APPROVING A SUBRECIPIENT AGREEMENT AUTHORIZING PAYMENT IN AN AMOUNT OF UP TO \$900,000 FROM PROJECT CI2113 - AMERICAN RESCUE PLAN ACT TO NEIGHBORWORKS SOUTHERN COLORADO, INC. TO CONSTRUCT NECESSARY INFRASTRUCTURE IMPROVEMENTS FOR AFFORDABLE HOUSING UNITS AS AUTHORIZED BY SECTION 603(C)(1)(A) OF THE AMERICAN RESCUE PLAN ACT AND U.S. TREASURY FINAL RULE 31 C.F.R. § 35.6 (B) (3) (II) (A) (5) AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

PUBLIC HEARING:

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

Councilor Flores, seconded by President Graham, 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 10569.

R9 AN ORDINANCE APPROVING A SUBRECIPIENT AGREEMENT AUTHORIZING PAYMENT IN AN AMOUNT OF UP TO \$400,000 OF COMMUNITY DEVELOPMENT BLOCK GRANT – COVID-19 FUNDS TO THE PUEBLO RESCUE MISSION THROUGH A SUBRECIPIENT AGREEMENT TO PURCHASE REAL PROPERTY LOCATED AT 710 WEST 4TH STREET, PUEBLO, CO AND MAKE CERTAIN IMPROVEMENTS TO THE PROPERTY TO PROVIDE A WARMING SHELTER FOR THE PUEBLO COMMUNITY DURING WEATHER EMERGENCIES DECLARED BY THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

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

PUBLIC HEARING:

- Richard Pena appeared in person to speak against this ordinance
- Augustine Garcia appeared in person to speak against this ordinance
- Drayla Lara appeared in person to speak against this ordinance
- Samuel Hernandez Jr appeared in person to speak against this ordinance
- Elvis Martinez appeared in person to speak against this ordinance

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

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

Councilor Flores, seconded by Councilor Martinez Ortega, amended the motion to postpone the Ordinance to the Regular City Council meeting on October 23, 2023.

Roll Call - **Ayes:** Councilor Atencio, Councilor Flores, Councilor Maestri, Councilor Martinez, Councilor Martinez Ortega, Councilor Winner. **Nays:** President Graham. Motion Passed 6-1.

S. COUNCIL MEMBER CONFLICT OF INTEREST

Councilor Martinez Ortega recused himself from the meeting due to a conflict of interest.

T. COMMUNICATIONS

T1 A CITIZEN FILED AN ETHICS COMPLAINT AGAINST COUNCILOR VICENTE MARTINEZ ORTEGA

Councilor Atencio, seconded by Councilor Maestri, moved to accept the communication.

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

Councilor Flores, seconded by Councilor Winner, moved to dismiss the complaint.

Roll Call - **Ayes:** Councilor Flores, President Graham, Councilor Martinez, Councilor Winner. **Nays:** Councilor Atencio, Councilor Maestri. Motion Passed 4-2.

T2 A CITIZEN FILED AN ETHICS COMPLAINT AGAINST COUNCILOR VICENTE MARTINEZ ORTEGA

Councilor Flores, seconded by Councilor Martinez, moved to accept the communication.

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

Councilor Winner, seconded by Councilor Flores, moved to dismiss the complaint.

Roll Call - **Ayes:** Councilor Flores, Councilor Martinez, Councilor Winner. **Nays:** Councilor Atencio, President Graham, Councilor Maestri. Motion Failed 3-3.

President Graham, seconded by Councilor Atencio, moved to investigate the complaint.

Roll Call - **Ayes:** Councilor Atencio, President Graham, Councilor Maestri. **Nays:** Councilor Flores, Councilor Martinez, Councilor Winner. Motion Failed 3-3.

City Attorney George Hypolite reviewed his legal opinion at the request of Council.

Councilor Flores, seconded by Councilor Martinez, moved to dismiss the complaint.

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

U. ADJOURN

President Graham adjourned the meeting at 9:39 p.m.

Respectfully submitted,

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

Marisa Stoller
City Clerk

Submit complaint by mail or email to:

City of Pueblo – Elections Division
Marisa Stoller, City Clerk
#1 City Hall Place
Pueblo, CO 81003
Phone: (719) 553-2669
Fax: (719) 552-2697
mstoller@pueblo.us



CITY CLERK

OCT - 6 2023

Received

CAMPAIGN FINANCE COMPLAINT FORM

Any person may file a complaint up to 180 days after the date on which the Complainant either knew or should have known, by the exercise of reasonable diligence, of an alleged violation. A complainant must specifically identify one or more respondents, a violation of Colorado Campaign Finance Rules and Regulations (Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning Campaign and Political Finance) and allege specific facts to support a legal and factual basis for the complaint. (See section 1-45-111.7, C.R.S.) Please be advised, complaints are public information and the Respondent will be provided a copy of this Complaint.

*Denotes required field

Your Information (Complainant)- Information about the person or entity filing the complaint:

*Full Name: Michelle M. Gray
*Mailing Address: 1159 S Camino Santiago Dr Pueblo CO 81007
*Telephone Number: 719 252 6011 *Email Address: mmcorttsgray@hotmail.com
*Date Made Aware of Violation: 9/9/2023

Respondent's Information - Information about the person or entity alleged to have committed the violation:

*Full Name: Nick Gradisar
*Mailing Address: 1 City Hall Place Pueblo CO 81003
Telephone Number: 719 553 2655 *Email Address: cityadmin@pueblo.us

Briefly summarize the allegations of your complaint including dates of the alleged violations and attach any supporting documents and materials.

attached

By submitting this form and any supporting evidence or documentation, I hereby affirm that I have read and am familiar with the procedures set forth in section 1-45-111.7, of the Colorado Revised Statute (C.R.S.).

*Complainant's Signature: Michelle M. Gray

Date: 10/6/2023

My name is Michelle Gray; I am the Chair of the Pueblo County Republican Party and am committed to ensuring that those who govern the constituents of the City are transparent, responsive, and ethical. I am filing an ethics complaint against City Mayor Nick Gradisar, who is also a candidate for reelection. I used the City of Pueblo Code of Ethics in determining the violations committed by Nick Gradisar: CHAPTER 9 - Code of Ethics | Code of Ordinances | Pueblo, CO | Municode Library, the Colorado Revised Statutes Title 24 Article 18, and the Colorado Constitution Article 29 Section 3.

On September 11, 2023, I addressed City Council to bring forth my citizens' grievance against Mayor Nick Gradisar. Rather than properly address my grievance, as recorded during public comment, Councilman Martinez leveraged his authority from the dais directing me, Michelle Gray, not to "waste the City Clerk's time or any of our (City Council's and Mayor's) time with an ethics complaint:" My freedom of speech was impinged upon. This is a clear violation of the Code of Ethics (Chapter 9 Code of Ethics, Article I Uniform Standards of Conduct, Sec. 1-9-1 Legislative declaration (2.a) Framework and Purpose Code of Ethics number 2 "Objective Judgement. Employ independent, objective judgment in performing duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences and the Colorado Revised Statutes 24-18-103)." Rather than encouraging the transparency our City Council and Mayor's office, Councilman Vicente Martinez was trying to prevent Mayor Nick Gradisar's unethical conduct from coming to light.

On September 9, 2023, Mayor Nick Gradisar attended an alleged townhall, which was in fact a campaign event. Nick Gradisar gave approval to Vicente Martinez to organize a meeting while also requiring city staff to attend the meeting. Vicente Martinez Ortega's campaign logo and canvassing efforts were used to entice voters to the alleged town hall. The meeting, far from being a public town hall, was in fact a campaign event. Mayor Nick Gradisar, knowingly, and unethically provided taxpayer monies and provided \$225 in refreshments for those who attended this alleged town hall. Mayor Gradisar mixed taxpayer dollars with campaign dollars for the benefit of his reelection bid.

I submit, with video and material evidence, the following violations of the Colorado Constitution, the Colorado Revised Statutes, and the Pueblo Code of Ethics that Mayor Nick Gradisar has committed:

- Colorado Revised Statute 24-18-103 (1) and Pueblo Municipal Code Section 1-9-3 (a) clearly states that "a City official or employee shall carry out his or her duties and services in a competent, **unbiased, open and honest** manner for the benefit of the people of the City." As recorded at the August 28th City Council meeting, Councilman Vicente Martinez Ortega stated that constituents could not attend the "townhall" unless they received a flyer. As noted on the flyer (attached), this was a joint endeavor. Requiring a flyer to attend a District 4 town hall not only excludes citizens in D4 (those who did not receive a flyer), it also excludes residents in Districts 1 – 3 showing that this meeting was not held for the benefit of all the people of the city and was instead held as a campaign event. Additionally, the bias and proof the meeting was not held "for the benefits of the people of the city" was recorded during the September 11, 2023, public comment session when Michelle Gray was told specifically, that "he did not represent all of Pueblo." Mayor Nick Gradisar is complicit in this bias as he participated in the campaign event and empowered Vicente Martinez Ortega to organize the alleged town hall.
- Colorado Revised Statute 24-18-103 (1) and Pueblo Municipal Code Section 1-9-3 (a) was also violated by bias and lack of openness and was not conducted for the "benefit of the people of the city" when attendees were recruited through canvassing and campaign efforts. Since Mayor Gradisar was working with Councilman Vicente Martinez Ortega in this joint venture, he was aware that Vicente Martinez Ortega was targeting voters. Councilman Martinez is recorded on September 11th stating that "his campaign paid for the flyers, paid for the gas to go there... (the event) which took 3.5 miles worth of canvassing, (for a total of) 5 hours of canvassing. The flyer for the alleged townhall clearly denotes that

this was a campaign effort since Vicente's logo was prominently placed on the flyer and Mayor Nick Gradisar's name was equally prominent. Additionally, Mayor Gradisar knew that the event was only open to those who received a flyer, and that the flyers were only distributed to potential voters as stated by Councilman Vicente on September 11th during City Council. Targeting voters for a townhall does not benefit the people of the city – instead it benefits Nick Gradisar's reelection bid for mayor.

- Colorado Constitution Article 29 Section 3, Colorado Revised Statute 24 – 18 – 104 1.a.b.I.II, and Pueblo Municipal Code Section 1-9-4(a) Section 2 states that City officials may not accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value which would tend improperly to influence a reasonable person in his or her position to depart from the faithful and impartial discharge of his or her public duties. As recorded in the September 11th public comment section, Councilman Martinez stated that “his campaign paid for the flyers, paid for the gas to go there, ...and that it took 3.5 miles of canvassing, 5 hours total” to make the meeting happen.” Far from being an open Townhall, this event was a campaign event that benefited Mayor Nick Gradisar. By allowing Vicente to organize the alleged Townhall using campaign funds, the Mayor has taken a gift of substantial value. As recorded, Vicente spent \$250 to organize the event. Additionally, the statement on the flyer asking those canvassed to “Join Vicente, Mayor Gradisar & City Staff” would lead a reasonable person to believe that this limited attendance event, which was in fact a campaign event, was supported by the city employees that attended (city departments, police, fire, public works, parks and recreation).
- This complaint maintains that Councilman Martinez used his campaign funds to recruit people to the alleged town hall to secure votes for Mayor Nick Gradisar. Vicente also thanked the Mayor's office for “providing \$225 for refreshments for folks who attended this alleged town hall to eat.” By providing Vicente with \$225 of taxpayer monies, and attending the event, Nick Gradisar was influencing reasonable people to believe that this limited attendance event, which was in fact a campaign event, was supported by his office, city departments, police, fire, parks and recreation. Nick Gradisar was furthering his bid for Mayor by influencing reasonable people to believe that he, Vicente and other agencies are working together for his reelection bid.
- Colorado Constitution Article 29 Section 3, Colorado Revised Statute 24-18-104 2.b. and Pueblo Municipal Code Section 1-9-7(b) states a City official, or employee shall not 1) engage in a substantial financial transaction for his or her private business purposes with a person whom he or she inspects or supervises in the course of his or her official duties; or 2) perform an official act direct and substantially affecting to its economic benefit a business or other undertaking in which he ... has a substantial financial interest. Mayor Gradisar was provided voters for his reelection bid since the meeting required “3.5 miles of canvassing, for a total of 5 hours in order to make the meeting happen.” Nick Gradisar not only had a substantial interest but was in fact a beneficiary. This is a clear violation.

Because of the egregious violations of the City of Pueblo's Code of Ethics made by Nick Gradisar, I request, on behalf of the citizens of Pueblo, that they be made whole by the implementation of the following penalties.

- Colorado Revised Statutes 24 – 18 – 103 (2), Colorado Revised Statutes 24 – 18 – 206 and Pueblo Municipal Code Section 1-9-8 dictates that “any individual who is found to have violated any provision of this code of ethics shall be liable to the City for double the amount of financial equivalent of any benefits obtained by such actions.” Mayor Nick Gradisar should be subject to this penalty. I request that he be required to repay the taxpayers of Pueblo the \$225 that was inappropriately spent for a campaign event by his office, and the \$250 penalty for violating the Code of Ethics. Additionally, I request that Nick Gradisar be required to donate to the city an amount equivalent to two times the amount of campaign contributions that Nick Gradisar raised at this event. This would ensure that Nick Gradisar is not unduly

enriched by the use of city funds and cover the penalty provided in the Code of Ethics for violations of the Code of Ethics.

- I also request that per Colorado Revised Statutes 24 – 18 – 103 (2), Colorado Revised Statutes 24 – 18 – 206 and Pueblo Municiple Code Section 1-9-8 “City officials who violate this code of ethics are subject to appropriate disciplinary action.” I request that Mayor Nick Gradisar be subject to appropriate disciplinary action for recruiting city employees to attend a campaign event under the guise of a town hall, using taxpayer funds to fund a campaign event, marketing a town hall that excluded most Pueblo residents, marketing an event as a Townhall that was in fact a campaign event, and securing funding from a person whom he inspects or supervises in the course of his official duties.
- As stated earlier, at the City Council meeting September 11th, 2023 Vicente Martinez “thanked the mayor for providing taxpayer funds and for attending, thanked city departments, police, fire, public works, parks and rec...for attending” what was clearly a campaign event. I call for an immediate investigation of this clear violation of the Colorado Revised Statutes, the Colorado Constitution, and the Pueblo City Council Code of Ethics and for the implementation of penalties and disciplinary action for the violations of Mayor Nick Gradisar.

August 28th Video Link with supporting evidence at time 40:55

https://pueblo.granicus.com/player/clip/771?view_id=4&redirect=true&h=fe25d427769b02a1326a0a42e80cb28d

September 11th Video Link with supporting evidence at time 43:38

https://pueblo.granicus.com/player/clip/772?view_id=4&redirect=true&h=5692e43db685f38d5f1a4b376753a019

Michelle M Gray
Pueblo County GOP Chair
719-252-6011

**District 4
South Pointe
Townhall**

**Sept 9th, 10 AM-12 PM
Settler's Village Park
3400 Pheasant Ln,
Pueblo, CO 81005**



**Join Vicente,
Mayor Gradisar &
City Staff
addressing South
Pointe issues, in
your community.**



**VICENTE
PUEBLO CITY COUNCIL
DISTRICT 4**



**Background Paper for Proposed
Other**

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM:

SUBJECT: PROPOSED 2024 ANNUAL BUDGET

This Public Hearing is held for the purpose of receiving public testimony as it pertains to the 2024 Proposed Annual Budget per the requirements of Section 7-9 of the Charter for the City of Pueblo.

ATTACHMENTS:

None



**Background Paper for Proposed
Other**

COUNCIL MEETING DATE: October 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: MINUTES OF THE PLANNING AND ZONING COMMISSION REGULAR
MEETING FOR 09/23/2023

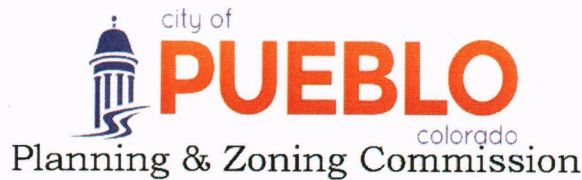
ATTACHMENTS:

1. PZ Minutes 09-23-2023 Signed

Mike Castellucci
Chair

Patrick Avalos
Vice Chair

Sarah Martinez
City Council Representative



Christopher Pasternak

Alexandra Aznar

Elizabeth Bailey

Cheryl Spinuzzi

MINUTES OF REGULAR MEETING

City of Pueblo, Colorado

Wednesday, September 13, 2023 – 3:30 p.m.

City Council Chambers, 1 City Hall Place

The meeting was called to order at 3:30 p.m. with Commissioner Castellucci presiding.

Commissioners Present: Mike Castellucci, Patrick Avalos, Cheryl Spinuzzi, Sarah Martinez, Lisa Bailey, Christopher Pasternak.

Commissioners Absent: Alexandra Aznar

Staff Members Present: Paul Willumstad, Attorney; David Wyatt, Assistant City Attorney, Scott Hobson, Acting Director of Planning and Community Development, Beritt Odom, Principal Planner; Mikaylin Hackley, Planner, Joe Martellaro, Associate Engineer, Charles Roy, Deputy Director of Public Works, Alex Romero, Finance Director, Laura Solano, Chief of Staff, and George Hypolite, City Attorney.

Staff Members Absent: None

APPROVAL OF THE AGENDA: Bailey moved to continue Z-23-06 to the October 11, 2023, meeting and approve the September 13, 2023, agenda as amended, seconded by, Avalos.

Motion Passed: 6-0

Public Meeting: 2024-2028 Proposed Capital Improvement Plan: Discussion and information provided by Laura Solano, Chief of Staff, Alexandria Romero, Director of Finance.

Commission Action: Bailey motioned to approve the Proposed Capital Improvement Plan, seconded by Spinuzzi.

Motion Passed: 6-0

1. Z-23-06 Continued to October 11, 2023. Belmont Place Planned Unit Development Amendment Rezoning. Proposed amendments to the Belmont Place Planned Unit Development Guide. Staff report by Wade Broadhead, Senior Planner.

Public Hearing:

Commission Action:

Motion Passed:

2. Z-23-01 Continued from August 9, 2023, Ventana Estates, Filing 2, Overall Development Plan: Amendment of the 2002 Ventana Master Plan to facilitate residential development in the western portion of the 2001 Ventana Annexation area, approximately 91.455 acres. Staff report by Beritt Odom, Principal Planner.

Public Hearing: Applicant, Nathan Bell was sworn in and spoke in favor of the application and answered all questions.

Sworn in and speaking in opposition to the application were: Ryan McCafferty, Jan Coffee, Tony Roberts, Dedra McDade, Celeste Oreskovich, Larry L. Hagler, Dave Torline. Exhibit #1 was provided by Jan Coffee.

Commission Action: Bailey motioned to approve the application seconded by Spinuzzi.

Motion Passed: 6-0

3. Z-23-03 *Continued from August 9, 2023, Ventana Filing 2 Rezoning:* Approximately 74.21 acres, generally located west of Ventana, Filing No. 1 Subdivision and north of State Highway 78, to be rezoned from City of Pueblo A-4 to R-2, Single-Family Residential. Staff report by Beritt Ododm, Principal Planner.

Public Hearing: Applicant, Nathan Bell remained sworn in and spoke in favor of the application. Speaking in opposition and remained sworn in were Ryan McCafferty, Jan Coffee, Tony Roberts, Dedra McDade Celeste Oreskovich, Larry L. Hagler, Dave Torline. Exhibit #1 was provided by Jan Coffee.

Commission Action: Bailey moved to recommend the application with one (1) staff condition, seconded by Spinuzzi.

Motion Passed 5-1

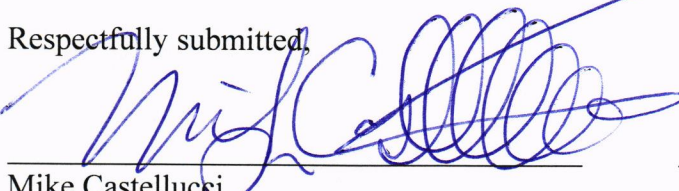
Approval of Minutes:

1. Bailey moved to approve the minutes from the **August 9, 2023**, seconded by Avalos.

Old/New Business

There being no further business the Regular Meeting was adjourned at 5:30 p.m.

Respectfully submitted,


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: October 23, 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: A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$195,602.85 TO ROCKY MECHANICAL, L.L.C., A COLORADO LIMITED LIABILITY COMPANY, FOR PROJECT NO. 23-125, MECHANICAL IMPROVEMENTS - MINERAL PALACE ATRIUM, SETTING FORTH \$29,340.15 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

SUMMARY:

Attached is a resolution awarding a Construction Contract to Rocky Mechanical, L.L.C. for Project No. 23-125, Mechanical Improvements - Mineral Palace Atrium.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

This project will consist of mechanical improvements to the Mineral Palace Atrium, including the following improvements:

1. Replace makeup air unit.
2. Demolish existing RTUs and evaporative units.
3. Install new exterior ductwork and RTU on roof.
4. Install new, modify existing, and extend ductwork.
5. Install new, modify existing, and extend domestic water piping to serve the new MAU.
6. Install new split system outdoor and indoor units.
7. Install new exhaust fans.
8. Install thermostats and interlocks.
9. Provide mechanical, plumbing, architectural, structural, electrical, and other services as necessary per design.

This Resolution awards the construction contract to Rocky Mechanical L.L.C.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$224,943 (contract and contingencies) will be paid from account Project No. CI2113, ARPA Funds.

BOARD/COMMISSION RECOMMENDATION

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Denial of this resolution will cancel the project.

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

1. 23-125 Bid Summary

RESOLUTION NO. 15402

A RESOLUTION AWARDDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$195,602.85 TO ROCKY MECHANICAL, L.L.C., A COLORADO LIMITED LIABILITY COMPANY, FOR PROJECT NO. 23-125, MECHANICAL IMPROVEMENTS - MINERAL PALACE ATRIUM, SETTING FORTH \$29,340.15 FOR CONTINGENCIES, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for Project No. 23-125, Mechanical Improvements - Mineral Palace Atrium have been received and examined; and,

WHEREAS, the proposal of Rocky Mechanical L.L.C. was the lowest bid determined to be responsive, and the Committee of Awards recommends to the City Council that it authorizes Project No. 23-125, Mechanical Improvements - Mineral Palace Atrium to be performed; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The City Council authorizes Project No. 23-125, Mechanical Improvements - Mineral Palace Atrium, to be performed, and the contract for said project is hereby awarded to Rocky Mechanical L.L.C. in the amount of \$195,602.85.

SECTION 2.

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

SECTION 3.

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

Contingencies and Additional Work.....\$29,340.15

SECTION 4.

Funds in the amount of \$224,943, for the contract and contingencies, shall be from account Project CI2113, ARPA Funds.

SECTION 5.

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

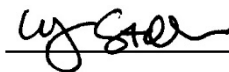
SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 



City of Pueblo

Purchasing

Naomi Hedden, Director
230 S. Mechanic St., Pueblo, CO 81003

EVALUATION TABULATION

IFB No. 23-125 (CI2113)

Mechanical Improvements - Mineral Palace Atrium

RESPONSE DEADLINE: October 5, 2023 at 10:30 am

Report Generated: Thursday, October 5, 2023

SELECTED VENDOR TOTALS

Vendor	Total
Rocky Mechanical	\$195,602.8516
FRPHI Hydronics, LLC	\$239,435.00

EVALUATION TABULATION
IFB No. 23-125 (CI2113)
Mechanical Improvements - Mineral Palace Atrium

BASE BID

		Base Bid			FRPHI Hydronics, LLC		Rocky Mechanical	
Selected	Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
DEMO								
X	1	Demo Gas/DX RTU	3	EA	\$1,000.00	\$3,000.00	\$950.00	\$2,850.00
X	2	Demo Evaporative Coolers	2	EA	\$1,000.00	\$2,000.00	\$920.00	\$1,840.00
X	3	Demo Ductwork	500	LBS	\$5.00	\$2,500.00	\$2.95	\$1,475.00
X	4	Demo 3/4"-1" Natural Gas	25	LF	\$20.00	\$500.00	\$7.00	\$175.00
X	5	Demo Evap Water (Allowance)	50	LF	\$1.00	\$50.00	\$11.00	\$550.00
X	6	Demo Exhaust Fan	1	EA	\$1,000.00	\$1,000.00	\$550.00	\$550.00
X	7	Crane/Hoisting	1	LS	\$3,000.00	\$3,000.00	\$1,250.00	\$1,250.00
X	8	Demo Registers/Diffusers/Grilles	2	EA	\$100.00	\$200.00	\$65.00	\$130.00
Install								
X	9	RTU-1, Gas/DX, 4 Ton	1	EA	\$50,000.00	\$50,000.00	\$34,089.00	\$34,089.00
X	10	MAU-1, Direct Gas/Evap, 4600 CFM	1	EA	\$20,000.00	\$20,000.00	\$27,000.00	\$27,000.00
X	11	Split System, 1 Ton, Incl. Refrigerant Piping	1	EA	\$18,000.00	\$18,000.00	\$9,900.00	\$9,900.00
X	12	Crane/Hoisting	1	LS	\$3,000.00	\$3,000.00	\$1,250.00	\$1,250.00
X	13	EF-1, 4,776 CFM	1	EA	\$20,000.00	\$20,000.00	\$9,450.00	\$9,450.00
X	14	EF-2, 168 CFM	1	EA	\$20,000.00	\$20,000.00	\$9,450.00	\$9,450.00

EVALUATION TABULATION

IFB No. 23-125 (CI2113)

Mechanical Improvements - Mineral Palace Atrium

Selected	Line Item	Base Bid			FRPHI Hydronics, LLC		Rocky Mechanical	
		Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	15	EUH-2	1	EA	\$10,000.00	\$10,000.00	\$1,675.00	\$1,675.00
X	16	Ductwork	600	LBS	\$50.00	\$30,000.00	\$20.8333	\$12,499.98
X	17	Ductliner at Return/Transfer	100	SF	\$20.00	\$2,000.00	\$13.00	\$1,300.00
X	18	14"x14" Supply Registers	2	EA	\$150.00	\$300.00	\$150.00	\$300.00
X	19	24"x24" Exhaust Grille	1	EA	\$150.00	\$150.00	\$150.00	\$150.00
X	20	12"x12" Exhasut Grille	1	EA	\$150.00	\$150.00	\$150.00	\$150.00
X	21	CO2/NO Sensor	1	LS	\$1,500.00	\$1,500.00	\$18,000.00	\$18,000.00
X	22	10-FT StealthRail Collapsible Guardrail	1	EA	\$5,000.00	\$5,000.00	\$9,125.00	\$9,125.00
Piping								
X	23	Condensate Drains	3	EA	\$500.00	\$1,500.00	\$558.3333	\$1,674.9999
X	24	Extend and Reconnect Natural Gas	2	EA	\$4,000.00	\$8,000.00	\$1,287.50	\$2,575.00
Electrical								
X	25	First floor removal ED02	3	EA	\$1,000.00	\$3,000.00	\$266.6667	\$800.0001
X	26	Roof removal ED01	3	EA	\$2,000.00	\$6,000.00	\$600.00	\$1,800.00
X	27	power EUH-2: Disconnect, conduit, wire, terminations	1	EA	\$1,500.00	\$1,500.00	\$950.00	\$950.00
X	28	power IU-1	1	EA	\$2,000.00	\$2,000.00	\$950.00	\$950.00
X	29	Roof penetrations / patching	5	EA	\$1,000.00	\$5,000.00	\$160.00	\$800.00

EVALUATION TABULATION

Public Improvement Invitation for Bid - Mechanical Improvements - Mineral Palace Atrium

Page 3

EVALUATION TABULATION

IFB No. 23-125 (CI2113)

Mechanical Improvements - Mineral Palace Atrium

Selected	Line Item	Base Bid			FRPHI Hydronics, LLC		Rocky Mechanical	
		Description	Quantity	Unit of Measure	Unit Cost	Total	Unit Cost	Total
X	30	OU-1 term, breaker	1	EA	\$1,000.00	\$1,000.00	\$1,800.00	\$1,800.00
X	31	20A circuits 32,34,9, recep WP	47	LF	\$5.00	\$235.00	\$19.15	\$900.05
X	32	30A circuit EF-1	76	LF	\$5.00	\$380.00	\$5.2632	\$400.0032
X	33	EF-1 term, breaker	1	EA	\$850.00	\$850.00	\$800.00	\$800.00
X	34	EF-2 circuits	76	LF	\$5.00	\$380.00	\$5.2632	\$400.0032
X	35	EF-2 term, breaker	1	EA	\$850.00	\$850.00	\$1,200.00	\$1,200.00
X	36	RTU-1 circuit 30A	88	LF	\$5.00	\$440.00	\$4.5454	\$399.9952
X	37	RTU term, recep, breaker	1	EA	\$850.00	\$850.00	\$1,200.00	\$1,200.00
X	38	MAU-1circuits	80	LF	\$5.00	\$400.00	\$5.00	\$400.00
X	39	MAU-1 term, breaker, recep	1	EA	\$850.00	\$850.00	\$1,200.00	\$1,200.00
X	40	Startup Testing, Coordination, PM, GC's	1	EA	\$850.00	\$850.00	\$20,741.92	\$20,741.92
General								
X	41	Patch and Repair Roof	1	LS	\$5,000.00	\$5,000.00	\$4,951.90	\$4,951.90
X	42	Mobilization	1	LS	\$3,000.00	\$3,000.00	\$8,500.00	\$8,500.00
X	43	Traffic Control	1	LS	\$5,000.00	\$5,000.00	\$0.00	\$0.00
Total						\$239,435.00		\$195,602.8516

EVALUATION TABULATION

Public Improvement Invitation for Bid - Mechanical Improvements - Mineral Palace Atrium

Page 4

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	FRPHI Hydronics, LLC	Rocky Mechanical
BID GUARANTEE	Pass	
CONFIRMATION OF UNDERSTANDING AND OFFER	Pass	Pass
NAME, TITLE, AND CONTACT INFORMATION	Pass	Pass
AFFIRMATIVE ACTION PLAN REQUIREMENT:	Pass	Pass
PERFORMANCE OF WORK REQUIREMENT:	Pass	Pass
COLORADO LABOR REQUIREMENT:	Pass	Pass
CERTIFICATION REGARDING BYRD ANTI-LOBBYING	Pass	Pass
SAM.gov REGISTRATION	Pass	Pass
SUBCONTRACTOR LISTING	Pass	Pass
SALES AND/OR USE TAX INFORMATION	Pass	Pass
Has/is this firm or any officer or partner of this firm:		
Convicted of a criminal offense	Pass	Pass
Convicted under state or federal statutes	Pass	Pass
Convicted under state or federal antitrust statutes	Pass	Pass
Failed to perform	Pass	Pass
Suspension or Debarment	Pass	Pass
Unqualified	Pass	Pass
Unlicensed	Pass	Pass
Delinquent	Pass	Pass
Confirmation	Pass	Pass



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: A RESOLUTION AWARDING CONTRACT AMENDMENT NO. 1 IN THE AMOUNT OF \$85,988.59 FOR PROJECT NO. 21-061 (WWAN01), 2021 SMALL MAIN REMOVE AND REPLACE PROJECT, AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE THE SAME

SUMMARY:

This Resolution awards Contract Amendment No. 1 in the amount of \$85,988.59 to K.R. Swerdfeger Construction, LLC. for Project No. 21-061 (WWAN01), 2021 Small Main Remove and Replace Project.

PREVIOUS COUNCIL ACTION:

Resolution 14774 dated December 13, 2021, awarded a construction contract to K.R. Swerdfeger Construction, LLC. for Project No. 21-061 (WWAN01), 2021 Small Main Remove and Replace Project.

BACKGROUND:

The previously awarded contract included removing and replacing of sewer mains taken from the Wastewater Department priority list due to their deteriorated structural conditions.

A portion of this project was to remove and replace the sewer main in W 20th St between West St and N Greenwood St. Once the project started, it was determined that performing work in accordance with the proposed alignment would require removing and replacing the storm line running along the new sewer main as well as additional surface improvements. Moreover, if the existing sewer main were removed and replaced via open cut, it would require extensive surface improvements and landscaping not required with a trenchless repair. The work was performed by trenchless repair using the horizontal directional drilling (HDD) method to avoid the stormwater line and extensive surface improvements, which was the most economical

alternative. The cost of the additional work exceeds the threshold for administrative approval of a change order and a contract amendment is required.

This Resolution approves Contract Amendment No. 1 in the amount of \$85,988.59 and the additional scope of work therein contained.

FINANCIAL IMPLICATIONS:

Resolution 14774 awarded a construction contract in the amount of \$1,552,601.00 and set forth \$310,520.00 for contingencies. A previous change order was issued on March 30, 2023, in the amount of \$305,371.86, leaving a contingency balance of \$5,148.14.

Additional funds in the amount of \$80,840.45 will be paid from Project No. WWAN01, Sewer User Funds.

This amounts to a final cost for the project of \$1,943,961.45.

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

None

RECOMMENDATION:

Approval of Resolution

ATTACHMENTS:

1. 10-23-23 21-061 2021 Small Main Remove and Replace Project Attachment

RESOLUTION NO. 15403

A RESOLUTION AWARDING CONTRACT AMENDMENT NO. 1
IN THE AMOUNT OF \$85,988.59 FOR PROJECT NO. 21-061
(WWAN01), 2021 SMALL MAIN REMOVE AND REPLACE
PROJECT, AND AUTHORIZING THE PURCHASING AGENT TO
EXECUTE THE SAME

WHEREAS, Resolution 14774 awarded a construction contract for Project No. 21-061 to
K.R. Swerdfeger Construction, LLC. Of Pueblo, Colorado; and

WHEREAS, additional work was necessary to complete trenchless repairs and avoid the
stormwater line and extensive surface improvements; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The Contract Amendment No. 1 to the construction contract for Project No. 21-061
(WWAN01), 2021 Small Main Remove and Replace Project, with K.R. Swerdfeger Construction,
LLC., Project 21-061 is hereby approved in the amount of \$85,988.59 to perform additional work
as necessary.

SECTION 2.

Funds are available from the Sewer User Funds and have been budgeted and
appropriated to Project No. 21-061 (WWAN01).

SECTION 3.

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

SECTION 4.

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

SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK

RESOLUTION NO. 14774

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$1,552,601.00 TO K.R. SWERDFEGER CONSTRUCTION, INC. AND SETTING FORTH \$3150,520.00 FOR CONTINGENCIES, FOR PROJECT NO. 21-061 (WWAN01) 2021 SMALL MAIN REMOVE AND REPLACE PROJECT AND AUTHORIZING THE PURCHASING AGENT TO EXECUTE SAME

WHEREAS, competitive bids for the Project No. 21-061 (WWAN01) 2021 Small Main Remove and Replace Project have been received and examined; and

WHEREAS, the proposal of K.R. Swerdfeger Construction, Inc. of Pueblo, Colorado was the lowest of those bids determined to be responsive; NOW, THEREFORE,

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

SECTION 1.

City Council authorizes Project No. 21-061 (WWAN01) 2021 Small Main Remove and Replace Project to be performed, and the contract for said project is hereby awarded to K.R. Swerdfeger Construction, Inc., in the amount of \$1,552,601.00.

SECTION 2.

Funds for Project 21-061 (WWAN01) shall be from the Sewer User Funds.

SECTION 3.

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

SECTION 4.

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

Contingencies and Additional Work.....\$310,520

SECTION 5.

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

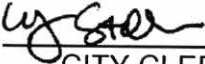
SECTION 6.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED December 13, 2021

BY: Ed Brown
MEMBER OF CITY COUNCIL

APPROVED: Lawrence W. Atencio
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK

**AMENDMENT NO. 1 TO
CONSTRUCTION CONTRACT**

This Amendment No. 1 to a construction contract ("Amendment") is executed to be effective as of October 24, 2023, by and between the City of Pueblo, a Municipal Corporation ("City") and K.R. Swerdfeger Construction, LLC, a Colorado Limited Liability Company ("Contractor").

WHEREAS, City and Contractor entered into that certain construction contract dated December 28, 2021, for Bid 21-061 (WWAN01) 2021 Small Main Remove and Replace Project (the "Construction Agreement"); and

WHEREAS, City and Contractor desire to amend the Construction Agreement subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, City and Contractor hereby agree to the following:

1. The Request for Quotation for additional work attached hereto, and labelled Exhibit 1, is hereby accepted and approved. The Construction Agreement is amended to incorporate all additional work to be performed as contemplated by and at the prices set forth in the Request for Quotation. Contractor shall perform all such work subject to and consistent with all requirements and provisions of the Construction Agreement. Contractor shall perform all acts necessary or required as a result of this Amendment, including, but not limited to, furnishing Performance and Payment Bonds in compliance with Section 5.20 of the Invitation for Bid. The Performance and Payment Bonds shall be in the total amount of \$1,943,961.45, which amount includes the original contract amount of \$1,552,601.00, Contract Change Order No. 1 in the amount of \$305,371.86, and the additional contract amount of \$85,988.59 contemplated by the additional work to be performed under this Amendment. The time for completion of all work under the Construction Agreement including the additional work to be performed under this Amendment shall not be extended.

2. Except as expressly modified by this Amendment, the Construction Agreement shall remain in full force and effect. Except as modified by this Amendment, any obligations to be performed under the Construction Agreement by either party are not waived nor excused in any manner but shall be performed in accordance with the terms and conditions of the Construction Agreement as it existed prior to this Amendment.

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

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

PUEBLO, A MUNICIPAL CORPORATION

K.R. SWERDFEGER CONSTRUCTION, LLC

By _____
Naomi Hedden, Director of Purchasing

By _____
Raymond K. Swerdfeger, Vice President

ATTEST:

Marisa Stoller, City Clerk

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

Alexandria Romero, Director of Finance

APPROVED AS TO FORM:

Robert P. Jagger, City Attorney

EXHIBIT 1
REQUEST FOR QUOTATIONS

BID 21-061 (WWAN01) 2021 SMALL MAIN REMOVE AND REPLACE PROJECT

The undersigned hereby proposes to furnish all labor, materials, tools, equipment, and all utility/transportation services necessary to perform and complete, in an industry acceptable and professional manner, construction in accordance with the plans and specifications as prepared by or for the City of Pueblo, Colorado, for the sums set forth in the following schedule:

Additional Work Item	Quantity	Grand Total for Additional Work
Additional work and materials required to complete project.	Lump Sum	\$85,988.59

(Eighty Five Thousand Nine Hundred Eighty Eight and 59/100-----Dollars)

The undersigned has examined the quantities shown against the plans and specifications and accepts the said quantities as substantially correct, both as to classification and amount, and as correctly listing the work to be completed. The City is not responsible for bidding errors resulting from Contractor's failure to follow this requirement.

K.R. SWERDFEGER CONSTRUCTION, LLC

By: _____
Raymond K. Swerdfeger, Vice President



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Greg Pedroza, Director Aviation

SUBJECT: A RESOLUTION REESTABLISHING THE PUEBLO MEMORIAL AIRPORT ADVISORY COMMITTEE ("COMMITTEE") AND REPEALING RESOLUTION NO. 14575.

SUMMARY:

A Resolution reestablishing the Pueblo Memorial Airport Advisory Committee ("Committee") and repealing Resolution No. 14575.

PREVIOUS COUNCIL ACTION:

Pursuant to Resolution No. 14575 (March 8, 2021), the Airport Advisory Committee was reestablished. Pursuant to Resolution No. 15129 (January 23, 2023), two Council Members were appointed to the Airport Advisory Committee for a one year term expiring January 31, 2024.

BACKGROUND:

When the Airport Advisory Committee was reestablished, it did not provide for City Council representative to the Committee nor corresponding one year term. The proposed resolution addresses this issue, provides for one Council Member representative and makes a corresponding change to the number of representatives that can be recommended by the County of Pueblo from two to one.

FINANCIAL IMPLICATIONS:

Not applicable to this Resolution.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

If City Council does not approve the Resolution, the document authorizing the Committee will remain the same with the conflict noted herein unaddressed.

RECOMMENDATION:

The Aviation Department recommends approval of this Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15404

A RESOLUTION REESTABLISHING THE PUEBLO MEMORIAL AIRPORT ADVISORY COMMITTEE ("COMMITTEE") AND REPEALING RESOLUTION NO. 14575

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

There is hereby reestablished the Pueblo Memorial Airport Advisory Committee (the "Committee") as an advisory committee to the Mayor and City Council. The Committee shall consist of eleven (11) members to serve without compensation. The Mayor shall appoint all members of the Committee, subject to Council confirmation. One member shall be a City Council Member and one member shall be a County Commissioner of Pueblo County, Colorado ("Elected Officer Members"). One (1) member shall be a commercial service operator located at the Pueblo Memorial Airport. The Mayor will appoint the commercial service operator who shall serve on the Committee and may base the decision on input from the consortium of commercial service operators at the Airport.

SECTION 2.

Elected Officer Members shall be appointed for a term of one year commencing in January of any given year. All other committee members shall be appointed for terms of three (3) years provided that such members initially shall be appointed for staggered terms. Such members currently serving on the Committee shall continue to serve through the end of their current applicable terms, and such members' appointments to the Committee are hereby ratified. The Committee shall select its own officers and may adopt bylaws not inconsistent with this Resolution. Where not inconsistent with this Resolution, the Committee's current bylaws shall continue in effect until such time as they may be amended.

SECTION 3.

The functions of the Committee shall be as follows:

- a) To investigate, evaluate, promote, and recommend programs for commercial airlines and general aviation services at Pueblo Memorial Airport.
- b) To create a community awareness program as to the availability and use of air service at Pueblo Memorial Airport.
- c) To make periodic reports with respect to its activities to the Mayor and City Council and the Board of Pueblo County Commissioners.

SECTION 4.

The Committee shall have no regular staff or budget but may request administrative assistance from the Mayor. Subject to funds being appropriated and made available, the Committee may advise the City to engage an air service marketing consultant as an

independent contractor upon such terms and conditions as the Mayor and City Council may approve.

SECTION 5.

Resolution No. 14575 is hereby repealed.

SECTION 6.

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 policies procedures described therein.

SECTION 7.

Upon final passage and approval, this Resolution shall become effective January 31, 2024.

INTRODUCED: October 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: October 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 RATIFYING PACOG'S JOINT APPOINTMENT OF STEVEN CONTRERAS TO THE PUEBLO REGIONAL BUILDING COMMISSION

SUMMARY:

This resolution ratifies the joint City-County appointment of a member to the Pueblo Regional Building Commission to complete a three-year term expiring October 1, 2026.

PREVIOUS COUNCIL ACTION:

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

BACKGROUND:

The County advertised for one joint vacancy on the Pueblo Regional Building Commission due to a term expiration on October 1, 2023. They received three applications for the vacancy. Pueblo County Commissioners and Pueblo City Council voted to appoint Steven Contreras, term of October 1, 2023 – October 1, 2026, at the September 28, 2023, Pueblo Area Council of Governments meeting.

FINANCIAL IMPLICATIONS:

This is a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

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

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO. 15405

A RESOLUTION RATIFYING PACOG'S JOINT APPOINTMENT
OF STEVEN CONTRERAS TO THE PUEBLO REGIONAL
BUILDING COMMISSION

WHEREAS, this Resolution ratifies the joint appointment made at the PACOG meeting on September 28, 2023, by City-County Representatives who were present; NOW, THEREFORE;

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Steven Contreras is hereby appointed to the Pueblo Regional Building Commission to complete a three-year term expiring October 1, 2026.

SECTION 2.

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

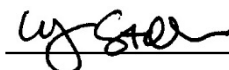
SECTION 3.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 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 RATIFYING PACOG'S JOINT APPOINTMENT OF DAKOTA LAMOUREAUX AND TANNA SCHUT TO THE COMMUNITY SERVICES ADVISORY COMMISSION (CSAC)

SUMMARY:

This resolution ratifies the joint City-County appointments of members to the Community Services Advisory Commission to complete vacant terms.

PREVIOUS COUNCIL ACTION:

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

BACKGROUND:

Currently there are six (6) vacancies on the Community Services Advisory Commission due to term expirations and/or resignations.

The terms for the vacancies are:

- One vacancy will expire April 30, 2024
- Two vacancies will expire April 30, 2025
- One vacancy will expire April 30, 2026
- Two vacancies will expire April 30, 2027

The following two individuals applied to serve on the board:

1. Dakota Lamoureux, term ending April 30, 2025

2. Tanna Schut, term ending April 30, 2026

Pueblo County Commissioners and Pueblo City Council approved the appointment of these two applicants at the September 28, 2023, Pueblo Area Council of Governments meeting.

FINANCIAL IMPLICATIONS:

This is a volunteer committee and members serve without compensation.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAKEHOLDER PROCESS:

N/A

ALTERNATIVES:

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

RECOMMENDATION:

Approval of the Resolution.

ATTACHMENTS:

None

RESOLUTION NO.

A RESOLUTION RATIFYING PACOG'S JOINT APPOINTMENT
OF DAKOTA LAMOUREAUX AND TANNA SCHUT TO THE
COMMUNITY SERVICES ADVISORY COMMISSION (CSAC)

WHEREAS, this Resolution ratifies the joint appointment made at the PACOG meeting on September 28, 2023, by City-County Representatives who were present; NOW, THEREFORE;

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Dakota Lamoureux is hereby appointed to the Community Services Advisory Commission to complete a four-year term expiring April 30, 2025.

SECTION 2.

Tanna Schut is hereby appointed to the Community Services Advisory Commission to complete a four-year term expiring April 30, 2026.

SECTION 3.

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

SECTION 4.

This Resolution shall become effective immediately upon final passage.

INTRODUCED: October 23, 2023

BY: None
MEMBER OF CITY COUNCIL

APPROVED: _____
PRESIDENT OF CITY COUNCIL

ATTESTED BY: _____
CITY CLERK



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Laura Solano, Chief of Staff

SUBJECT: A RESOLUTION ACCEPTING A GRANT AWARD OF \$120,000 FROM THE COLORADO DEPARTMENT OF AGRICULTURE, TO SUPPORT THE PUEBLO FOOD PROJECT STAFF COMMUNITY FOOD PANTRY NO. CI2328

SUMMARY:

Attached is a resolution accepting a grant award of \$120,000.00 for the Pueblo Food Project from the Colorado Department of Agriculture.

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

The Pueblo Food Project Community Pantry has been in use since 2020 resulting in over 1 million dollars has been spent on locally procured and produced food items. Pueblo Food Project has received over 10 grants to support the work of the Community Pantry.

FINANCIAL IMPLICATIONS:

This \$120,000.00 will be received for the stated purpose without any in-kind match on the part of the City.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Resolution.

STAKEHOLDER PROCESS:

Not applicable to this Resolution.

ALTERNATIVES:

Not accept the donation and return the funds.

RECOMMENDATION:

Approval of Resolution.

ATTACHMENTS:

1. 10-23-23 Dept of Ag PFP Food Pantry Grant

RESOLUTION NO. 15406

A RESOLUTION ACCEPTING A GRANT AWARD OF \$120,000 FROM THE COLORADO DEPARTMENT OF AGRICULTURE, TO SUPPORT THE PUEBLO FOOD PROJECT STAFF COMMUNITY FOOD PANTRY NO. CI2328

WHEREAS, a grant award was given by The Colorado Department of Agriculture in the amount of \$120,000.00, intended to support the Pueblo Food Project Community Pantry; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

City Council authorizes the acceptance of \$120,000.00 from The Colorado Department of Agriculture to the City of Pueblo - Pueblo Food Project.

SECTION 2.

The funds will be used for the Pueblo Food Project Community Pantry.

SECTION 3.

Funds for this donation will be placed in Contribution Project No. CI2328.

SECTION 4.

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

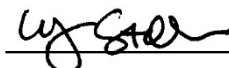
SECTION 5.

This Resolution shall become effective immediately upon passage and approval.

INTRODUCED: October 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 



STATE OF COLORADO
Department of Human Services

Page 1 of 1

ORDER		*****IMPORTANT*****				
Number:	POGG1,IHGA,202400002362	The order number and line number must appear on all invoices, packing slips, cartons, and correspondence.				
Date:	9/19/23	BILL TO				
Description:	City of Pueblo LFPA	ACCOUNTING 1575 SHERMAN STREET, 6TH FLOOR DENVER, CO 80203-1714				
Effective Date:	10/01/23					
Expiration Date:	03/31/25					
BUYER		SHIP TO				
Buyer:	JIAMIR MIRABAL	FOOD DISTRIBUTION PROGRAM				
Email:	jiamir.mirabal@state.co.us	1575 SHERMAN STREET 3RD FLOOR				
VENDOR		DENVER, CO 80203-1714				
CITY OF PUEBLO Pueblo Food Project 1 City Hall Place Pueblo, CO 81003		SHIPPING INSTRUCTIONS				
Contact:	Luann Martinez	Delivery/Install Date: -				
Phone:	719-568-7728	FOB:				
VENDOR INSTRUCTIONS						
EXTENDED DESCRIPTION						
City of Pueblo with The Local Food Purchase Assistance (LFPA) to purchase and distribute food to underserved communities per attached documents.						
Reference RFA IHGA 2023*368.						
Line Item	Commodity/Item Code	UOM	QTY	Unit Cost	Total Cost	MSDS Req.
1	96240		0	0.00	\$120,000.00	☐
Description: LFPA Plus Contract						
Service From: 10/01/23			Service To: 03/31/25			
TERMS AND CONDITIONS						
https://www.colorado.gov/osc/purchase-order-terms-conditions						
DOCUMENT TOTAL = \$120,000.00						



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Eva Cosyleon, MPO Manager

SUBJECT: AN ORDINANCE ESTABLISHING THE 2024-2025 PUEBLO URBAN TRANSPORTATION PLANNING PROJECT AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$932,107 IN 2024 FOR SAID PROJECT

SUMMARY:

The proposed Ordinance would establish FY2024-2025 Urban Transportation Planning Project, and budget and appropriate \$932,107 in FY2024 for the Project comprised of \$373,476 in FY2024 Federal Highway Administration Consolidated Planning Grant (CPG) funds and estimated carryover funds from FY22-23 FHWA CPG Funds in the amount of \$558,631 that are identified for expenditure in the 2024 Pueblo Area Council of Governments (PACOG) Metropolitan Planning Organization (MPO) budget approved by the PACOG Board on September 28, 2023, Resolution No. 2023-013.

PREVIOUS COUNCIL ACTION:

The establishment of the Project and budgeting of funds has been approved by the City Council on an annual basis once the purchase order is issued by the State of Colorado to PACOG.

BACKGROUND:

The PACOG board approved a Consolidated Planning Grant contract for FY2024-FY2025 with the Colorado Department of Transportation (CDOT) at their October 26, 2023 meeting. The contract provides funds in the amount of \$373,476 along with estimated carryover funds from the FY2022-23 CPG contract in the amount of \$558,631 that will be available for eligible reimbursable expenses. The carryover funds include a onetime allocation of \$300,000 for the inclusion of a greenhouse gas component within the 2050 PACOG Long Range Transportation Plan. The City and PACOG annually enter into a Delegation Agreement that authorizes the City to complete the transportation planning tasks on behalf of PACOG and be reimbursed for eligible expenses to complete the tasks identified in the FY 2024-2025 Unified Planning

Work Program (UPWP) adopted by PACOG Resolution 23-013 on September 28,2023. This Ordinance budgets and appropriates the 2024-2025 Urban Transportation Planning Project, and budgets and appropriates funds in the amount of \$932,107 allocated for the City to complete urban transportation services in compliance with federal and state requirements for the use of CPG grant funds.

FINANCIAL IMPLICATIONS:

Funds up to the amount of \$932,107 will be reimbursed to the City by CDOT which includes \$373,476 from the FY 2024-FY2025 FHWA CPG Funds and remaining federal and local carryover funds from previous years totaling an estimated \$558,631. It is estimated that approximately \$2,168 in staff time from the Finance and Legal departments will be spent on the Project.

BOARD/COMMISSION RECOMMENDATION:

The FY 2024-FY 2025 funds are included in the FY2024-FY 2025 PACOG MPO Unified Planning Work Program budget, and the Urban Planning Work Program that have been previously approved by the PACOG Board on September 28,2023.

STAKEHOLDER PROCESS:

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

ALTERNATIVES:

None.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. CDOT P.O. & 24-25 PACOG RESO 23-013

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE 2024-2025 PUEBLO
URBAN TRANSPORTATION PLANNING PROJECT AND
BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT
OF \$932,107 IN 2024 FOR SAID PROJECT

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

SECTION 1.

The FY2024-2025 Pueblo Urban Transportation Planning Project is hereby established.

SECTION 2.

Funds in the amount of \$932,107 comprised of \$373,476 in FY2024 FHWA CPG Funds and estimated carryover funds from FY2022-23 FHWA CPG in the amount of \$558,631 are hereby budgeted and appropriated into the FY2024-25 Urban Transportation Planning 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 date of final action by the Mayor and City Council:

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

State Agency Department of Transportation	Agreement Number/PO Number 24-HTD-ZL-00100/491003362
Subrecipient PUEBLO AREA COUNCIL OF GOVERNMENTS	Agreement Performance Beginning Date The Effective Date
Subaward Agreement Amount Federal Funds Maximum Amount (82.79%) \$309,201.00 Local Funds Local Match Amount \$64,275.00 (17.21%) \$373,476.00 Agreement Total	Initial Agreement Expiration Date December 31, 2025
	Fund Expenditure End Date December 31, 2025
	Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117, 43-1-701, 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149.
Agreement Purpose In accordance with 23 USC §104(f) and 49 USC §5303, the purpose of this Grant is for CDOT to disburse metropolitan transportation planning funds to Metropolitan Planning Organizations (“MPO”) for use within their respective metropolitan planning areas based on a “Continuing, Cooperative and Comprehensive Transportation Planning” process in the State of Colorado as defined by the US Census Bureau for Consolidated Planning Grant (“CPG”) purpose.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: 1. Exhibit A – Statement of Work and Budget. 2. Exhibit B – Sample Option Letter. 3. Exhibit C – Federal Provisions. 4. Exhibit D – Additional Program Requirements. 5. Exhibit E – Title VI-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 C – Federal Provisions, Exhibit D – Additional Program Requirements, and Exhibit E – Title VI-Civil Rights. 2. Colorado Special Provisions in §17 of the main body of this Agreement. 3. The provisions of the other sections of the main body of this Agreement. 4. Exhibit A – Statement of Work and Budget. 5. Executed Option Letters (if any).	
Principal Representatives For the State: Kathleen Collins Division of Transportation Development Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 kathleen.collins@state.co.us For Subrecipient: John Adams PUEBLO AREA COUNCIL OF GOVERNMENTS 229 WEST 12TH STREET PUEBLO, CO 81003-2810 JohnAdams@pueblo.us	

SIGNATURE PAGE**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

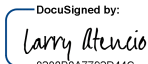
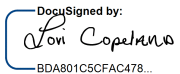
SUBRECIPIENT PUEBLO AREA COUNCIL OF GOVERNMENTS By:  Name: <u>Larry Atencio</u> Title: <u>Chairman-PACOG - PUEBLO</u> Date: <u>10/4/2023</u>	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By:  Name: <u>Keith Stefanik</u> Title: <u>Chief Engineer</u> Date: <u>10/4/2023</u>
2nd State or Subrecipient Signature if needed By: _____ Name: _____ Title: _____ Date: _____	LEGAL REVIEW Philip J. Weiser, Attorney General <u>N/A</u> By: Assistant Attorney General Date: _____
In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD  By: Department of Transportation Effective Date: <u>10/4/2023</u>	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Fund Expenditure End Date.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for Breach of Agreement by Subrecipient, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Subrecipient 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, Subrecipient 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 Subrecipient an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Subrecipient for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Subrecipient which are directly attributable to the uncompleted portion of Subrecipient's obligations, provided that the sum of any and all reimbursement shall not exceed the Subaward Maximum Amount payable to Subrecipient hereunder.

F. Subrecipient's Termination Under Federal Requirements

Subrecipient may request termination of this Agreement by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Agreement is terminated in this manner, then Subrecipient shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this subaward agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Subrecipient is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit A.
- E. **"Business Day"** means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **"Deliverable"** means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Subrecipient's Work that is intended to be delivered by Subrecipient.

- H. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- I. **“End of Term Extension”** means the time period defined in **§2.D**.
- J. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- K. **“Extension Term”** means the time period defined in **§2.C**.
- L. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program.
- M. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. Federal Highway Administration (FHWA) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- N. **“FHWA”** means Federal Highway Administration.
- O. **“Goods”** means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.
- P. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- Q. **“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.
- R. **“Initial Term”** means the time period defined in **§2.B**.
- S. **“Matching Funds”** (Local Funds, or Local Match) means the funds provided by Subrecipient as a match required to receive the Grant Funds and includes in-kind contribution.
- T. **“Party”** means the State or Subrecipient, and “Parties” means both the State and Subrecipient.
- U. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- V. **“Recipient”** means the State agency shown on the Signature and Cover Pages of this Agreement, for the purposes of this Federal Award.
- W. **“Services”** means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- X. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- Y. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- Z. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- AA. **“State Records”** means any and all State data, information, and records, regardless of physical form.
- BB. **“Subaward Maximum Amount”** means an amount equal to the total of Grant Funds for this Agreement.
- CC. **“Subcontractor”** means any third party engaged by Subrecipient to aid in performance of the Work. “Subcontractor” also includes sub-recipients of Grant Funds.
- DD. **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- EE. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- FF. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- GG. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK AND BUDGET

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

5. PAYMENTS TO SUBRECIPIENT

A. Subaward Maximum Amount

Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Subrecipient any amount under this Agreement that exceeds the Subaward Maximum Amount shown on the Cover Page of this Agreement as “Federal Funds Maximum Amount”.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. Any advance payment allowed under this Agreement, shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement and its Exhibits. Eligibility and submission for advance payment is subject to State approval and must include approved documentation in the form and manner set forth and approved by the State.
- d. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
- e. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Subrecipient shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days' interest to be paid and the interest rate.

iii. Payment Disputes

If Subrecipient disputes any calculation, determination or amount of any payment, Subrecipient shall notify the State in writing of its dispute within 30 days following the earlier to occur of Subrecipient's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Subrecipient and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination.

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Subrecipient beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Subrecipient shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

Subrecipient shall provide Matching Funds as provided in Exhibit A. Subrecipient shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subrecipient and paid into Subrecipient's treasury or bank account. Subrecipient represents to the State that the amount designated "Subrecipient's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies.

D. Reimbursement of Subrecipient Costs

- i. The State shall reimburse Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of §5, this Agreement and Exhibit A. However, any costs incurred by Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Subrecipient for costs or expenses incurred or performance by the Subrecipient prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the

Subrecipient. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement.

- ii. The State shall reimburse Subrecipient's allowable costs, not exceeding the Subaward Maximum Amount shown on the Cover Page of this Agreement and on Exhibit A for all allowable costs described in this Agreement and shown in Exhibit A. Except as provided in §5.E., Subrecipient may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Subrecipient provides notice to the State of the change, the change does not modify the Subaward Maximum Amount or the Subaward Maximum Amount for any federal fiscal year or State Fiscal Year, and the change does not modify any requirements of the Work.
- iii. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:
 - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
 - b. Equal to the actual net cost to Subrecipient (i.e. the price paid minus any items of value received by Subrecipient that reduce the cost actually incurred).
- iv. Subrecipient's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Subrecipient shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

E. Use of Funds, Budget Adjustments

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. Subrecipient may adjust budgeted expenditure amounts up to 10% between activities of said Budget without approval of the State. Budget adjustments to activities exceeding 10% but less than 24.99% must be submitted in advance of actual cost and receive written State approval, which approval may be transmitted informally by email or such other means that does not rise to the level of an amendment to this Agreement. A budget revision of **Exhibit A** will be issued by the State with any such adjustment. Adjustments in excess of 24.99% for any activity shall be authorized by the State in an amendment to this Agreement which may also require an amendment to **Exhibit A**. Budget adjustments shall not increase the State's total consideration beyond the Subaward Maximum Amount without an amendment to this Agreement.

F. Close-Out

Subrecipient shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement. To complete close-out, Subrecipient shall submit to the State all Deliverables (including documentation) as defined in this Agreement and Subrecipient's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement due to Subrecipient's failure to submit required documentation, then Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to any other Exhibit, for any Agreement having a term longer than three months, Subrecipient shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement.

C. Performance and Final Status

Subrecipient shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. SUBRECIPIENT RECORDS**A. Maintenance**

Subrecipient shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work and the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder (collectively, the "Subrecipient Records"). Subrecipient shall maintain such records for a period of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively (the "Record Retention Period"). If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Subrecipient in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Subrecipient shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by the State or that governmental entity. Subrecipient shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Subrecipient and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Work.

D. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION - STATE RECORDS**A. Confidentiality**

Subrecipient shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subrecipient shall not, without prior written approval of

the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Subrecipient shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Subrecipient shall immediately forward any request or demand for State Records to the State's Principal Representative identified on the Cover Page of this Agreement.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Subrecipient becomes aware of any Incident, Subrecipient shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Subrecipient can establish that Subrecipient, and its agents, employees, and Subcontractors are not the cause or source of the Incident, Subrecipient shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subrecipient shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Subrecipient shall make all modifications as directed by the State. If Subrecipient cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Subrecipient shall reimburse the State for the reasonable costs thereof. The State may, in its sole discretion and at Subrecipient's sole expense, require Subrecipient to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Subrecipient shall provide the State with the results of such audit and evidence of Subrecipient's planned remediation in response to any negative findings.

E. Data Protection and Handling

Subrecipient shall ensure that all State Records and Work Product in the possession of Subrecipient or any Subcontractors are protected and handled in accordance with the requirements of this Agreement, including the requirements of any Exhibits hereto, at all times. As used in this section, the protections afforded Work Product only apply to Work Product that requires confidential treatment.

F. Safeguarding PII

If Subrecipient or any of its Subcontractors will or may receive PII under this Agreement, Subrecipient shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Subrecipient shall be a "Third-Party Service Provider" as defined in §24-73-

103(1)(i), C.R.S., and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

D. Subrecipient acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Subrecipient further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Agreement. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Subrecipient employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Subrecipient shall provide a disclosure statement as described in §9.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Agreement. Subrecipient may also be subject to such penalties as are allowed by law.

10. INSURANCE

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

E. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary over any insurance or self-insurance program carried by Subrecipient or the State.

F. Cancellation

All insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient and Subrecipient shall forward such notice to the State in accordance with §14 within seven days of Subrecipient's receipt of such notice.

G. Subrogation Waiver

All insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

If Subrecipient is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Subrecipient shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Subrecipient shall ensure that the Subcontractor maintain at all times during the terms of this Subrecipient, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

I. Certificates

For each insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement prior to the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement prior to the Effective Date, except that, if Subrecipient's subcontract is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Subrecipient's execution of the subcontract. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Agreement, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §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 Subrecipient is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§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 of Agreement

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State **(i)** secure that right to use such Work for the State and Subrecipient; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in **§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 Subrecipient for resolution.

B. Resolution of Controversies

If the initial resolution described in **§13.A** fails to resolve the dispute within 10 Business Days, Subrecipient shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S., for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the "Resolution Statutes"), except that if Subrecipient wishes to challenge any decision rendered by the Procurement Official, Subrecipient's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Subrecipient pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES and REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**A. Work Product**

Subrecipient agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Awarding Agency's and State's purposes. All Work Product shall be delivered to the State by Subrecipient upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Subrecipient are the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Subrecipient Property"). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. GENERAL PROVISIONS**A. Assignment**

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

B. Subcontracts

Subrecipient shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subaward would also be considered a Subrecipient, then the subcontract or subaward entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in **§16.A.**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

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

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

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

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

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

M. Survival of Certain Agreement Terms

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

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Subrecipient. Subrecipient shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Subrecipient may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§16.A.**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

- i. Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.
- ii. Subrecipient, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date and maintain at all times during the term of this Agreement, at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

T. Indemnification**i. General Indemnification**

Subrecipient shall indemnify, save, and hold harmless the State, its employees, agents and assignees (collectively, 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 Subrecipient, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Subrecipient in violation of §8 may be cause for legal action by third parties against Subrecipient, the State, or their respective agents. Subrecipient 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 Subrecipient, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Subrecipient 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. Federal Provisions

Subrecipient shall comply with all applicable requirements of Exhibits C, D, and E at all times during the term of this Agreement.

17. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all agreements except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

Subrecipient shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subrecipient nor any agent or employee of Subrecipient shall be deemed to be an agent or employee of the State. Subrecipient shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Subrecipient and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Subrecipient or any of its agents or employees. Subrecipient shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Subrecipient shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Subrecipient shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold Subrecipient harmless; requires the State to agree to binding arbitration; limits Subrecipient's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subrecipient hereby certifies and warrants that, during the term of this Agreement and any extensions, Subrecipient has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Subrecipient is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Subrecipient has no interest and shall not

acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Subrecipient's services and Subrecipient shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Subrecipient in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Subrecipient by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Subrecipient, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Subrecipient certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Subrecipient shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Subrecipient that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Subrecipient **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Agreement is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Subrecipient has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Subrecipient participates in the Department program, Subrecipient shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Subrecipient has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Subrecipient fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Subrecipient shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Subrecipient, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Subrecipient **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S., prior to the Effective Date of this Agreement.

EXHIBIT A, STATEMENT OF WORK AND BUDGET

FY2024 and FY 2025 Consolidated Planning Grant
Scope of Work
Pueblo Area Council of Governments (PACOG)

October 2023

SAM UEI:D57UDNFVRBL5, CFDA #: 20.205, Federal Award Date: 9/6/23

Summary of FY 2024 and FY 2025 Contracted Consolidated Planning Grant (CPG)

Funds Source	Federal PL Funds	Local Match Cash	Total Funds
FY2024-FY2025 CPG Contract			
FY 2024 CPG	\$309,201	\$64,275	\$373,476
FY 2022-2023 CPG Contract Carryover	Expected in late 2023/early 2024		
FY 2025 CPG	Expected in October 2024		
Total Contracted Funds	\$309,201	\$64,275	\$373,476

2.5% of the funds are required to be spent on Complete Streets activities, unless MPO receives federal approval to opt-out per IIJA Section 11206.

FY2024-2025 Work Objectives

The work objectives presented below are effective FFY2024-2025, and are detailed in the FY 2024-2025 Unified Planning Work Program (UPWP) with information by year and a completion schedule.

INTRODUCTION

Pueblo Area Council of Governments Consolidated Planning Grant Scope of Work

FFY 2024 - FFY 2025

Prepared By:

City of Pueblo Urban Transportation Planning Division, Metropolitan Planning Organization
The Consolidated Planning Grant (CPG) Scope of Work for FFY-2024 is based on the PACOG adopted FY 2022-2023 Unified Planning Work Program (UPWP). An updated FY 2024-2025 UPWP will reflect FY 2024 and FY 2025 that will be adopted in August 2023.

Organization, Management & Funding

The general objectives of the FFY 2024-2025 UPWP are to:

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

WORK ELEMENT 2410 Program Administration & Coordination

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

2411 - AGREEMENTS AND BYLAWS

Activities:

- Complete and execute planning partner memorandum of understandings, as needed, to implement the transportation planning process.
- Assist in updating bylaws as necessary resulting in changes as approved by the PACOG Board identified in the Reorganization Study conducted in FY 2016/17.
- Develop & adopt bylaws for Transportation Advisory Commission, including possible restructuring the Transportation Advisory Commission (TAC) to include Chair, Vice-Chair, Vice-Co-Chair to structure.
- Consolidate and update TAC Membership (freight, rail, other community partners such as Colorado State University Pueblo to possibly be added)
- Assist in maintaining required materials as necessary. (i.e. Agendas, Minutes, Financial Records, etc.).

2412 - UNIFIED PLANNING WORK PROGRAM

Activities:

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

2413 - BUDGET AND FINANCIAL MANAGEMENT

Activities:

- CDOT monthly Metropolitan Transportation Planning reimbursements.
- Prepare MPO Budget for PACOG Board adoption.
- Prepare Sub-Delegation Budget and Appropriation Ordinances for City of Pueblo

- Prepare for and participate in PACOG audit(s) if required under Single Audit Requirements.

2414 - STAFF AND PROFESSIONAL DEVELOPMENT

Activities:

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

2415 - PUBLIC INVOLVEMENT ACTIVITIES

Products/Activities:

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

2416 – EQUITY AND JUSTICE 40

Products/Activities:

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

- When developing transit-oriented development, consider equitable and sustainable practices.

2417 – MPO COMMITTEE MEETINGS

Activities:

- 10-12 PACOG Board meetings annually.
- 10-12 TAC meetings annually.
- Participate in local committee's (i.e., ADA, PACE, Pueblo Department of Public Health and Environment)

2418 – COORDINATION WITH PUEBLO TRANSIT

Activities:

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

2419- MISCELLANEOUS ADMINISTRATIVE ACTIVITIES

Activities:

- Perform the routine administrative, personnel, contractual and management activities, and tasks necessary to maintain and support a viable long-range transportation planning process.
- Procure, upgrade and/or maintain computer systems, software and equipment required to carry out an efficient and effective transportation planning process.
- In conjunction with the amendment and update of the FY2023-2027 Transportation Improvement Program (TIP), MPO Annual Certification of the Planning Process (23 CFR 450.334 & CFR 613.100).
- Annual Review with FHWA and FTA.

WORK ELEMENT 2420 – DATA COLLECTION AND MANAGEMENT

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

2421 – Traffic Counting and Data Management

Activities:

- Obtain, update, convert, refine, and maintain traffic count data for the Pueblo area. This includes national highway system, state highway system, county, and local roadways.
- Continue traffic counting program to support transportation modeling and impacts on urban or non-urban areas.
- Continue bike/pedestrian counting on trails within PACOG area.
- Develop a GIS layer to include count data gathered by MPO, County, and any third party.
- Transfer MS2 data to new GIS layer

- Develop and distribute 2023 Traffic Flow Maps (On-call Consultant)
- Provide traffic count reports to CDOT in a format compatible with the national HPMS Database.

2422-Traffic Crash Monitoring Program

Activities:

- Purchase Diexsys Vision Zero Suite Software
- Update, maintain, review, and verify crash database.
- Analyze traffic and collision data for trends.
- Prepare projections and reports for planning uses.
- Publish Crash Summary Data annually with 5-years historical crash data.
- Prepare Annual top 25 high crash locations.
- Improve geo-referencing process locations of crashes.
- Develop summary reports and maps with crash data to assist planning partners in identifying potential safety improvement projects.

2423-MPO Database Management

Activities:

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

2424 – POPULATION, LAND USE, AND GIS DATA COLLECTION

Activities:

- Update MPO Databases and GIS layers as information becomes available.
- Obtain, verify, and review Pueblo Transit System's data for the Pueblo area.
- Ensure PACOG ArcGIS maps are accessible to partner agencies and public.
- Obtain, update, convert, refine, and maintain non-motorized transportation systems data for the Pueblo area. This includes bike routes, regional trail systems, designated mountain bike trails, and future bike and trail planning.
- Update local transportation system data to reflect changes to the future transportation network as modified by local or county government actions.
- Convert graphics from various planning documents, utilizing GIS software, to analyze the consistency between the LRTP and proposed developments.
- In coordination with CDOT, review the existing Functional Classifications and update as necessary based on the new 2020 census data.

WORK ELEMENT 2430 – TRANSPORTATION PLANS, PERFORMANCE MEASURES, GREEN HOUSE GAS REDUCTION, ACTIVE TRANSPORTATION, AND SCENARIO PLANNING

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

2431 – Metropolitan Transportation Plan

Activities:

- 2045 LRTP Implementation.
- Develop 2050 LRTP framework and schedule.
- Ongoing updating and maintenance of a 6-year capital plan of projects for inclusion into the TIP.
- Monitor the approved 2045 LRTP and make amendments where significant changes have been identified.
- Coordinate with CDOT's implementation of GHG Emissions, and complete GHG Transportation Report.
- Review local plans for consistency with the LRTP.

2432 – Implementation of Performance Measures

Activities:

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

2433 – Travel Demand Model

Activities:

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

2434 – Transportation Improvement Program

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

Activities:

- Prepare, coordinate, and distribute required administrative modifications and amendments to the adopted TIP following a review of compliance/progress verification, along with submittal of corresponding request for inclusion in the State Transportation Improvement Program (STIP).
- Produce and distribute an annual list of projects obligated the prior FFY within.

- Plan, organize and facilitate the updating of the TIP on an annual basis and apply fiscal constraint to a proposed projects list. Validate or modify the list of programmed projects to be executed in subsequent years of the adopted TIP.
- In conjunction with the amendment and update of the FY2023-2027 Transportation Improvement Program (TIP), submit MPO Annual Certification of the Planning Process (23 CFR 450.334 & CFR 613.100).
- Update and post project amendments to "TIP Tracker" on pacog.net.
- In accordance with state and federal requirements and policies, analyze the potential environmental and environmental justice impacts of proposed projects.

2435 – Transition to a Clean Energy, resilient future

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

2436 – Complete Streets

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

WORK ELEMENT 2440 ON-CALL ASSISTANCE, REGIONAL AND STATEWIDE PLANNING

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

2441 – On-Call Transportation Technical Assistance Consultant

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

- Aid on plans, reports, and/or studies that require computer simulation/visualization of corridors, projects, systems, or road networks as needed.

- Provide Area-Wide Local Roadway Safety Plan
- Provide traffic model as needed and requested by MPO
 - Run project scenario based on projects identified in the 2045 LRTP and as requested by MPO staff.
 - Update Travel demand.
 - Development of the 2050 regional population forecast.
 - Update local transportation system data to reflect change to the future transportation network as modified by local or county government actions.
 - Review Functional Classification and update as necessary based on the new 2020 census data.
 - Update TAZ with 2020 census data and re-configure traffic model
 - Collaborate with CDOT Consultant and MPO to establish baseline and mitigation plan (if needed)
 - Facilitate MPO on ongoing administrative process for establishing, tracking, and verifying mitigation & performance measures.
 - Assist MPO and CDOT with Green House Gas Mitigation Plan & Carbon Reduction Plan
- Provide updated GIS data (shape files) to MPO such as:
 - New roadways
 - Proposed roadways
 - New trails/bike routes/bike lanes
 - Roadway classifications
- Provide Pueblo Transit
 - Route expansion studies and analysis
 - Increased Ridership modeling and analysis
 - National Transit Database data collection for federal reporting.
 - Route consolidation and expansion planning

2442 – Regional, Statewide, and Federal Planning Participation

Activities:

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

2443 – Planning and environmental Linkages

Activities:

- Implement planning and environmental linkages (PEL) as part of the transportation planning and environmental review process.
- Develop partnerships with resource agency staff.
- Provide PEL resources and educational training to local jurisdictions.
- Create PEL methodologies for transportation planning in PACOG region.

2444– Special projects and other Transportation Mode Planning

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

Activities:

- Assist and support Pueblo Transit with Areas of Persistent Poverty Program, an FTA-D-AOPP-10 grant, that improves transit services in areas experiencing long-term economic distress, supports coordinated human service transportation planning to improve transit service, or provide new services, including paratransit.
 - Objective of the project is to obtain a better planned route for use by community on the East Side for a more efficient transit route to better serve the needs of this community.
 - Work anticipated to be completed from August 1, 2023 - August 2024

Cost and funding for this project is: \$188,000 Federal Share and \$18,000 in local match from Transit Capital Improvement Project 2201.

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Transportation	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Subrecipient Insert Subrecipient's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract
Subaward Agreement Amount Federal Funds Maximum Amount (%) \$0.00 Local Funds Local Match Amount (%) \$0.00 Agreement Total \$0.00	Option Agreement Number Insert CMS number or Other Contract Number of this Option Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year Current Agreement Expiration Date Month, Day, Year

1. **OPTIONS:**
 - A. Option to extend for an Extension Term or End of Term Extension.
2. **REQUIRED PROVISIONS:**
 - A. **For use with Option 1(A):** In accordance with Section(s) 2.B/2.C of the Original Agreement referenced above, the State hereby exercises its option for an additional term/end of term extension, beginning Insert start date and ending on the current agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
 - B. **For use with Options 1(A):** The Subaward Agreement Amount table on the Agreement's Cover Page is hereby deleted and replaced with the Current Subaward Agreement Amount table shown above.
3. **OPTION EFFECTIVE DATE:**
 - A. The effective date of this Option Letter is upon approval of the State Controller or ____, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: _____ Name: _____ Title: _____ Date: _____	In accordance with §24-30-202, C.R.S., this Option Letter is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Option Letter Effective Date: _____
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EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS

- 1.1. The Contract to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract, or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Federal Provisions shall control.

2. DEFINITIONS

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.1.1. Awards may be in the form of:
- 2.1.1.1.1. Grants;
- 2.1.1.1.2. Contracts;
- 2.1.1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.4. Loans;
- 2.1.1.1.5. Loan Guarantees;
- 2.1.1.1.6. Subsidies;
- 2.1.1.1.7. Insurance;
- 2.1.1.1.8. Food commodities;
- 2.1.1.1.9. Direct appropriations;
- 2.1.1.1.10. Assessed and voluntary contributions; and
- 2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 2.1.1.2. Award **does not** include:
- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.2.3. Any award classified for security purposes; or
- 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Contract” means the Agreement or Subaward Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Contract or Subaward Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes Subrecipients and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

- 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 2.1.5.2. A foreign public entity;
- 2.1.5.3. A domestic or foreign non-profit organization;
- 2.1.5.4. A domestic or foreign for-profit organization; and
- 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Sub award to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subrecipient. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the sub recipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the sub recipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

- 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.

5. TOTAL COMPENSATION

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
- 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
- 5.1.2. In the preceding fiscal year, Contractor received:
- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
- 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
- 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit

are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS

- 8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Sub award was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;
 - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:
 - 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Sub recipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.
- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”
- 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subawards of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

13. CERTIFICATIONS

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed, or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT D, ADDITIONAL PROGRAM REQUIREMENTS**A. Work**

Per 23 CFR 420.111, SUBRECIPIENT shall complete the Work and other obligations as described herein and Exhibit A. Work performed prior to the Effective Date or after the Termination date shall not be considered part of the Work. SUBRECIPIENT shall take all reasonable steps to carry out all activities described and identified in the Statement of Work. The Statement shall include an estimation of anticipated benefits from each program submitted, a Budget, the activity purpose, objectives, major tasks, timeline of expected completion, and an Evaluation process to determine the success of each activity stated in Exhibit A. In addition, SUBRECIPIENT shall be responsible for:

- 1.) The initial design and implementation of its congestion mitigation and air quality program as outlined in the current TIP;
- 2.) Monitoring and Evaluating the program effectiveness;
- 3.) The promotion of congestion mitigation and air quality program(s) by employers;
- 4.) Submittal of an annual report to CDOT; and,

B. Notice

SUBRECIPIENT shall not commence Work until the date specified by a written notice, which may be electronic, and shall complete the Work within the period specified in the Agreement unless the period or terms thereof are extended according to this Agreement.

C. Staff/Consultant Services

SUBRECIPIENT shall be responsible to select staff/consultant services in compliance with all applicable federal procurement requirements including 23 CFR 172 and 2 CFR 200. Any Request for Proposal (RFP) used by SUBRECIPIENT to secure consultant Services must be reviewed by CDOT before SUBRECIPIENT releases the RFP. CDOT shall have 15 calendar days from the date of receiving the RFP in which to return comments. Responses to CDOT's comments will be provided by SUBRECIPIENT within 15 calendar days of receipt of the comments. SUBRECIPIENT shall notify CDOT in writing before executing any Agreement for consultant Services which utilizes Grant funding.

D. Statement of Work and Budget Amendment

SUBRECIPIENT shall amend Exhibit A in accordance with the terms of this Agreement, when:

- 1.) Reallocating funds between budget line items in Exhibit A, as permitted pursuant to §5(E); and
- 2.) Adding or deleting activities listed in Exhibit A to reflect authorized budget line item reallocations permitted pursuant to §5(E).

If any changes to Exhibit A (i) require an increase or decrease to the maximum amount of this Subaward, (ii) change the term of the Agreement, or (iii) exceed the 24.99% threshold in §5(E) for any activity, the Parties must amend this Agreement prior to such change being effective.

E. Limited Availability of Funds

The amount of Federal Funds available to pay for the Work performed by Subrecipient in any one year is limited to the amount of the unused portion of the allocated funds, made available through 23 USC 104 (b)(3) and (f) as amended, and 49 USC 5303 as amended.

F. Additional Funds Use

Federal Funds shall be used only to reimburse Subrecipient for eligible allowable costs incurred and Subrecipient shall be solely responsible for all costs incurred that are either not allowable or which exceed the funds available in the Agreement as identified herein and/or in the Exhibit A.

G. Billing, Reimbursement, and Allowable Costs**1.) Reimbursement**

The Parties hereto expressly recognize that the Subrecipient is to be paid, reimbursed, or otherwise compensated with the funds provided to CDOT by the U.S. Department of Transportation for the purpose of completing the Work and therefore, the Subrecipient expressly understands and agrees that all its rights, demands, and claims to compensation arising under this Agreement are contingent upon receipt of such funds by CDOT.

2.) Allowable Costs

CDOT shall not be obligated to use State funds under this Agreement. CDOT's use of Federal Funds shall be to reimburse Subrecipient for allowable costs incurred by Subrecipient, as defined in this Agreement. Subrecipient shall be solely responsible for all costs incurred which are not allowable or which exceed the funds available in the Agreement.

H. Allowable and Indirect Costs

Allowable and indirect costs may include but are not limited to those listed in 2 CFR 200, or State Fiscal Rule 2-7: "Official Functions and Training Functions," whichever may apply. However, such costs shall be limited to those costs determined by the CDOT as necessary to directly carry out the Work for this Agreement. In determining the amount of allowable costs, CDOT will exclude:

- a) Any costs incurred by the Subrecipient before the execution of the Agreement.
- b) Any costs incurred by the Subrecipient that are not included in **Exhibit A**.
- c) Any cost incurred by the Subrecipient after the termination date of this Agreement as amended.
- d) Memberships, subscriptions, and professional activities, which do not meet the following requirements:
 - (1). Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the federal-awarding agency;
 - (2). Costs of subscriptions to business, professional, and technical periodicals;
 - (3). Costs of meetings, conferences, and conventions where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs; or
 - (4). Costs of memberships in business, technical, and professional organizations. However, costs of membership in organizations substantially engaged in lobbying are not allowed and thus unallowable.
- e) Official Function Expenditures (as defined by Rule 2-7 of the Colorado State Fiscal Rules), which do not qualify as a meeting, conference, meal or other function that is hosted by the MPO or Subrecipient staff and attended by guests and/or other MPO or Subrecipient personnel and held for official MPO or Subrecipient business. Expenditures incurred for official functions shall be approved by the responsible MPO or Subrecipient official.

I. Disallow Costs

CDOT has the right to disallow any costs incurred by the Subrecipient, which are not consistent with this Agreement, or on any activity not in compliance with the authorized Work.

J. Reimbursement Waiver

Subrecipient agrees that reimbursement of any cost under this Agreement does not constitute a final CDOT decision about the allowability of the costs and does not constitute a waiver of any violation by Subrecipient of the terms of this Agreement.

K. Certification

Upon submitting request for reimbursement, the designated representative of the Subrecipient has certified that:

- a) The costs are allowable, and therefore reimbursable;
- b) The expenditure amount for that time period is correct;
- c) The agreed upon Work has been performed and/or Work Product has been produced;
- d) All Requests for Proposals and/or Requests for Qualifications have been forwarded to CDOT for review and comment; and
- e) Reimbursements are being requested in accordance with the terms of this Agreement.

L. Expenditures

Along with the form requesting reimbursement, the Subrecipient shall include expenditures of Federal Funds for Work. The information shall contain:

- i. Budgeted amount;
- ii. Expenditures for current billing cycle and year-to-date;
- iii. Unexpended balance after current cycle;
- iv. Percent expended year-to-date; and
- v. Copies of Subcontractors invoices, if applicable.

M. Invoice

CDOT shall pay the Subrecipient's voucher for expenditures incurred in performance of Work, up to the maximum amount described in §7, and elsewhere in this Agreement, subject to conditions specified herein, within 30 days of receipt.

N. Final Report

Within 30 days after the end of the Program period, SUBRECIPIENT will provide to CDOT a final accomplishment report of the activities performed under this Agreement for the completed fiscal year. It shall include, but not be limited to:

- 1.) Final accomplishments by activities; and

- 2.) Status of uncompleted products; and
- 3.) Accomplishment of performance measures; and
- 4.) Actual expenditures for the Program Period.

O. Reporting Guidance

Reporting made for the purpose of this Agreement and its activities shall be done in accordance with 23 CFR Part 420.117, 450 and 2 CFR 200, and any supporting sections or amendments. The provisions of this paragraph do not constitute a waiver of legal and administrative appeals available to SUBRECIPIENT or the State.

P. Monitoring

In accordance with 2 CFR 200 and other applicable standards, the State will monitor all the activities conducted by SUBRECIPIENT pursuant to the terms of this Agreement to assure that the Project is being performed consistent with supporting federal laws and regulations, as amended, to enable the preparation and submission of appropriate reports that will contain at a minimum:

- 1.) Comparison of actual performance with established goals during the program and once the program is complete;
- 2.) Progress in meeting schedules;
- 3.) Comparison of budgeted (approved) amounts and actual costs incurred;
- 4.) Cost variances to budget;
- 5.) Approved program revisions; and
- 6.) Other supporting data.

Q. Performance, Progress, Personnel, and Funds

In responding to these requirements, CDOT will utilize the following steps and procedures to ensure that assigned responsibilities are carried out:

1.) Monitoring Documents

CDOT will use the current Statement of Work, and supporting documents, in reviewing the progress being made by SUBRECIPIENT to meet the commitments in this Agreement. The Statement of Work must include all activities, deliverables, and performance measures, and Budgets committed to by SUBRECIPIENT.

2.) Monitoring Meetings

Meetings between CDOT and SUBRECIPIENT representatives will be conducted at CDOT's discretion for the purpose of reviewing progress, resource allocations, and billings.

3.) Progress and Financial Reports

CDOT will prepare and submit progress and financial reports to the appropriate federal agencies.

R. Noncompliance

Any Product that SUBRECIPIENT has committed to in the Statement of Work not produced and justification not provided in a timely manner in accordance with this agreement, may result in the delay of payment of funds and/or termination as provided under this Agreement. Along with the terms of this Agreement and in accordance with 2 CFR 200, the following steps will be implemented by CDOT:

- 1.) CDOT representative will meet with SUBRECIPIENT representative to discuss performance.
- 2.) The CDOT representative will report the progress to the Division of Transportation Development Director.
- 3.) The Director will issue a decision as to whether performance is satisfactory or unsatisfactory. If performance was determined to have been unsatisfactory, CDOT shall determine if a reduction in allocation is appropriate. SUBRECIPIENT will be notified of any decisions made by CDOT.

S. Additional Requirements for Rights in Data, Documents, and Computer Software

Whenever possible, published material shall acknowledge the financial participation of CDOT and/or the FHWA and other agencies contributing funding to the Work Product. Any published material acknowledging the contribution of the FHWA shall include the federal disclaimer statement: "FUNDED BY THE FHWA". Published materials include any non-internal documents, reports, maps, photographs, computer software, or like materials that are intended to be viewed by those outside of CDOT, and Subrecipient.

Patents: In addition to the standard patent rights clauses of 37 CFR §401 et. al, and other applicable laws and regulations, CDOT, Subrecipient, and either party's subrecipients are subject to the provisions of 37 CFR part 401, governing patents and inventions whereby "The Subcontractor or Subrecipient will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subaward or Agreement, obtain rights in the Subcontractor's or Subrecipient's subject inventions."

T. 2 CFR 200 Subpart F

In accordance with the provisions of 2 CFR 200: “Audits of States, Local Governments, and Nonprofit Organizations”, all nonfederal entities including state and local government and non-profit organizations, receiving more than \$750,000 from all federal financial assistance funding sources, shall comply with the audit requirements of 2 CFR 200. Compliance with 2 CFR 200 is required in the following manner:

- a) If the Subcontractor 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.
- b) If the Subcontractor expends more than \$750,000 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.
- c) If the Subcontractor expends more than \$750,000 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.
- d) Single Audit can only be conducted by an independent auditor in accordance with generally accepted government auditing standards covering financial audits (2 CFR 200). An audit is an allowable direct or indirect cost.

U. Final Audit Report

If an audit is performed on Subrecipient’s records for any fiscal year covering a portion of the term of this Agreement, Subrecipient shall submit a copy of the final audit report to CDOT or its principal representative at the address specified herein.

EXHIBIT E, TITLE VI – CIVIL RIGHTS

Nondiscrimination Requirements

Subrecipient 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.

Subrecipient shall abide by all applicable federal and state nondiscrimination laws and regulations, including but not limited to, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; The Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28; 49 CFR Part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation; 23 CFR Part 200: Title VI Program and Related Statutes - Implementation and Review Procedures; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C §§12101 - 12213; Rehabilitation Act of 1973 § 504, 29 U.S.C § 794; 49 CFR Part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Assistance; 28 CFR Part 35: Nondiscrimination on the Basis of Disability in State and Local Government Services; 49 CFR Part 28: Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.

As a condition of federal financial assistance, Subrecipient shall develop and maintain a Title VI Program in accordance with the “Requirements for FHWA Subrecipients” set forth in CDOT’s Title VI Program Plan. Subrecipient shall also facilitate compliance with Executive Order 12898 and DOT Order 5610.2(a) by incorporating the principles of environmental justice in planning, project development and public outreach in accordance with applicable CDOT and FHWA guidance.

In any contract utilizing federal funds, land, or other federal aid, Subrecipient 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. Subrecipient shall develop and maintain an ADA Program in accordance with 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services and any other requirements established by CDOT for FHWA subrecipients.

Disadvantaged Business Enterprise Requirements

The requirements of 49 CFR Part 26 and CDOT’s DOT-approved DBE program are incorporated by reference into this agreement. Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Subrecipient shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by Subrecipient to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as CDOT deems appropriate. Subrecipient must include this assurance in all DOT-assisted contracts.

Prompt Payment

Subrecipient 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. If Subrecipient allows contractors to withhold retainage from subcontractors, retainage shall be released within 30 days from the date the work is satisfactorily completed.

RESOLUTION NO. 23-013

A RESOLUTION ADOPTING THE UNIFIED PLANNING WORK PROGRAM (UPWP) FOR FEDERAL FISCAL YEARS (FFY) 2024 AND 2025 FOR THE PUEBLO AREA COUNCIL OF GOVERNMENTS (PACOG) AS THE DESIGNATED METROPOLITAN PLANNING ORGANIZATION (MPO) FOR THE PUEBLO URBAN AREA IN COMPLIANCE WITH 23 USC 134, 49 USC 5303, 23 CFR 450 AND 500, AND 49 CFR 613; AND AUTHORIZING AND DIRECTING THE CITY OF PUEBLO IN ACCORDANCE WITH THE PACOG AND CITY OF PUEBLO DELEGATION AGREEMENT DATED FEBRUARY 23, 2023 TO ADMINISTER AND IMPLEMENT THIS UPWP IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

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

WHEREAS, PACOG has developed an annual Unified Planning Work Program (UPWP) and budgets for the Federal Fiscal Years 2024 and 2025 in compliance with the requirements of 23 USC 134, 49 USC 5303, 23 CFR 450 and 500, and 49 CFR 613 Act; and

WHEREAS, the FFY 2024-2025 UPWP was developed through local collaboration with comments and recommendations from the state and federal funding agencies; and

WHEREAS, the UPWP reflects the priorities, scope of work, and level of effort required for all of the agencies responsible for regional transportation planning for FFY 2024-2025.

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

SECTION 1:

The PACOG Unified Planning Work Program for Fiscal Year 2024-2025 is hereby approved and adopted.

SECTION 2:

The PACOG Board hereby authorizes and directs the City of Pueblo in accordance with the PACOG and City of Pueblo Delegation Agreement dated February 23, 2023, to administer and implement this UPWP in accordance with all applicable federal, state, and local laws and regulations.

SECTION 3:

This resolution shall become effective immediately upon passage and approval.

PASSED AND ADOPTED this 28th day of September,
2023 by the PACOG.



Chairperson, Pueblo Area Council of Governments

ATTEST:



PACOG Recording Secretary



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Andra Ahrens, Director Wastewater

SUBJECT: AN ORDINANCE APPROVING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES IN THE AMOUNT OF \$556,897.60 BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND BROWN AND CALDWELL, INC., FOR CONSULTING ENGINEERING AND PROJECT MANAGEMENT SERVICES WITH RESPECT TO A PILOT PROJECT TO IDENTIFY ISSUES CONTRIBUTING TO GROUNDWATER INFILTRATION AND INFLOW TO THE CITY'S SEWER SANITARY SYSTEM AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

SUMMARY:

This Ordinance accepts an agreement between the City of Pueblo and Brown and Caldwell, Inc. for consulting engineering services relating to a pilot project to identify issues contributing to groundwater infiltration and inflow to the city's sewer sanitary system and authorizing the mayor to execute the same.

PREVIOUS COUNCIL ACTION:

On November 12, 2018, the City Council Approved Resolution No. 14081, selecting Brown and Caldwell, Inc as the Engineer of Record for the Wastewater Treatment Department.

BACKGROUND:

The Wastewater Department has been addressing selenium and sulfate issues in the Arkansas River Basin for more than 25 years. Naturally occurring selenium and sulfate are known to enter the city sewer collection system through the infiltration and inflow of groundwater. The sanitary sewer collection system conveys sewage and the groundwater to the James R. Dilorio Water Reclamation Facility. Approximately 50 percent of the selenium and very little sulfate is removed during the treatment process.

The purpose of this project is to pilot multiple technologies in geographical locations

with groundwater high in selenium and sulfate. These technologies, not previously used by the Wastewater Department, are capable of identifying and locating sources of groundwater infiltration and inflow entering the sanitary sewer collection system.

FINANCIAL IMPLICATIONS:

The cost of the agreement with Brown and Caldwell to provide design services for the rehabilitation project will not exceed \$556,897.60. Funds are available from the Sewer User Fund and have been appropriated to Project No. WW1503.

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

The no-action alternative will eliminate the opportunity to collect data that identifies where infiltration and inflow occur in the sanitary sewer collection system. Without this data, it is unknown how best to rehabilitate the sanitary sewer mains to stop infiltration and inflow containing selenium and sulfate.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 10-23-23 Selenium Infiltration Pilot Project - Proposal
2. 10-23-23 Selenium Infiltration Pilot Project Agreement 18-087 Brown and Caldwell Groundwater Infiltration and Inflow Approved

ORDINANCE NO.

AN ORDINANCE APPROVING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES IN THE AMOUNT OF \$556,897.60 BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND BROWN AND CALDWELL, INC., FOR CONSULTING ENGINEERING AND PROJECT MANAGEMENT SERVICES WITH RESPECT TO A PILOT PROJECT TO IDENTIFY ISSUES CONTRIBUTING TO GROUNDWATER INFILTRATION AND INFLOW TO THE CITY'S SEWER SANITARY SYSTEM AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

WHEREAS, the Pueblo Wastewater Department operates a Water Reclamation Facility and collection system providing municipal wastewater treatment;

WHEREAS, consulting engineering services with respect to the design required for consulting engineering services relating to a pilot project to identify issues contributing to groundwater infiltration and inflow to the city's sewer sanitary system and authorizing the mayor to execute the same; and

WHEREAS, Brown and Caldwell is the consulting Engineer of Record and is the most qualified to serve the Pueblo Wastewater Department for such project; NOW, THEREFORE,

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

SECTION 1.

An agreement by and between the City of Pueblo, a Colorado Municipal Corporation, and Brown and Caldwell, Inc., a copy of which is attached hereto and made part hereof by reference ("Agreement"), after having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

Work Performed under the Agreement may include, but not limited to, the following items:

1. Project management and administration;
2. Field investigation, data analysis, condition assessment, and reporting services; Field service preparation for a pilot project.

SECTION 3.

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

SECTION 4.

Funds for work performed under this agreement shall be from the Sewer User Fund Project No. WW1503.

SECTION 5.

The officers and staff of the City are authorized to perform any and all acts consistent

with the intent of this Ordinance and the Agreement approved to implement the transactions described therein.

SECTION 6.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

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

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

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

President of City Council

ATTEST

City Clerk

Brown and Caldwell Proposal: Pilot Project to Identify Issues Contributing Groundwater Infiltration and Inflow to the City's Sewer System

Prepared for
City of Pueblo
SEPTEMBER 12, 2023



Project Overview

The City of Pueblo (COP) has been addressing selenium and sulfate issues in the Arkansas River Basin for more than 25 years. Naturally occurring selenium and sulfate are known to enter the COP sewer collections system through the infiltration and inflow of groundwater. The COP sewer collections system conveys sewage and the groundwater to the James R. Dilorio Water Reclamation Facility (WRF). Approximately 50 percent of the selenium and very little sulfate is removed during the treatment process. Treated effluent from the WRF is discharged to the Arkansas River.

The concentrations of selenium and sulfate in the effluent discharged to the Arkansas River during wet weather conditions are higher than site-specific standards in the Arkansas River set and allowed by the State of Colorado, Department of Health, Water Quality Commission (WQC). Since 2018, the COP has operated under a WQC adopted Discharger Specific Variance (DSV) for selenium and sulfate that represents the highest degree of protection for aquatic life that was determined feasible for the Pueblo WRF.

COP estimates an approximate \$200 million investment in capital and operating costs would be required at the WRF for additional treatment processes to further reduce the concentrations of selenium and sulfate in the treated effluent discharge without a certain substantial environmental benefit associated to the investment.

The 2018 WQC approved DSV included COP implementation of a \$10 million management program to reduce selenium and sulfate concentrations to the extent feasible. COP has made investments under the management program that include:

- Rehabilitating (by cured-in-place-pipe (CIPP) lining) and replacing sewer pipes.
- Sealing manholes.
- Establishing a homeowners sump pump removal program.
- Examining added treatment processes.

To date, the \$10 million management program investments have led to minor measurable reductions in sources of selenium entering the sewer collections system. Nevertheless, the investments and efforts expended have not reduced the selenium and sulfate concentrations sufficiently to meet state water quality standards without consideration of the 2018 WQC approved DSV.

Project Purpose

The purpose of this project is to pilot multiple technologies not previously used by City of Pueblo (COP) that are capable of identifying and locating sources of groundwater infiltration and inflow entering the COP sewer collections system.

The Electro Scan Focused Electrode Leak Location (FELL) technology described in this proposal and proposed for use during the project is not reliant on high groundwater level conditions with active infiltration into COP sewers occurring during performance of the testing in order to identify and locate pipe defects that provide a means for groundwater to infiltrate into sewer pipes. Additionally, the FELL technology can identify and locate cured-in-place-lining (CIPP) defects that cannot be seen via CCTV inspections that provide a means for groundwater to infiltrate into sewer pipes.



The unique CCTV inspection system described in this proposal and proposed for use during the project includes a combination mainline camera system and self-propelled service line camera system. This combination allows for the visual inspection of mainlines and laterals during single inspection runs.

The distributed temperature sensing (DTS) system technology described in this proposal and proposed for use during the project provides the means and methods to identify and detect groundwater inflow and infiltration into sewers at discrete 3-foot intervals along the length of pipes. Importantly, the DTS technology can detect intermittent groundwater discharges from sump pumps and perimeter drains that contribute extraneous groundwater to the sewer system.

The results of this project are intended to provide the COP with a better understanding of how to move beyond CCTV inspections to more effectively identify and locate the sources of extraneous groundwater entering the COP sewer collections system. The results will additionally yield benefit by exposing COP to a means and methods to perform quality control inspections of CIPP lining installations that are intended to reduce the volume of groundwater containing selenium and sulfate from entering the sewer system.

The introduction of advanced technologies during this project may ultimately assist COP to reduce the amount of selenium and sulfate reaching the James R. Dilorio Water Reclamation Facility for treatment and discharge.

Scope of Services

Brown and Caldwell (BC) will provide field investigation and engineering services to the City of Pueblo (COP) to identify sources contributing. Work will include planning and conducting field investigations, data analysis, condition assessment, and reporting.

The proposed Scope of Services includes the following tasks:

Task 100 - Project Management and Administration

Task 200 - Field Investigation, Data Analysis, Condition Assessment, and Reporting Services

Task 300 - Additional Services

Attachments included with this Scope of Services include:

Attachment 1 – Project Area Map

Attachment 2 – Project Fee Schedule

Attachment 3 – Project Schedule

Project Assumptions

The following assumptions were made in the development of this Scope of Services:

- The pipes and manholes of the project area are in suitable condition to allow for the inspections described in this proposal to be performed without undue risk to BC personnel, BC subcontractor personnel, and equipment provided and used to deliver services under this contract.
- COP shall not impede or restrict BC access to project area sewers.
- No excavations are required to expose project area sewer manholes.
- No sewer construction by COP or third parties will occur during BC field inspection operations.
- COP will grant access to use water from fire hydrants within the project area for the purposes of sewer cleaning and inspection operations. Water usage and/or permit fees have been excluded from the proposed fee. We understand that Pueblo Water is the potable water provider, and that



- COP may have to coordinate all efforts to provide access.
- BC may shift budget between work phases or tasks as necessary to complete the Work.
- COP shall provide a local disposal site for materials removed by BC from COP sewers. Disposal fees have been excluded from the proposed fee.

Task 100 – Project Management and Administration

Objectives

Project Management and Administration includes the following activities:

- Project Management Planning.
- Project Control and Reporting.
- Project Meetings and Workshops.
- Project Closeout.

1.1 Project Management Planning

The Project Management Plan will document the key project information required by all project team members to assist them in executing the project to meet the required objectives: on time, on budget, with high quality. The key elements of the project plan are described below:

- Scope of Services with work breakdown structure
- Project resources and budgets.
- Baseline Project schedule.
- Communications Plan.
- Risk Management Plan.
- QA/QC Plan.
- Project documentation plan and file structure.
- Preparation of the project specific Field Work Safety Plan (FWSP).

1.2 Project Control and Reporting

Monthly invoices and progress reports will be prepared and submitted.

This task also includes periodic project review by BC management to assure the project is meeting critical success factors, is on schedule, and is within budget. Updates to the project schedule will be included in the progress reports.

1.3 Progress Meetings

BC will provide a regular forum for the receipt, exchange, response, and documentation of project planning, design, and management related issues and decisions during the project.



This task includes:

- Project Kickoff Meeting. Assume this meeting to be in person at a COP facility. A project area site visit by BC project team members and COP personnel will be conducted following the meeting.
- Monthly Update Meetings–BC PM will meet with COP to review project status, schedule, contract issues, and other project management related issues. Assume meetings to be virtual (1 hour each).

Report deliverable workshops and pre-inspection workshops are included in tasks below.

1.4 Project Close-Out

During project close-out, BC will submit all final invoices to COP and consolidate and archive all project files.

Deliverables

The following deliverables will be provided as part of this phase:

- Project Management Plan.
- Monthly invoices, with progress summaries.
- Kickoff Meeting agenda, presentation materials, and minutes.
- Progress Meeting summary notes.

Assumptions

- Project duration is up to 12-months.
- The BC prepared Communications Plan is for internal use by the BC project team and COP.
- External communication support/direct engagement with stakeholders will be performed by COP.

Task 200 – Field Investigation Services

The project area sewers are defined in Attachment 1-Project Area Map. The project area sewer pipes are labeled as 8- and 10-inches in diameter. The pipe materials are currently unknown to BC but are suspected to be vitrified clay pipe (VCP). We are under the impression that some pipes within the project area have been rehabilitated by installation of cured-in-place lining. BC understands that the total length of pipes within the project area have been described by the COP to be approximately 8,400 lineal feet (lf). The flows in the project area sewers are largely attributable to flows from the north with a minor contribution from the east.

The sewer pipes in the project area will be investigated by BC to determine:

- Pipe issues
 - Structural condition of pipelines (e.g., cracks, fractures, missing wall, offset joints, etc.)
 - Watertightness of individual pipes (from joint to joint), joints connecting pipes, service line (lateral) connections, and pipe connections at structures associated to the pipelines (e.g., pipe to MH connections)
- Cured-in-place-pipe (CIPP) lining issues.
 - Installation issues
 - CIPP tube tears, fins, wrinkles, folds, inclusions, or other defects.



- Issues related to CIPP liner watertightness potentially caused by:
 - Uncured resins.
 - Tubes not saturated with resins at completion of curing.
 - Contaminated resins.
 - Improper service line connection reinstatements - missed cuts, oversized cuts, etc., not repaired.
 - Constructed features:
 - Type of mainline to service line connections (e.g., top hat or other fitting extending into service line piping).
 - Resin seals or hydrophilic rubber seals at terminations at structures (leakage may be visible at CIPP liner to host pipe interface).
- Other issues:
 - Damages caused during cleaning.
 - Damages caused by excessive external loads.
 - Damages caused by third party strikes.
 - Illicit connections, such as perimeter drains or other non-sewer connections from private property to sewer pipes or manholes.
 - The potential presence of sump pumps discharging groundwater to the sewer pipes.

2.1 Review of Available Information

COP will provide BC available and relevant information and data to aid BC in the performance of the project. This may include, but is not limited to information such as:

- Record documents such as plan and profile drawings, as-built drawings, and specifications.
- Record documents related to prior sewer pipe and manhole repair, rehabilitation, and replacement.
- GIS data for all project area sewer pipes, structures, connections, and other assets.
- CCTV inspection records, video, photos, and data.
- Manhole inspection records, video, photos, and data,
- Operations and maintenance records for the project area sewers.
- Address/location of known sump pump installations.
- Project area sewer collections system flow data:
 - Flow meter data acquired within the project area boundary.
 - Flow meter data acquired within the same sewer basin upstream of the project area.
 - Flow meter data acquired within the same sewer basin downstream of the project area.
 - Identification of the location of manholes where flow meters were installed.
 - Any available data including:
 - Flow rate (Q), depth of flow (d), velocity of flow (V), and if reported, temperature (°F) of flow.
 - Discrete, non-totalized, date and time stamped flow meter measurements (anticipated measurement intervals at either 15-minutes or 5-minutes).



- James R. Dilorio Water Reclamation Facility average daily influent flow data and average temperature data for a minimum period of three years.
- Selenium and sulphate water quality sampling data from the project area sewer basin and the influent to the James R. Dilorio Water Reclamation Facility.
- Groundwater level and temperature monitoring data.
- Access to COP staff knowledgeable about project area sewer operational and maintenance issues, prior inspections, previous rehabilitation, identification of sump pump locations, selenium sampling, flow metering, hydraulic modeling, and other COP and third-party work in the project area.
- Potable water temperature data (request to be refined during project execution).

City of Pueblo Responsibilities

- COP will provide BC with available information for use by BC to plan and perform the project inspections.

Deliverables

The following deliverables will be provided:

- BC will review available information provided by COP.
- BC will ask COP for clarification of available information, as needed.
- BC will compile a log of documents reviewed by BC.

2.2 Inspection Planning

BC will perform inspection planning services that includes preparing materials describing the inspection means and methods for each Task of the inspections to be performed during the course of the project. BC will additionally prepare a schedule for when each Task of the inspections is to be performed.

BC will organize and lead an in-person workshop at COP facilities. BC Project Management and Technical staff will attend and present at the workshop. The workshop is to be attended by COP designated sewer collections system operations and maintenance staff, plus COP engineering and management staff.

The purpose of the workshop will be to inform COP staff of planned BC work efforts, anticipated results, schedule, clarify roles and responsibilities, and to coordinate COP and BC communication requirements. During the workshop, BC will engage with COP staff to provide comments, ask questions about the inspection means and methods to be used for this project, and provide guidance to BC as COP sees necessary.

City of Pueblo Responsibilities

- Attend and participate in a BC organized and facilitated in person workshop.

Deliverables

The following deliverables will be provided by BC:

- Inspection planning services.
- BC will organize and lead an in-person workshop at COP facilities. The duration of the workshop is anticipated to be up to two hours.



2.3 Permitting

Permitting is anticipated to be minimal for this project. It is assumed the only permit required will be a permit for work within temporary traffic control work zones. BC shall submit a Traffic Control Plan (TCP) in drawing form for the review and approval by the COP Traffic Engineering Division. All traffic control procedures, signing, lighting, and barricades shall conform to the latest edition of the Manual on Uniform Traffic Control Devices, and shall be set up and maintained by a Certified Traffic Control Supervisor (TCS). It is assumed that neither flaggers nor off-duty police officers will be required during the field inspections.

Traffic control permitting and services are included for all aspects of the scoping items included herein.

City of Pueblo Responsibilities

- This scope assumes that permits will be provided by COP to BC and its subcontractors at no cost to BC.

Deliverables

The following deliverables will be provided by BC:

- Preparing a traffic control plan, submitting the plan to COP for approval, and obtaining a permit.

2.4 Inspection using Electro Scan Focused Electrode Leak Locating (FELL) Technology

ASTM F2550-06 describes the standard practice for Locating Leaks in Sewer Pipes Using Electro Scan—the Variation of Electric Current Flow Through the Pipe Wall. A copy of the complete standard may be obtained from ASTM International, <http://www.astm.org>.

Non-conductive (non-metallic) materials naturally prevent electricity from passing through, or along, the wall of a pipe. Electrical current should never be able to “leak” from inside a non-conductive piping system unless there is an opening in the pipe wall or liner materials in a rehabilitated pipeline. The larger the defect opening, the greater the electric current flow, and greater leak potential, as described in ASTM F2550.

Electro Scan Focused Electrode Leak Location (FELL) is conducted by applying a 9 to 11-volt electrical potential between a sonde (also referred to as a probe) that is placed in a non-conducting, water-filled sewer pipe and an electrode located at ground surface. By filling the pipe with water during the test, an electrical circuit can be completed with a metallic probe at ground surface.

The non-conducting nature of the sewer pipe material (such as concrete, plastic, and vitrified clay) and liner materials (such as cured in place pipe (CIPP) and plastic based slip liners) prevents electrical current from passing through the pipe wall to any great extent. If a defect is present, the extent of electrical current passing through the pipe wall is proportional to the significance of the defect. If groundwater is present at any time near these conducting defects, the presumption is that water will also infiltrate through the defects.

A schematic of the FELL testing method is provided in the Figure 1 below.



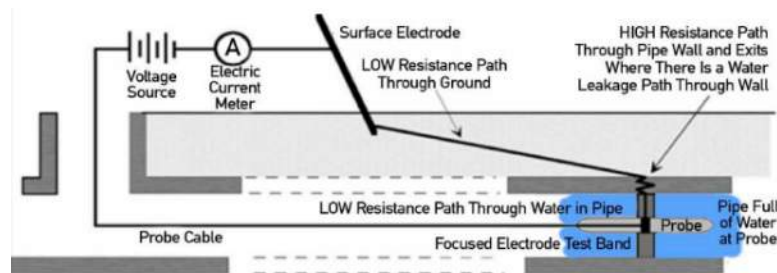


Figure 1. FELL testing method schematic.

A graphic of a typical FELL inspection equipment setup and operation is provided in the Figure 2 below.



Figure 2. FELL inspection equipment setup and operation.

Inspection using Electro Scan Focused Electrode Leak Locating (FELL) Technology will be performed prior to subsequent inspection methods. Results of FELL inspection will be used to inform subsequent CCTV video inspections (see Section 2.4) and distributed temperature sensing (DTS) inspections (see Section 2.5).

BC will provide sewer cleaning services prior to the FELL and CCTV inspections, additional traffic control services for any additional sewer cleaning services for the FELL and CCTV inspections, and a combination (hydro-jetter and vacuum) sewer cleaner system and services during BC provided FELL inspections.

Limitations

FELL inspection is intended to identify and locate potential leak sources in the mainline pipes and at service line connections to the mainline pipes. FELL leakage detection inspection of private property service lines is possible but is not proposed as part of this scope of services. Quantification of extraneous flows from FELL identified defects is not proposed as part of this scope of services. FELL inspections cannot detect extraneous flows entering the sewer system from sump pumps or other intermittent discharges.

Deliverables

The following deliverables will be provided by BC:

- Inspections using Electro Scan Focused Electrode Leak Locating (FELL) technology.
- Data analysis and reporting.
- Data will be delivered entirely in electronic format.

2.5 Visual Inspections by CCTV

Project area sewers will be visually inspected using a robotic CCTV camera system. The objective of the CCTV inspections will be to closely examine the locations of features and defects identified as potential groundwater leak sources by the prior Electro Scan Focused Electrode Leak Locating (FELL) inspections. CCTV inspections will therefore be performed after completion of FELL inspections.

Project area sewer mainlines will be CCTV inspected. Project area sewer service line pipes connecting to the mainlines will additionally be inspected by deploying a mini-CCTV camera from the from the mainline to the estimated public right-of-way to private property boundary line. If a cleanout is observed at the estimated public right-of-way to private property boundary line, the inspection will stop. If service line connections are collapsed, blocked by mainline lining materials or obstructions such as roots or obstacles, the affected service lines will be documented from the mainline, but not CCTV inspected. Service lines pipes on private property will not be inspected as part of this scope of services.

The Figure 3 below provide graphic representation of a robotic transporter equipped with a mainline CCTV camera and a service line mini-CCTV camera inspection system.



Figure 3. Robotic transporter equipped with mainline CCTV camera system.

CCTV inspections will be performed in accordance with current NASSCO Pipeline Assessment and Certification Program (PACP™) and Lateral Assessment and Certification Program (LACP™) performance specification guidelines and industry standards. Visually observed features and defects will be documented and described using PACP and LACP condition assessment coding standards.

In the event that “red flag” type observations of collapsed pipe, holes in pipes, detached linings, or other structural conditions are made, or significant sized obstacles, obstructions, or other operations and maintenance conditions that are judged to impede flow are made, or if suspected gas line cross bores are observed, the BC inspection team will immediately notify the COP Project Manager or their designee.

Limitations

While CCTV inspection can provide visual evidence of groundwater leakage into sewers, CCTV inspection cannot identify extraneous flows entering the sewer system from sump pumps or other intermittent discharges unless the discharges are occurring where the camera is positioned and focused while the discharge is active. Nevertheless, CCTV does not provide the means for observers to positively discern whether discharge waters are sewage or groundwater. Observations made during CCTV inspections may

provide some indicators of temperature variations, e.g., steam from hot water discharges into lower temperature sewage, or possibly cold-water groundwater discharges into higher temperature sewage.

City of Pueblo Responsibilities

- Identification of COP staff and provision of contact information for persons to be notified in the event “red flag” type observations are made during CCTV inspections.
- Attend a BC organized and facilitated remote workshop where BC presents FELL inspection and CCTV inspection findings, and BC describes next steps and schedule.

Deliverables

The following deliverables will be provided by BC:

- CCTV inspections of mainlines and service lines (laterals) within the public right of way right.
- NASSCO PACP and LACP coding of structural conditions, operations and maintenance conditions, construction features, and miscellaneous features.
- Data analysis and reporting.
- CCTV data and video will be delivered entirely in electronic format.
- BC will organize and lead a remote workshop to present FELL inspection and CCTV inspection findings.
- BC will modify and update the project schedule, as needed, and deliver a revised schedule to COP if adjustments by BC are recommended.

2.6 Manhole Inspections – To Be Performed Concurrently During Distributed Temperature Sensing Inspections (See Section 2.7)

Manholes are constructed for the primary purpose of providing access to sewer pipes for performing maintenance such as cleaning of pipes that connect to each manhole. Manholes are generally constructed to be watertight so that they do not allow groundwater infiltration or surface water inflow into the sewer system. Similar to pipes, manholes are subject to deterioration and develop structural defects or operation and maintenance defects during their service life and can become a source of extraneous groundwater infiltration and inflow into the sewer system.

During the performance of distributed temperature sensing (DTS) inspections, manholes associated with the project area sewers will be visually inspected from street/ground surface using a pole-mounted camera. The camera will be lowered into each manhole and photos of structural defects, constructed features, plus operations and maintenance conditions will be photographed and documented. Confined space entry will not be performed as a part of the manhole inspection process.

Manhole inspections will be performed in accordance with current NASSCO Manhole Assessment and Certification Program (MACP™) performance specification guidelines and industry standards. Visually observed features and defects will be documented and described using MACP condition assessment coding standards.

City of Pueblo Responsibilities

- Identification of COP staff and provision of contact information for persons to be notified in the event “red flag” type observations are made during manhole inspections.



Deliverables

The following deliverables will be provided by BC:

- Inspection of manholes within the public right of way.
- NASSCO MACP coding of structural conditions, operations and maintenance conditions, construction features, and miscellaneous features.
- Data analysis and reporting.
- Manhole inspection data and video will be delivered entirely in electronic format.

2.7 Distributed Temperature Sensing (DTS) Inspections

Overview

Distributed temperature sensing (DTS) systems measure the temperature of wastewater within sewer pipes and manhole channel inverts. Temperature measurements are taken at approximate 3-foot (1-meter) intervals in the sewer pipes and continuously over time. The measurements are analyzed to identify temperature measurements that indicate locations where extraneous groundwater infiltration and inflow (I/I) may be entering the sewer system.

The DTS system consists of the following primary components:

- **Fiber optic cable:** The cable serves as the temperature sensor. Approximately 8,400 lineal feet (lf) of sewer temperature will be monitored by the DTS cables laid in the invert of the project area sewer pipes. The fiber optic cable is left in place for the duration of each DTS measurement period which is currently anticipated to consist of two independent 14-day periods.
- **DTS data acquisition unit:** The DTS unit connects to one end of the fiber optic cable, emits pulses of laser light through the fiber optic cable, and processes the returned signals to determine temperature at discrete intervals along the cable. These intervals are approximately 3-feet (1-meter) in size along the length of the entire cable. The measurements are repeated every few minutes. The DTS data acquisition unit is installed in a manhole and is left in place for the duration of the DTS measurement period.
- **Batteries:** Rechargeable batteries power the DTS unit for a limited period of time. Removing discharged batteries and installing charged batteries periodically is required to allow for near-continuous operation of the DTS data acquisition unit during the DTS measurement period.

Installation and Deployment

The DTS system is optimally installed and deployed during periods when there is a significant temperature difference between sewage and extraneous water entering the sewer system from groundwater infiltration via pipe or manhole defects, groundwater inflow sources such as sump pumps, and direct inflow from wet-weather events.

DTS deployment is preferred during the highest precipitation timeframes as that would be the time when the groundwater table is likely at its highest elevation and sump pumps are most likely to be operating. For the COP, the highest precipitation timeframes have historically been the months of July and August followed by April and May (see Figure 4). Provisions have been included in the scope and fee based on anticipated timing of this project that allow for DTS deployment to occur directly following the FELL and CCTV activities listed in Tasks 2.4 and 2.5. The baseline schedule, provided with this scope of services,



reflects a gap between Tasks 2.4/2.5 and Tasks 2.6/2.7 such that DTS deployment occurs during the highest potential precipitation months. An alternative schedule can also be provided the reflects Tasks 2.4 through 2.8 occurring in succession, which would reduce the overall project duration by 2 months. DTS deployment would then occur in the April to May timeframe.

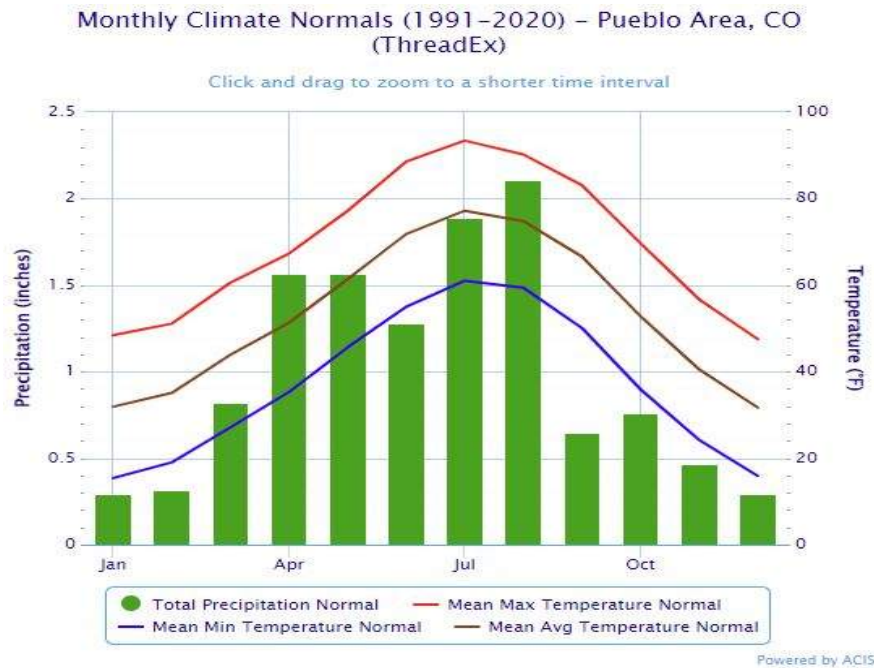


Figure 4. Historical Monthly Precipitation 1991-2020 for the City of Pueblo (Source - https://en.m.wikipedia.org/wiki/File:Monthly_Climate_Normals_%281991-2020%29_-_Pueblo_Area,_CO%28ThreadEx%29.svg).

BC will install the fiber optic cable and DTS data acquisition unit as detailed below:

- DTS pre-installation tasks
 - Project area manholes will be opened and examined during the cleaning, FELL inspection, and CCTV inspection field work. Information pertaining to the manholes and pipes obtained during the FELL and CCTV inspection field work will be used by BC to select one or more manholes where the DTS data acquisition unit will be installed and identify what conditions or issues in the pipes might be problematic for installation of the DTS fiber optic cable.
 - To document DTS pre-installation conditions, photos of the interior of manholes and street/ground surfaces at/adjacent to the manholes will be taken at:
 - a) the farthest upstream manholes where DTS cables are installed, and
 - b) the downstream manhole(s) where the DTS unit is installed.
 - Objects such as flow meters, flow meter sensors, or water quality sampling equipment not related to this project must be removed from the project sewers prior to DTS system installation.
 - Cleaning of the project area sewers to allow for the DTS cable to be placed on the invert (bottom) of sewer pipes is required. Cleaning must remove all accumulated sediment

- and debris from the sewer pipes. Cleaning activities must be performed no more than one week prior to DTS deployment.
 - Tag line ropes to be used by BC during the installation of the fiber optic cable must be installed in all sewer pipes after the completion of cleaning. The tag line ropes are to be continuous, to the extent possible, from upstream manholes to the location of the DTS data acquisition unit. It is currently anticipated that the installation of four to six tag line ropes will be required.
 - Prepare the necessary fiber optic cables for installation and package for shipping to the project site. Once on-site, but before installation, a series of checks are performed to ensure the equipment was not damaged during transit.
- DTS installation tasks
 - BC will attach the fiber optic cables to the tag line ropes and pull the cables into place within the project area sewer pipes.
 - BC will install the cables on the invert of the project area sewer pipes.
 - At select manholes, BC will secure fiber optic cables to the invert of pipes with BC supplied compression rings.
 - BC will secure excess cable lengths within manholes with BC supplied materials attached to sound ladder rungs, anchor bolts, or other features.
 - BC will install the DTS unit within a manhole toward the downstream end of the project area—currently anticipated to be in manhole 445720.8 at/near the intersection of Atlanta Avenue and W 23rd Street. BC will connect one end (downstream, typical) of each fiber optic cable to the DTS unit.
 - BC will install a “dead zone” box within a manhole at toward the upstream ends of the project area housing excess fiber optic cable and an independent temperature logger. These manholes are currently anticipated to be MHs 435839.0, 445848.1, 445854.3, 445845.4, and 445625.5.
 - After system installation, BC will use the DTS unit to test the integrity of each fiber optic cable.
 - BC will troubleshoot and resolve issues identified during the cable integrity testing.
 - BC will complete installation and testing of all equipment within two to three days.

The photos in Figure 5 below show (from left to right):

- Street view of DTS cable reel at manhole during installation while cable is being pulled into the sewer pipe by a tag line rope.
- Interior pipe view during DTS cable during installation while cable is being pulled by tag line rope into the sewer pipe; after the cable is pulled in and in final position on the invert of the pipe the cable will be secured in the pipe by compression rings.





Figure 5. Street View of manhole and interior pipe view.

The photos in Figure 6 below show (from left to right):

- DTS cable secured within upstream manhole with remaining cable length coiled and secured within the upstream manhole inside a “dead zone” box.
- DTS unit and cables installed within manhole.



Figure 6. DTS cable secured and installed within manhole.

- Deployment
 - The DTS measurement deployment period will begin after the DTS system is installed, operational and acquiring temperature data.
 - BC will monitor temperature in the sewers for a maximum of 14-days.
 - BC will regularly visit the DTS system installation during the temperature measurement period to perform DTS and independent temperature logger data downloads and exchange discharged batteries with recharged batteries.
 - During the regularly scheduled visits, BC will use a pole-mounted camera to perform integrity checks to examine the operation of the fiber cable installations. The camera will be lowered to a position near the invert of the manhole at each location where each



cable compression ring is installed. We currently anticipate performing battery exchanges and integrity checks using the pole-mounted camera every Monday, Wednesday, and Friday of the DTS measurement period.

- Additional site visits by BC may be performed to address issues discovered during the inspection.
- End of deployment period
 - The DTS measurement period(s) will end after 14-days of operation.
 - Events or conditions may occur during the 14-day measurement period that are beyond the control of BC. Damage from vandalism or damage from debris strikes or debris accumulation may cause a significant reduction in the functionality of the DTS system. BC will alert the City as soon as we become aware of issues. To address this possibility, BC recommends that an allowance/contingency be established in the contract that enables the City to issue BC a notice to proceed to return the DTS system to a fully functional state. If the City declines to establish an allowance/contingency or if established, declines to issue an NTP, then the measurement period will prematurely end, even if the period is not complete.
 - After the end of the 14-day monitoring period, BC will remove compression rings, fiber optic cables, and the DTS unit.
 - To document DTS post-installation conditions, photos of the interior of manholes and street/ground surfaces at manholes will be taken at:
 - a) the farthest upstream manholes where DTS “dead boxes” and cables are installed, and
 - b) the downstream manhole(s) where the DTS unit is installed.

City of Pueblo Responsibilities

- Notification of BC if COP becomes aware of any issues related to the DTS temperature measurement system installation and operations. Issues might include vandalism, need for COP to perform maintenance cleaning of sewers in the project area, high volume or high flow rate flows due to wet-weather events or upstream discharges, flooding, reports of sewer backups, etc.

Deliverables

The following deliverables will be provided by BC:

- Cleaning of sewer lines and installation of tag line ropes in advance of DTS cable installation.
- Pre-installation and post-installation photos of the interior of manholes and street/ground surfaces at/adjacent to the manholes at a) the farthest upstream manholes where DTS cables are installed, and b) the downstream manhole where the DTS unit is installed.
- DTS temperature measurement system installation, operation, maintenance, and removal.
- Data analysis and reporting.
- DTS data will be delivered entirely in electronic format.

2.8 Draft Report, In-Person Workshop, and Final Report

BC will develop and deliver a Draft Report for COP review and comment. Efficacy of the inspections to identify and locate groundwater infiltration and inflow flow sources will be described. Corroboration of results from the independent inspection means and methods will be described.



BC will organize and lead an in-person workshop at COP facilities. The purpose of the workshop will be to jointly review the Draft Report and discuss BC findings. During the workshop, BC will engage with COP staff to provide comments, ask questions about the inspection findings, and give guidance to BC as COP sees necessary.

BC Project Management and Technical staff will attend and present at the workshop. The workshop is to be attended by COP designated sewer collections system operations and maintenance staff, plus COP engineering and management staff.

BC will compile COP Draft Report review comments, incorporate input, then develop and deliver a Final Report.

City of Pueblo Responsibilities

- Receive and review Draft Report, provide comments.
- Attend and participate in a BC organized and facilitated in-person workshop, provide comments.
- Receive and accept Final Report.

Deliverables

The following deliverables will be provided by BC:

- BC will prepare and submit a Draft Report describing results of the inspections for COP review and comment.
- BC will organize and lead an in-person workshop at COP facilities to jointly review the Draft Report and discuss BC findings. The duration of the workshop is anticipated to be up to two hours.
- BC will prepare and submit a Final Report describing results of the project inspection efforts.

Task 300 – Additional Services

Upon written authorization by COP and mutual agreement on scope and fee, BC shall provide additional services as required by the project. Additional services may be required due to unavoidable schedule delays, resolving DTS system functionality or operational issues, testing additional technologies, strategizing approaches for accessing and investigating service lines on private property, investigating private property service lines, performing additional services as requested by COP, or other currently undefined services. The following are items that have been identified as potential Additional Services at the time of scope development:

3.1 Sewer Cleaning and Traffic Control in Advance of DTS

Due to the preferred seasonal timing (wet-weather) for the DTS activities, an additional round of sewer cleaning and traffic control is anticipated to execute this aspect of the scope. Should timing of the preceding work activities (FELL and CCTV) occur in succession with the DTS activities, then this additional effort is not expected.

Included in this task is additional project management fee that would result from an extended schedule to allow DTS activities to occur during wet-weather months and not in succession with the FELL activities.



3.2 Stand-by Subcontractor Cost

To cover potential work delays of on-site subcontractors related to unforeseen or uncontrollable circumstances, additional fee is included. Stand-by costs incurred by subcontractors as a result of foreseen or controllable circumstances shall be borne by the subcontractor. Any stand-by costs incurred under this task shall only be paid with approval from the City.

3.3 Adjacent Project Site

BC has identified two adjacent sewer lines to the project area where there is value in obtaining additional data. This task includes fee to provide cleaning, FELL, CCTV, DTS and associated activities for data collection of approximately 1,600 linear feet of sewer (see Figure 7). Activities for this project task must be approved by COP and take place in conjunction with Phase 200 scope of services.



Figure 7. Adjacent Project Site (blue dashed area).

3.4 Owner's Contingency

Upon written authorization by COP and mutual agreement on scope and fee, BC shall provide additional services as required by the project. Contingency services may be required due to unavoidable schedule delays, unforeseeable issues, or other items as authorized by COP.

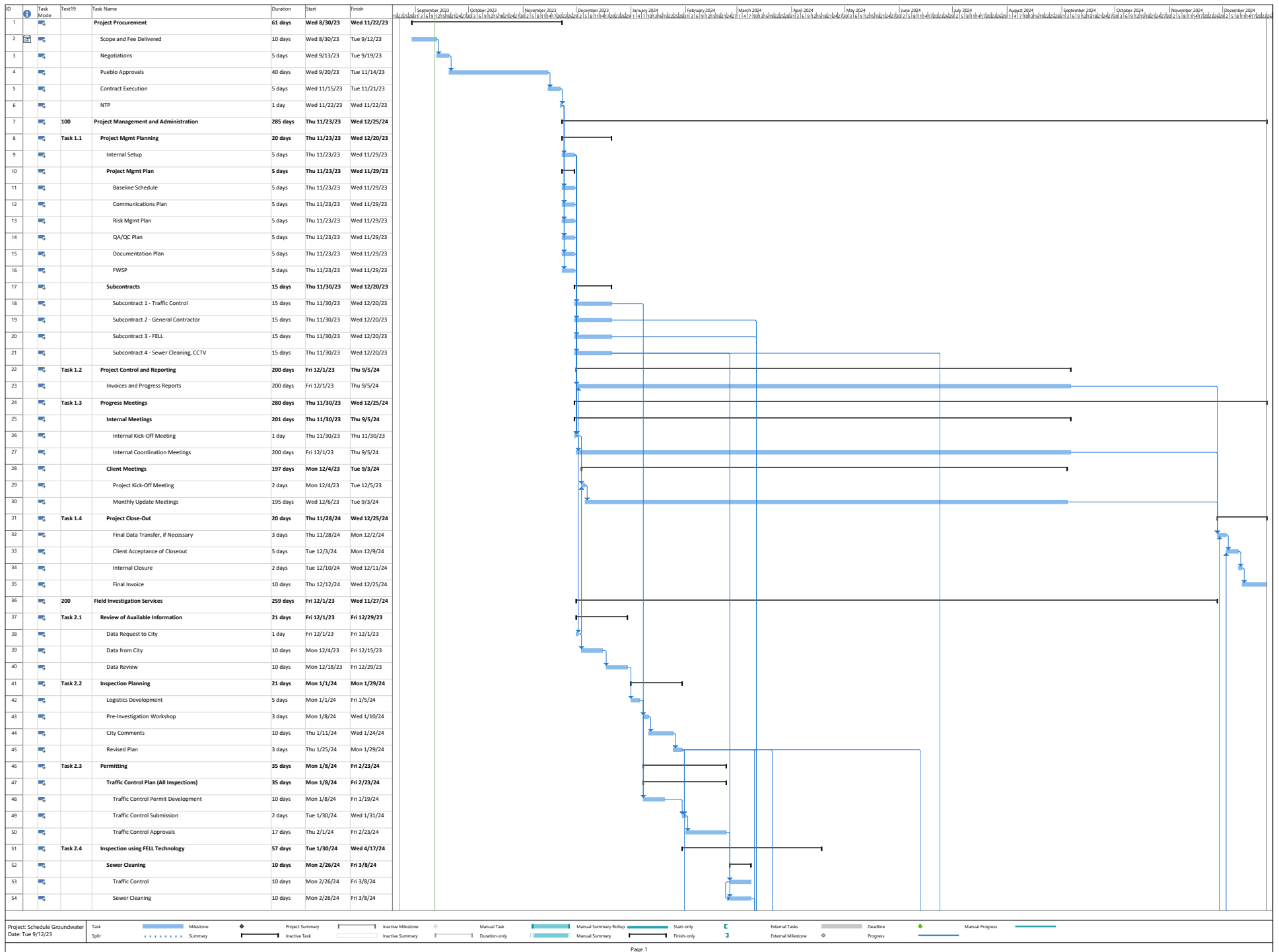
Attachment 1: Project Area Map

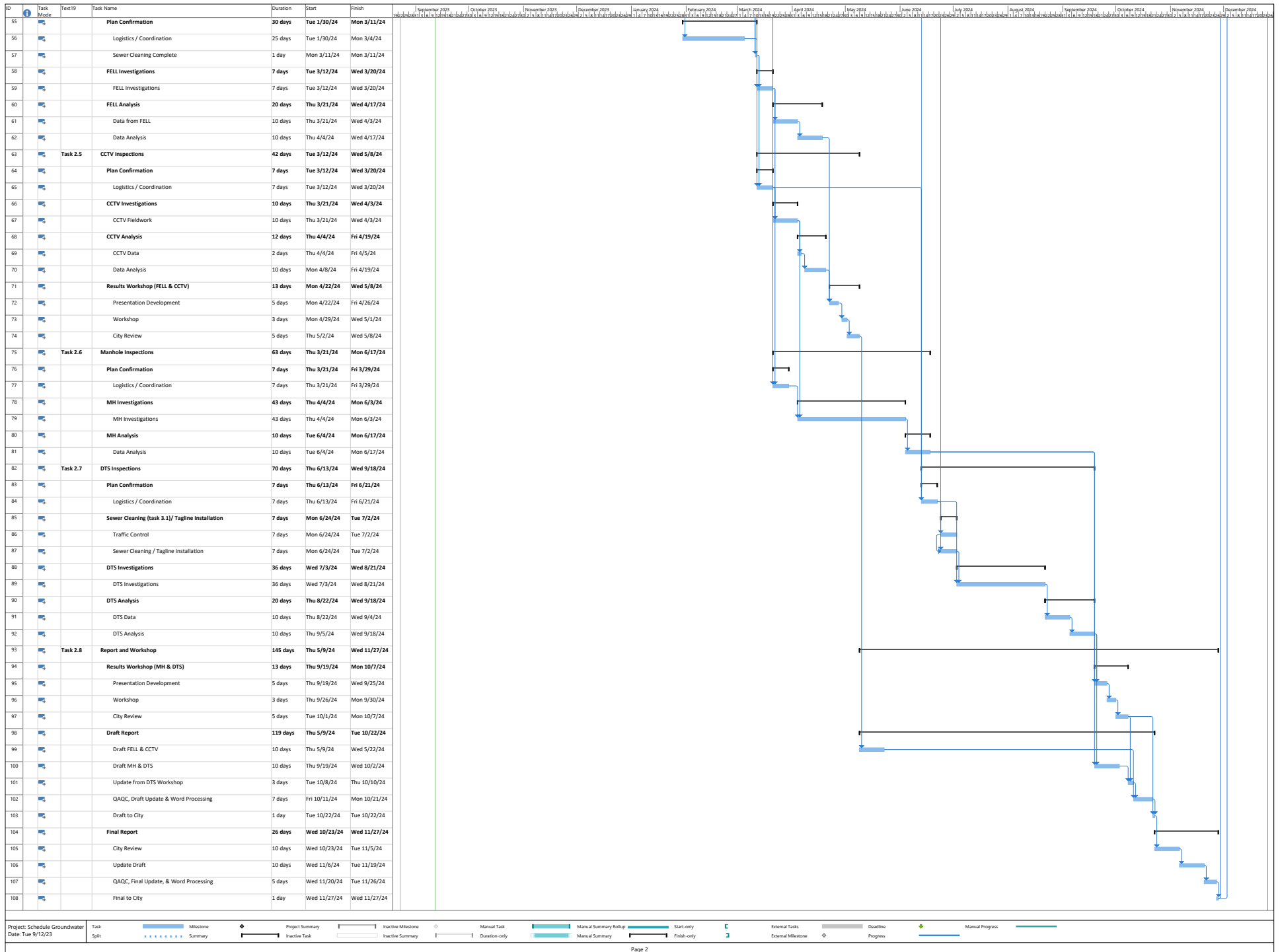


Attachment 2: Project Fee Schedule

			Chandler Wilson	Keli Lambert	Mike Thorlenson	Sara Everman	Gary Skipper	Mike Metcalf	Mark Poppe	David Hill	Andy Lukas	Matt Davis	Rhys McDonald	Drew Skipper	Jr. Engineer	Admin Asst.			Equipment - Supplies & Shipping	Travel Costs		Propipe - Cleaning and CCTV	M.E. Simpson - FELL Provider	Traffic Control Provider	Wildcat - Confined Space Entry	Contingency		Subcontractor and ODC Markup	
Phase	Task	Phase / Task Description	Project Manager	Project Analyst	Principal	H&S	SME	SME	Sr. Eng	Jr. Eng	SME	Sr. Eng	Sr. Eng	Field Tech / Support	Jr. Engineer	Word Processing	Total Labor Hours	Labor Effort			Subtotal ODCs						Subtotal Subs	Subtotal Markup	Total Effort
		Rate =	\$220.00	\$120.00	\$265.00	\$235.00	\$280.00	\$265.00	\$235.00	\$190.00	\$280.00	\$265.00	\$265.00	\$165.00	\$165.00	\$110.00													
100		Project Management	97.00	64.00	3.00	4.00	12.00	0.00	4.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	188.00	\$35,715.00	\$0.00	\$1,700.00	\$1,700.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$170.00	\$37,585.00
	1.1	Project Mgmt Planning	48.00	32.00	2.00	4.00	8.00							4.00			98.00	\$18,770.00			\$0.00						\$0.00	\$0.00	\$18,770.00
	1.2	Project Controls & Reporting	24.00	30.00	1.00												55.00	\$9,145.00			\$0.00						\$0.00	\$0.00	\$9,145.00
	1.3	Progress Meetings	24.00				4.00		4.00								32.00	\$7,340.00	\$1,700.00		\$1,700.00					\$0.00	\$170.00	\$9,210.00	
	1.4	Project Close-Out	1.00	2.00													3.00	\$460.00			\$0.00					\$0.00	\$0.00	\$460.00	
200		Installation and Data Acquisition	28.00	0.00	0.00	0.00	64.00	62.00	144.00	44.00	12.00	32.00	28.00	202.00	128.00	8.00	752.00	\$157,300.00	\$8,000.00	\$9,010.00	\$17,010.00	\$66,583.00	\$53,480.00	\$14,850.00	\$50,000.00	\$0.00	\$184,913.00	\$20,192.30	\$379,415.30
	2.1	Review of Available Information	2.00				8.00	2.00	16.00					8.00			36.00	\$8,290.00			\$0.00						\$0.00	\$0.00	\$8,290.00
	2.2	Inspection Planning	8.00				24.00	8.00	40.00								80.00	\$20,000.00	\$1,700.00		\$1,700.00					\$0.00	\$170.00	\$21,870.00	
	2.3	Permitting	2.00						2.00					2.00			6.00	\$1,240.00			\$0.00			\$2,100.00		\$2,100.00	\$210.00	\$3,550.00	
	2.4	Inspection using FELL Technology																											
	2.4.1	Cleaning in advance of FELL												24.00	8.00		32.00	\$5,280.00		\$1,600.00	\$1,600.00	\$31,100.00		\$3,750.00		\$34,850.00	\$3,645.00	\$45,375.00	
	2.4.2	Inspection using FELL Technology	2.00				4.00	16.00	8.00					24.00	8.00		62.00	\$12,960.00	\$500.00	\$1,600.00	\$2,100.00		\$53,480.00	\$2,625.00		\$56,105.00	\$5,820.50	\$76,985.50	
	2.5	Visual Inspections by CCTV																											
	2.5.1	CCTV Inspections	2.00				6.00	2.00	14.00	20.00				40.00	8.00		92.00	\$17,660.00	\$250.00	\$1,950.00	\$2,200.00	\$14,843.00		\$3,750.00		\$18,593.00	\$2,079.30	\$40,532.30	
	2.5.2	CCTV Inspections - Laterals															0.00	\$0.00				\$20,640.00				\$20,640.00	\$2,064.00	\$22,704.00	
	2.6	Manhole Inspections	2.00						8.00	24.00				48.00	48.00		130.00	\$22,720.00	\$250.00		\$250.00					\$0.00	\$25.00	\$22,995.00	
	2.7	DTS Inspections	2.00				2.00	2.00	8.00		10.00	32.00	24.00	56.00	56.00		192.00	\$39,530.00	\$7,000.00	\$2,160.00	\$9,160.00			\$2,625.00	\$50,000.00	\$52,625.00	\$6,178.50	\$107,493.50	
	2.8	Report and Workshop	8.00				20.00	32.00	48.00		2.00		4.00			8.00	122.00	\$29,620.00			\$0.00					\$0.00	\$0.00	\$29,620.00	
300		Additional Services	10.00	0.00	2.00	0.00	2.00	0.00	2.00	16.00	0.00	0.00	0.00	0.00	16.00	0.00	110.00	\$19,670.00	\$0.00	\$2,950.00	\$2,950.00	\$31,848.00	\$13,895.00	\$5,150.00	\$10,000.00	\$50,000.00	\$110,893.00	\$6,384.30	\$139,897.30
	3.1	Sewer Cleaning / Traffic Control in Advance of DTS Activities	4.00		2.00									28.00	10.00		44.00	\$7,680.00		\$1,600.00	\$1,600.00	\$21,048.00		\$3,750.00		\$24,798.00	\$2,639.80	\$36,717.80	
	3.2	Stand-by Subcontractor Cost	2.00											8.00			10.00	\$1,760.00			\$0.00	\$5,600.00	\$5,900.00	\$1,000.00	\$5,000.00	\$17,500.00	\$1,750.00	\$21,010.00	
	3.3	Adjacent Project Site	4.00				2.00		2.00	16.00				32.00			56.00	\$10,230.00	\$1,350.00		\$1,350.00	\$5,200.00	\$7,995.00	\$400.00	\$5,000.00	\$18,595.00	\$1,994.50	\$32,169.50	
	3.4	Owner's Contingency															0.00	\$0.00			\$0.00				\$50,000.00	\$50,000.00	\$0.00	\$50,000.00	
		GRAND TOTAL	135	64	5	4	78	62	150	60	12	32	28	206	144	8	1,050	\$212,685.00	\$8,000.00	\$13,660.00	\$21,660.00	\$98,431.00	\$67,375.00	\$20,000.00	\$60,000.00	\$50,000.00	\$295,806.00	\$26,746.60	\$556,897.60

Attachment 3: Project Schedule





**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CITY OF PUEBLO
AND
(LEGAL NAME OF CONSULTANT)**

THIS AGREEMENT is made and entered this _____ day of _____, 2023, by and between Pueblo, a Municipal Corporation ("Client") and Brown and Caldwell, Inc., a California Corporation authorized to do business in the State of Colorado (hereinafter referred to as "Consultant") for Consultant to render professional management and administration, field investigation, data analysis, condition assessment, and reporting services for Client with respect to Bid 18-087 Wastewater Department Engineer of Record – Pilot Project to Identify Contributing Groundwater Infiltration and Inflow and related ancillary services, hereinafter referred to as the "Project." In consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

SECTION 1. GENERAL AND SCOPE OF SERVICES

(a) Consultant shall satisfactorily perform the professional planning and consulting services for the Project described in more detail in Schedule 1 attached hereto and incorporated herein by reference (the "Basic Services"). Such services shall include all usual and customary professional consulting and related services incident to its work on the Project as set forth in Schedule 1. In the event this Agreement follows the selection of Consultant by Client pursuant to a Request for Proposals (RFP), all of the requirements of that RFP 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.

SECTION 2. CONSULTANT'S RESPONSIBILITIES

(a) Consultant shall be responsible for the professional quality, technical accuracy and timely completion of Consultant's work, including that performed by Consultant's subconsultants and subcontractors, and including drawings, reports and other services, irrespective of Client's approval of or acquiescence in same. Consultant shall perform its services in accordance with generally accepted standards and practices customarily utilized by competent engineering firms in effect at the time Consultant's services are rendered.

(b) Consultant shall be responsible, in accordance with applicable law, to Client for all loss or damage to Client caused by Consultant's negligent act or omission.

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

(d) Consultant represents that Schedule 3 attached hereto 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.

(e) 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.

SECTION 3. FEES FOR SERVICES; PAYMENT

(a) Client will pay to Consultant as full compensation for all services required to be performed by Consultant under this Agreement, except for services for additional work or work beyond the scope of this Agreement, the maximum sum of U.S. \$556,897.60, computed as set forth in Schedule 2.

(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 for reimbursable expenses incurred. Applications for payment shall be submitted based upon the work completed as shown in Schedule 2 attached hereto and shall contain appropriate documentation that such services have been performed. Thereafter, Client shall pay Consultant for the amount of the application within 30 days of the date such application is received.

(c) No separate or additional payment shall be made for profit, overhead, local telephone expenses, lodging, routine photocopying, computer time, or similar expenses unless otherwise provided and listed in Schedule 2.

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

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

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

SECTION 4. CLIENT'S RESPONSIBILITIES

(a) Client agrees to advise Consultant regarding Client's Project requirements and to provide all relevant information, surveys, data and previous reports accessible to Client which Consultant may reasonably require. Consultant shall rely on information provided without verification unless otherwise agreed in the specific Scope of Work.

(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.

SECTION 5. TERMINATION

(a) Client reserves the right to terminate this Agreement and Consultant's performance hereunder, at any time upon 10 days written notice, either for cause or for convenience. Upon such termination, Consultant and its subcontractors shall cease all work and stop incurring expenses, and shall promptly deliver to Client all data, 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 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 Client. In no event shall payment to Consultant upon termination exceed the maximum compensation provided for complete performance in Section 3(a).

(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 with that level of care and skill ordinarily exercised by consultants performing similar services at the time such services are performed, or to perform work in a manner deemed satisfactory by Client's Project Representative, then in that event, Consultant's entire right to compensation shall be limited to 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 professional responsibility for its completed work and services shall survive any termination.

SECTION 6. USE OF DOCUMENTS

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

SECTION 7. INSURANCE AND INDEMNITY

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

(b) The minimum insurance coverage which Consultant shall obtain and keep in force is as follows:

(i) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the Client.

(ii) Commercial General Liability Insurance. The Consultant shall secure and maintain during the period of this agreement/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 him and all his 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/Contract, and "Completed Operations and Projects Liability" coverage.

(iii) Professional Liability Insurance with coverage of not less than \$1,000,000 in a form and with a deductible acceptable to Client covering claims arising from the negligent acts, errors, or omissions in the services performed by Consultant for Client under this Agreement.

(iv) Comprehensive Automobile Liability Insurance. The Consultant shall procure and maintain during the period of the agreement/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 agrees to hold harmless, defend and indemnify Client from and against any liability to third parties, to the extent caused by the negligent acts or omissions of Consultant, its employees, subcontractors and consultants.

SECTION 8. 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 to the extent Client has paid Consultant for services performed by Consultant's subcontractors.

(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. 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.

SECTION 9. MISCELLANEOUS

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Consultant or Client by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the Client, City of Pueblo, Department of Wastewater, Attn: Andra Ahrens, Director, 1300 S. Queens Avenue, Pueblo, Colorado, 81001, or to Consultant, Brown and Caldwell, Inc., Attn: Michael Thorstenson, 1697 Cole Boulevard, Golden, Colorado, 80401. Either party may change his address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

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

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

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

(e) Choice of Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Colorado. Any unresolved dispute arising from or concerning any breach of this Agreement shall be decided in a state court of competent jurisdiction located in Pueblo, Colorado.

(f) Equal Employment Opportunity. In connection with the performance of this Agreement, neither Consultant nor its consultants shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability 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, national origin, disability or age.

(g) Severability. If any provision of this Agreement, except for Section 2, is determined to be directly contrary to and prohibited by law 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 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 as of the time of any such determination, this entire Agreement shall be void and terminated pursuant to the provisions of Section 5 without waiving any claims or defenses.

SECTION 10. COMPLIANCE WITH 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.

SECTION 11. PERA LIABILITY

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 has submitted a completed Colorado PERA Questionnaire and submitted to Client as reference for this Agreement.

SECTION 12. 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.

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 BROWN AND CALDWELL, INC.

By _____
Naomi Hedden, Director of Purchasing

By _____
Michael J. Thorstenson, P.E., Principal-In-Charge

Attest _____
Marisa Stoller, City Clerk

[S E A L]

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

Alexandria Romero, Finance Director

APPROVED AS TO FORM:

Robert P. Jagger, City Attorney

Attachments: Schedule 1: Scope of Services
 Schedule 2: Fee Schedule
 Schedule 3: Work Schedule
 Additional Information for Agreement

Project Overview

The City of Pueblo (COP) has been addressing selenium and sulfate issues in the Arkansas River Basin for more than 25 years. Naturally occurring selenium and sulfate are known to enter the COP sewer collections system through the infiltration and inflow of groundwater. The COP sewer collections system conveys sewage and the groundwater to the James R. Dilorio Water Reclamation Facility (WRF). Approximately 50 percent of the selenium and very little sulfate is removed during the treatment process. Treated effluent from the WRF is discharged to the Arkansas River.

The concentrations of selenium and sulfate in the effluent discharged to the Arkansas River during wet weather conditions are higher than site-specific standards in the Arkansas River set and allowed by the State of Colorado, Department of Health, Water Quality Commission (WQC). Since 2018, the COP has operated under a WQC adopted Discharger Specific Variance (DSV) for selenium and sulfate that represents the highest degree of protection for aquatic life that was determined feasible for the Pueblo WRF.

COP estimates an approximate \$200 million investment in capital and operating costs would be required at the WRF for additional treatment processes to further reduce the concentrations of selenium and sulfate in the treated effluent discharge without a certain substantial environmental benefit associated to the investment.

The 2018 WQC approved DSV included COP implementation of a \$10 million management program to reduce selenium and sulfate concentrations to the extent feasible. COP has made investments under the management program that include:

- Rehabilitating (by cured-in-place-pipe (CIPP) lining) and replacing sewer pipes.
- Sealing manholes.
- Establishing a homeowners sump pump removal program.
- Examining added treatment processes.

To date, the \$10 million management program investments have led to minor measurable reductions in sources of selenium entering the sewer collections system. Nevertheless, the investments and efforts expended have not reduced the selenium and sulfate concentrations sufficiently to meet state water quality standards without consideration of the 2018 WQC approved DSV.

Project Purpose

The purpose of this project is to pilot multiple technologies not previously used by City of Pueblo (COP) that are capable of identifying and locating sources of groundwater infiltration and inflow entering the COP sewer collections system.

The Electro Scan Focused Electrode Leak Location (FELL) technology described in this proposal and proposed for use during the project is not reliant on high groundwater level conditions with active infiltration into COP sewers occurring during performance of the testing in order to identify and locate pipe defects that provide a means for groundwater to infiltrate into sewer pipes. Additionally, the FELL technology can identify and locate cured-in-place-lining (CIPP) defects that cannot be seen via CCTV inspections that provide a means for groundwater to infiltrate into sewer pipes.

The unique CCTV inspection system described in this proposal and proposed for use during the project includes a combination mainline camera system and self-propelled service line camera system. This combination allows for the visual inspection of mainlines and laterals during single inspection runs.

The distributed temperature sensing (DTS) system technology described in this proposal and proposed for use during the project provides the means and methods to identify and detect groundwater inflow and infiltration into sewers at discrete 3-foot intervals along the length of pipes. Importantly, the DTS technology can detect intermittent groundwater discharges from sump pumps and perimeter drains that contribute extraneous groundwater to the sewer system.

The results of this project are intended to provide the COP with a better understanding of how to move beyond CCTV inspections to more effectively identify and locate the sources of extraneous groundwater entering the COP sewer collections system. The results will additionally yield benefit by exposing COP to a means and methods to perform quality control inspections of CIPP lining installations that are intended to reduce the volume of groundwater containing selenium and sulfate from entering the sewer system.

The introduction of advanced technologies during this project may ultimately assist COP to reduce the amount of selenium and sulfate reaching the James R. Dilorio Water Reclamation Facility for treatment and discharge.

Scope of Services

Brown and Caldwell (BC) will provide field investigation and engineering services to the City of Pueblo (COP) to identify sources contributing. Work will include planning and conducting field investigations, data analysis, condition assessment, and reporting.

The proposed Scope of Services includes the following tasks:

Task 100 - Project Management and Administration

Task 200 - Field Investigation, Data Analysis, Condition Assessment, and Reporting Services

Task 300 - Additional Services

Attachments included with this Scope of Services include:

Attachment 1 – Project Area Map

Attachment 2 – Project Fee Schedule

Attachment 3 – Project Schedule

Project Assumptions

The following assumptions were made in the development of this Scope of Services:

- The pipes and manholes of the project area are in suitable condition to allow for the inspections described in this proposal to be performed without undue risk to BC personnel, BC subcontractor personnel, and equipment provided and used to deliver services under this contract.
- COP shall not impede or restrict BC access to project area sewers.
- No excavations are required to expose project area sewer manholes.
- No sewer construction by COP or third parties will occur during BC field inspection operations.
- COP will grant access to use water from fire hydrants within the project area for the purposes of sewer cleaning and inspection operations. Water usage and/or permit fees have been excluded from the proposed fee. We understand that Pueblo Water is the potable water provider, and that

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- COP may have to coordinate all efforts to provide access.
 - BC may shift budget between work phases or tasks as necessary to complete the Work.
 - COP shall provide a local disposal site for materials removed by BC from COP sewers. Disposal fees have been excluded from the proposed fee.

Task 100 – Project Management and Administration

Objectives

Project Management and Administration includes the following activities:

- Project Management Planning.
- Project Control and Reporting.
- Project Meetings and Workshops.
- Project Closeout.

1.1 Project Management Planning

The Project Management Plan will document the key project information required by all project team members to assist them in executing the project to meet the required objectives: on time, on budget, with high quality. The key elements of the project plan are described below:

- Scope of Services with work breakdown structure
- Project resources and budgets.
- Baseline Project schedule.
- Communications Plan.
- Risk Management Plan.
- QA/QC Plan.
- Project documentation plan and file structure.
- Preparation of the project specific Field Work Safety Plan (FWSP).

1.2 Project Control and Reporting

Monthly invoices and progress reports will be prepared and submitted.

This task also includes periodic project review by BC management to assure the project is meeting critical success factors, is on schedule, and is within budget. Updates to the project schedule will be included in the progress reports.

1.3 Progress Meetings

BC will provide a regular forum for the receipt, exchange, response, and documentation of project planning, design, and management related issues and decisions during the project.

This task includes:

- Project Kickoff Meeting. Assume this meeting to be in person at a COP facility. A project area site visit by BC project team members and COP personnel will be conducted following the meeting.
- Monthly Update Meetings–BC PM will meet with COP to review project status, schedule, contract issues, and other project management related issues. Assume meetings to be virtual (1 hour each).

Report deliverable workshops and pre-inspection workshops are included in tasks below.

1.4 Project Close-Out

During project close-out, BC will submit all final invoices to COP and consolidate and archive all project files.

Deliverables

The following deliverables will be provided as part of this phase:

- Project Management Plan.
- Monthly invoices, with progress summaries.
- Kickoff Meeting agenda, presentation materials, and minutes.
- Progress Meeting summary notes.

Assumptions

- Project duration is up to 12-months.
- The BC prepared Communications Plan is for internal use by the BC project team and COP.
- External communication support/direct engagement with stakeholders will be performed by COP.

Task 200 – Field Investigation Services

The project area sewers are defined in Attachment 1-Project Area Map. The project area sewer pipes are labeled as 8- and 10-inches in diameter. The pipe materials are currently unknown to BC but are suspected to be vitrified clay pipe (VCP). We are under the impression that some pipes within the project area have been rehabilitated by installation of cured-in-place lining. BC understands that the total length of pipes within the project area have been described by the COP to be approximately 8,400 lineal feet (lf). The flows in the project area sewers are largely attributable to flows from the north with a minor contribution from the east.

The sewer pipes in the project area will be investigated by BC to determine:

- Pipe issues
 - Structural condition of pipelines (e.g., cracks, fractures, missing wall, offset joints, etc.)
 - Watertightness of individual pipes (from joint to joint), joints connecting pipes, service line (lateral) connections, and pipe connections at structures associated to the pipelines (e.g., pipe to MH connections)
- Cured-in-place-pipe (CIPP) lining issues.
 - Installation issues
 - CIPP tube tears, fins, wrinkles, folds, inclusions, or other defects.

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- Issues related to CIPP liner watertightness potentially caused by:
 - Uncured resins.
 - Tubes not saturated with resins at completion of curing.
 - Contaminated resins.
 - Improper service line connection reinstatements - missed cuts, oversized cuts, etc., not repaired.
 - Constructed features:
 - Type of mainline to service line connections (e.g., top hat or other fitting extending into service line piping).
 - Resin seals or hydrophilic rubber seals at terminations at structures (leakage may be visible at CIPP liner to host pipe interface).
 - Other issues:
 - Damages caused during cleaning.
 - Damages caused by excessive external loads.
 - Damages caused by third party strikes.
 - Illicit connections, such as perimeter drains or other non-sewer connections from private property to sewer pipes or manholes.
 - The potential presence of sump pumps discharging groundwater to the sewer pipes.

2.1 Review of Available Information

COP will provide BC available and relevant information and data to aid BC in the performance of the project. This may include, but is not limited to information such as:

- Record documents such as plan and profile drawings, as-built drawings, and specifications.
- Record documents related to prior sewer pipe and manhole repair, rehabilitation, and replacement.
- GIS data for all project area sewer pipes, structures, connections, and other assets.
- CCTV inspection records, video, photos, and data.
- Manhole inspection records, video, photos, and data,
- Operations and maintenance records for the project area sewers.
- Address/location of known sump pump installations.
- Project area sewer collections system flow data:
 - Flow meter data acquired within the project area boundary.
 - Flow meter data acquired within the same sewer basin upstream of the project area.
 - Flow meter data acquired within the same sewer basin downstream of the project area.
 - Identification of the location of manholes where flow meters were installed.
 - Any available data including:
 - Flow rate (Q), depth of flow (d), velocity of flow (V), and if reported, temperature (°F) of flow.
 - Discrete, non-totalized, date and time stamped flow meter measurements (anticipated measurement intervals at either 15-minutes or 5-minutes).

- James R. Dilorio Water Reclamation Facility average daily influent flow data and average temperature data for a minimum period of three years.
- Selenium and sulphate water quality sampling data from the project area sewer basin and the influent to the James R. Dilorio Water Reclamation Facility.
- Groundwater level and temperature monitoring data.
- Access to COP staff knowledgeable about project area sewer operational and maintenance issues, prior inspections, previous rehabilitation, identification of sump pump locations, selenium sampling, flow metering, hydraulic modeling, and other COP and third-party work in the project area.
- Potable water temperature data (request to be refined during project execution).

City of Pueblo Responsibilities

- COP will provide BC with available information for use by BC to plan and perform the project inspections.

Deliverables

The following deliverables will be provided:

- BC will review available information provided by COP.
- BC will ask COP for clarification of available information, as needed.
- BC will compile a log of documents reviewed by BC.

2.2 Inspection Planning

BC will perform inspection planning services that includes preparing materials describing the inspection means and methods for each Task of the inspections to be performed during the course of the project. BC will additionally prepare a schedule for when each Task of the inspections is to be performed.

BC will organize and lead an in-person workshop at COP facilities. BC Project Management and Technical staff will attend and present at the workshop. The workshop is to be attended by COP designated sewer collections system operations and maintenance staff, plus COP engineering and management staff.

The purpose of the workshop will be to inform COP staff of planned BC work efforts, anticipated results, schedule, clarify roles and responsibilities, and to coordinate COP and BC communication requirements. During the workshop, BC will engage with COP staff to provide comments, ask questions about the inspection means and methods to be used for this project, and provide guidance to BC as COP sees necessary.

City of Pueblo Responsibilities

- Attend and participate in a BC organized and facilitated in person workshop.

Deliverables

The following deliverables will be provided by BC:

- Inspection planning services.
- BC will organize and lead an in-person workshop at COP facilities. The duration of the workshop is anticipated to be up to two hours.

2.3 Permitting

Permitting is anticipated to be minimal for this project. It is assumed the only permit required will be a permit for work within temporary traffic control work zones. BC shall submit a Traffic Control Plan (TCP) in drawing form for the review and approval by the COP Traffic Engineering Division. All traffic control procedures, signing, lighting, and barricades shall conform to the latest edition of the Manual on Uniform Traffic Control Devices, and shall be set up and maintained by a Certified Traffic Control Supervisor (TCS). It is assumed that neither flaggers nor off-duty police officers will be required during the field inspections.

Traffic control permitting and services are included for all aspects of the scoping items included herein.

City of Pueblo Responsibilities

- This scope assumes that permits will be provided by COP to BC and its subcontractors at no cost to BC.

Deliverables

The following deliverables will be provided by BC:

- Preparing a traffic control plan, submitting the plan to COP for approval, and obtaining a permit.

2.4 Inspection using Electro Scan Focused Electrode Leak Locating (FELL) Technology

ASTM F2550-06 describes the standard practice for Locating Leaks in Sewer Pipes Using Electro Scan—the Variation of Electric Current Flow Through the Pipe Wall. A copy of the complete standard may be obtained from ASTM International, <http://www.astm.org>.

Non-conductive (non-metallic) materials naturally prevent electricity from passing through, or along, the wall of a pipe. Electrical current should never be able to “leak” from inside a non-conductive piping system unless there is an opening in the pipe wall or liner materials in a rehabilitated pipeline. The larger the defect opening, the greater the electric current flow, and greater leak potential, as described in ASTM F2550.

Electro Scan Focused Electrode Leak Location (FELL) is conducted by applying a 9 to 11-volt electrical potential between a sonde (also referred to as a probe) that is placed in a non-conducting, water-filled sewer pipe and an electrode located at ground surface. By filling the pipe with water during the test, an electrical circuit can be completed with a metallic probe at ground surface.

The non-conducting nature of the sewer pipe material (such as concrete, plastic, and vitrified clay) and liner materials (such as cured in place pipe (CIPP) and plastic based slip liners) prevents electrical current from passing through the pipe wall to any great extent. If a defect is present, the extent of electrical current passing through the pipe wall is proportional to the significance of the defect. If groundwater is present at any time near these conducting defects, the presumption is that water will also infiltrate through the defects.

A schematic of the FELL testing method is provided in the Figure 1 below.

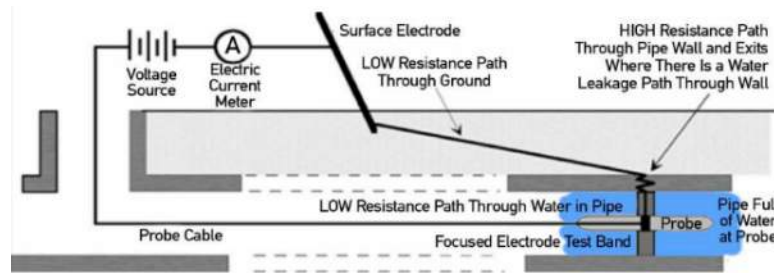


Figure 1. FELL testing method schematic.

A graphic of a typical FELL inspection equipment setup and operation is provided in the Figure 2 below.



Figure 2. FELL inspection equipment setup and operation.

Inspection using Electro Scan Focused Electrode Leak Locating (FELL) Technology will be performed prior to subsequent inspection methods. Results of FELL inspection will be used to inform subsequent CCTV video inspections (see Section 2.4) and distributed temperature sensing (DTS) inspections (see Section 2.5).

BC will provide sewer cleaning services prior to the FELL and CCTV inspections, additional traffic control services for any additional sewer cleaning services for the FELL and CCTV inspections, and a combination (hydro-jetter and vacuum) sewer cleaner system and services during BC provided FELL inspections.

Limitations

FELL inspection is intended to identify and locate potential leak sources in the mainline pipes and at service line connections to the mainline pipes. FELL leakage detection inspection of private property service lines is possible but is not proposed as part of this scope of services. Quantification of extraneous flows from FELL identified defects is not proposed as part of this scope of services. FELL inspections cannot detect extraneous flows entering the sewer system from sump pumps or other intermittent discharges.

Deliverables

The following deliverables will be provided by BC:

- Inspections using Electro Scan Focused Electrode Leak Locating (FELL) technology.
- Data analysis and reporting.
- Data will be delivered entirely in electronic format.

2.5 Visual Inspections by CCTV

Project area sewers will be visually inspected using a robotic CCTV camera system. The objective of the CCTV inspections will be to closely examine the locations of features and defects identified as potential groundwater leak sources by the prior Electro Scan Focused Electrode Leak Locating (FELL) inspections. CCTV inspections will therefore be performed after completion of FELL inspections.

Project area sewer mainlines will be CCTV inspected. Project area sewer service line pipes connecting to the mainlines will additionally be inspected by deploying a mini-CCTV camera from the from the mainline to the estimated public right-of-way to private property boundary line. If a cleanout is observed at the estimated public right-of-way to private property boundary line, the inspection will stop. If service line connections are collapsed, blocked by mainline lining materials or obstructions such as roots or obstacles, the affected service lines will be documented from the mainline, but not CCTV inspected. Service lines pipes on private property will not be inspected as part of this scope of services.

The Figure 3 below provide graphic representation of a robotic transporter equipped with a mainline CCTV camera and a service line mini-CCTV camera inspection system.



Figure 3. Robotic transporter equipped with mainline CCTV camera system.

CCTV inspections will be performed in accordance with current NASSCO Pipeline Assessment and Certification Program (PACP™) and Lateral Assessment and Certification Program (LACP™) performance specification guidelines and industry standards. Visually observed features and defects will be documented and described using PACP and LACP condition assessment coding standards.

In the event that “red flag” type observations of collapsed pipe, holes in pipes, detached linings, or other structural conditions are made, or significant sized obstacles, obstructions, or other operations and maintenance conditions that are judged to impede flow are made, or if suspected gas line cross bores are observed, the BC inspection team will immediately notify the COP Project Manager or their designee.

Limitations

While CCTV inspection can provide visual evidence of groundwater leakage into sewers, CCTV inspection cannot identify extraneous flows entering the sewer system from sump pumps or other intermittent discharges unless the discharges are occurring where the camera is positioned and focused while the discharge is active. Nevertheless, CCTV does not provide the means for observers to positively discern whether discharge waters are sewage or groundwater. Observations made during CCTV inspections may

provide some indicators of temperature variations, e.g., steam from hot water discharges into lower temperature sewage, or possibly cold-water groundwater discharges into higher temperature sewage.

City of Pueblo Responsibilities

- Identification of COP staff and provision of contact information for persons to be notified in the event “red flag” type observations are made during CCTV inspections.
- Attend a BC organized and facilitated remote workshop where BC presents FELL inspection and CCTV inspection findings, and BC describes next steps and schedule.

Deliverables

The following deliverables will be provided by BC:

- CCTV inspections of mainlines and service lines (laterals) within the public right of way right.
- NASSCO PACP and LACP coding of structural conditions, operations and maintenance conditions, construction features, and miscellaneous features.
- Data analysis and reporting.
- CCTV data and video will be delivered entirely in electronic format.
- BC will organize and lead a remote workshop to present FELL inspection and CCTV inspection findings.
- BC will modify and update the project schedule, as needed, and deliver a revised schedule to COP if adjustments by BC are recommended.

2.6 Manhole Inspections – To Be Performed Concurrently During Distributed Temperature Sensing Inspections (See Section 2.7)

Manholes are constructed for the primary purpose of providing access to sewer pipes for performing maintenance such as cleaning of pipes that connect to each manhole. Manholes are generally constructed to be watertight so that they do not allow groundwater infiltration or surface water inflow into the sewer system. Similar to pipes, manholes are subject to deterioration and develop structural defects or operation and maintenance defects during their service life and can become a source of extraneous groundwater infiltration and inflow into the sewer system.

During the performance of distributed temperature sensing (DTS) inspections, manholes associated with the project area sewers will be visually inspected from street/ground surface using a pole-mounted camera. The camera will be lowered into each manhole and photos of structural defects, constructed features, plus operations and maintenance conditions will be photographed and documented. Confined space entry will not be performed as a part of the manhole inspection process.

Manhole inspections will be performed in accordance with current NASSCO Manhole Assessment and Certification Program (MACP™) performance specification guidelines and industry standards. Visually observed features and defects will be documented and described using MACP condition assessment coding standards.

City of Pueblo Responsibilities

- Identification of COP staff and provision of contact information for persons to be notified in the event “red flag” type observations are made during manhole inspections.

Deliverables

The following deliverables will be provided by BC:

- Inspection of manholes within the public right of way.
- NASSCO MACP coding of structural conditions, operations and maintenance conditions, construction features, and miscellaneous features.
- Data analysis and reporting.
- Manhole inspection data and video will be delivered entirely in electronic format.

2.7 Distributed Temperature Sensing (DTS) Inspections

Overview

Distributed temperature sensing (DTS) systems measure the temperature of wastewater within sewer pipes and manhole channel inverts. Temperature measurements are taken at approximate 3-foot (1-meter) intervals in the sewer pipes and continuously over time. The measurements are analyzed to identify temperature measurements that indicate locations where extraneous groundwater infiltration and inflow (I/I) may be entering the sewer system.

The DTS system consists of the following primary components:

- **Fiber optic cable:** The cable serves as the temperature sensor. Approximately 8,400 lineal feet (lf) of sewer temperature will be monitored by the DTS cables laid in the invert of the project area sewer pipes. The fiber optic cable is left in place for the duration of each DTS measurement period which is currently anticipated to consist of two independent 14-day periods.
- **DTS data acquisition unit:** The DTS unit connects to one end of the fiber optic cable, emits pulses of laser light through the fiber optic cable, and processes the returned signals to determine temperature at discrete intervals along the cable. These intervals are approximately 3-feet (1-meter) in size along the length of the entire cable. The measurements are repeated every few minutes. The DTS data acquisition unit is installed in a manhole and is left in place for the duration of the DTS measurement period.
- **Batteries:** Rechargeable batteries power the DTS unit for a limited period of time. Removing discharged batteries and installing charged batteries periodically is required to allow for near-continuous operation of the DTS data acquisition unit during the DTS measurement period.

Installation and Deployment

The DTS system is optimally installed and deployed during periods when there is a significant temperature difference between sewage and extraneous water entering the sewer system from groundwater infiltration via pipe or manhole defects, groundwater inflow sources such as sump pumps, and direct inflow from wet-weather events.

DTS deployment is preferred during the highest precipitation timeframes as that would be the time when the groundwater table is likely at its highest elevation and sump pumps are most likely to be operating. For the COP, the highest precipitation timeframes have historically been the months of July and August followed by April and May (see Figure 4). Provisions have been included in the scope and fee based on anticipated timing of this project that allow for DTS deployment to occur directly following the FELL and CCTV activities listed in Tasks 2.4 and 2.5. The baseline schedule, provided with this scope of services,

reflects a gap between Tasks 2.4/2.5 and Tasks 2.6/2.7 such that DTS deployment occurs during the highest potential precipitation months. An alternative schedule can also be provided the reflects Tasks 2.4 through 2.8 occurring in succession, which would reduce the overall project duration by 2 months. DTS deployment would then occur in the April to May timeframe.

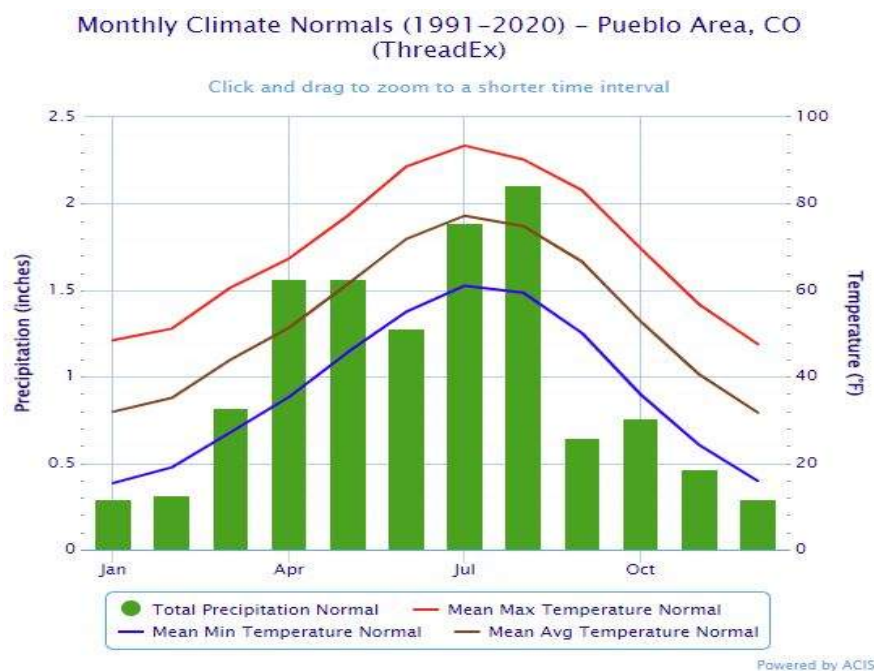


Figure 4. Historical Monthly Precipitation 1991-2020 for the City of Pueblo (Source - https://en.m.wikipedia.org/wiki/File:Monthly_Climate_Normals_%281991-2020%29_-_Pueblo_Area,_CO%28ThreadEx%29.svg).

BC will install the fiber optic cable and DTS data acquisition unit as detailed below:

- DTS pre-installation tasks
 - Project area manholes will be opened and examined during the cleaning, FELL inspection, and CCTV inspection field work. Information pertaining to the manholes and pipes obtained during the FELL and CCTV inspection field work will be used by BC to select one or more manholes where the DTS data acquisition unit will be installed and identify what conditions or issues in the pipes might be problematic for installation of the DTS fiber optic cable.
 - To document DTS pre-installation conditions, photos of the interior of manholes and street/ground surfaces at/adjacent to the manholes will be taken at:
 - a) the farthest upstream manholes where DTS cables are installed, and
 - b) the downstream manhole(s) where the DTS unit is installed.
 - Objects such as flow meters, flow meter sensors, or water quality sampling equipment not related to this project must be removed from the project sewers prior to DTS system installation.
 - Cleaning of the project area sewers to allow for the DTS cable to be placed on the invert (bottom) of sewer pipes is required. Cleaning must remove all accumulated sediment

and debris from the sewer pipes. Cleaning activities must be performed no more than one week prior to DTS deployment.

- Tag line ropes to be used by BC during the installation of the fiber optic cable must be installed in all sewer pipes after the completion of cleaning. The tag line ropes are to be continuous, to the extent possible, from upstream manholes to the location of the DTS data acquisition unit. It is currently anticipated that the installation of four to six tag line ropes will be required.
- Prepare the necessary fiber optic cables for installation and package for shipping to the project site. Once on-site, but before installation, a series of checks are performed to ensure the equipment was not damaged during transit.
- DTS installation tasks
 - BC will attach the fiber optic cables to the tag line ropes and pull the cables into place within the project area sewer pipes.
 - BC will install the cables on the invert of the project area sewer pipes.
 - At select manholes, BC will secure fiber optic cables to the invert of pipes with BC supplied compression rings.
 - BC will secure excess cable lengths within manholes with BC supplied materials attached to sound ladder rungs, anchor bolts, or other features.
 - BC will install the DTS unit within a manhole toward the downstream end of the project area—currently anticipated to be in manhole 445720.8 at/near the intersection of Atlanta Avenue and W 23rd Street. BC will connect one end (downstream, typical) of each fiber optic cable to the DTS unit.
 - BC will install a “dead zone” box within a manhole at toward the upstream ends of the project area housing excess fiber optic cable and an independent temperature logger. These manholes are currently anticipated to be MHs 435839.0, 445848.1, 445854.3, 445845.4, and 445625.5.
 - After system installation, BC will use the DTS unit to test the integrity of each fiber optic cable.
 - BC will troubleshoot and resolve issues identified during the cable integrity testing.
 - BC will complete installation and testing of all equipment within two to three days.

The photos in Figure 5 below show (from left to right):

- Street view of DTS cable reel at manhole during installation while cable is being pulled into the sewer pipe by a tag line rope.
- Interior pipe view during DTS cable during installation while cable is being pulled by tag line rope into the sewer pipe; after the cable is pulled in and in final position on the invert of the pipe the cable will be secured in the pipe by compression rings.



Figure 5. Street View of manhole and interior pipe view.

The photos in Figure 6 below show (from left to right):

- DTS cable secured within upstream manhole with remaining cable length coiled and secured within the upstream manhole inside a “dead zone” box.
- DTS unit and cables installed within manhole.



Figure 6. DTS cable secured and installed within manhole.

- Deployment
 - The DTS measurement deployment period will begin after the DTS system is installed, operational and acquiring temperature data.
 - BC will monitor temperature in the sewers for a maximum of 14-days.
 - BC will regularly visit the DTS system installation during the temperature measurement period to perform DTS and independent temperature logger data downloads and exchange discharged batteries with recharged batteries.
 - During the regularly scheduled visits, BC will use a pole-mounted camera to perform integrity checks to examine the operation of the fiber cable installations. The camera will be lowered to a position near the invert of the manhole at each location where each

cable compression ring is installed. We currently anticipate performing battery exchanges and integrity checks using the pole-mounted camera every Monday, Wednesday, and Friday of the DTS measurement period.

- Additional site visits by BC may be performed to address issues discovered during the inspection.
- End of deployment period
 - The DTS measurement period(s) will end after 14-days of operation.
 - Events or conditions may occur during the 14-day measurement period that are beyond the control of BC. Damage from vandalism or damage from debris strikes or debris accumulation may cause a significant reduction in the functionality of the DTS system. BC will alert the City as soon as we become aware of issues. To address this possibility, BC recommends that an allowance/contingency be established in the contract that enables the City to issue BC a notice to proceed to return the DTS system to a fully functional state. If the City declines to establish an allowance/contingency or if established, declines to issue an NTP, then the measurement period will prematurely end, even if the period is not complete.
 - After the end of the 14-day monitoring period, BC will remove compression rings, fiber optic cables, and the DTS unit.
 - To document DTS post-installation conditions, photos of the interior of manholes and street/ground surfaces at manholes will be taken at:
 - a) the farthest upstream manholes where DTS “dead boxes” and cables are installed, and
 - b) the downstream manhole(s) where the DTS unit is installed.

City of Pueblo Responsibilities

- Notification of BC if COP becomes aware of any issues related to the DTS temperature measurement system installation and operations. Issues might include vandalism, need for COP to perform maintenance cleaning of sewers in the project area, high volume or high flow rate flows due to wet-weather events or upstream discharges, flooding, reports of sewer backups, etc.

Deliverables

The following deliverables will be provided by BC:

- Cleaning of sewer lines and installation of tag line ropes in advance of DTS cable installation.
- Pre-installation and post-installation photos of the interior of manholes and street/ground surfaces at/adjacent to the manholes at a) the farthest upstream manholes where DTS cables are installed, and b) the downstream manhole where the DTS unit is installed.
- DTS temperature measurement system installation, operation, maintenance, and removal.
- Data analysis and reporting.
- DTS data will be delivered entirely in electronic format.

2.8 Draft Report, In-Person Workshop, and Final Report

BC will develop and deliver a Draft Report for COP review and comment. Efficacy of the inspections to identify and locate groundwater infiltration and inflow flow sources will be described. Corroboration of results from the independent inspection means and methods will be described.

BC will organize and lead an in-person workshop at COP facilities. The purpose of the workshop will be to jointly review the Draft Report and discuss BC findings. During the workshop, BC will engage with COP staff to provide comments, ask questions about the inspection findings, and give guidance to BC as COP sees necessary.

BC Project Management and Technical staff will attend and present at the workshop. The workshop is to be attended by COP designated sewer collections system operations and maintenance staff, plus COP engineering and management staff.

BC will compile COP Draft Report review comments, incorporate input, then develop and deliver a Final Report.

City of Pueblo Responsibilities

- Receive and review Draft Report, provide comments.
- Attend and participate in a BC organized and facilitated in-person workshop, provide comments.
- Receive and accept Final Report.

Deliverables

The following deliverables will be provided by BC:

- BC will prepare and submit a Draft Report describing results of the inspections for COP review and comment.
- BC will organize and lead an in-person workshop at COP facilities to jointly review the Draft Report and discuss BC findings. The duration of the workshop is anticipated to be up to two hours.
- BC will prepare and submit a Final Report describing results of the project inspection efforts.

Task 300 – Additional Services

Upon written authorization by COP and mutual agreement on scope and fee, BC shall provide additional services as required by the project. Additional services may be required due to unavoidable schedule delays, resolving DTS system functionality or operational issues, testing additional technologies, strategizing approaches for accessing and investigating service lines on private property, investigating private property service lines, performing additional services as requested by COP, or other currently undefined services. The following are items that have been identified as potential Additional Services at the time of scope development:

3.1 Sewer Cleaning and Traffic Control in Advance of DTS

Due to the preferred seasonal timing (wet-weather) for the DTS activities, an additional round of sewer cleaning and traffic control is anticipated to execute this aspect of the scope. Should timing of the preceding work activities (FELL and CCTV) occur in succession with the DTS activities, then this additional effort is not expected.

Included in this task is additional project management fee that would result from an extended schedule to allow DTS activities to occur during wet-weather months and not in succession with the FELL activities.

3.2 Stand-by Subcontractor Cost

To cover potential work delays of on-site subcontractors related to unforeseen or uncontrollable circumstances, additional fee is included. Stand-by costs incurred by subcontractors as a result of foreseen or controllable circumstances shall be borne by the subcontractor. Any stand-by costs incurred under this task shall only be paid with approval from the City.

3.3 Adjacent Project Site

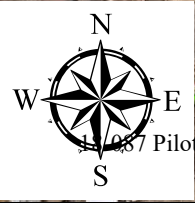
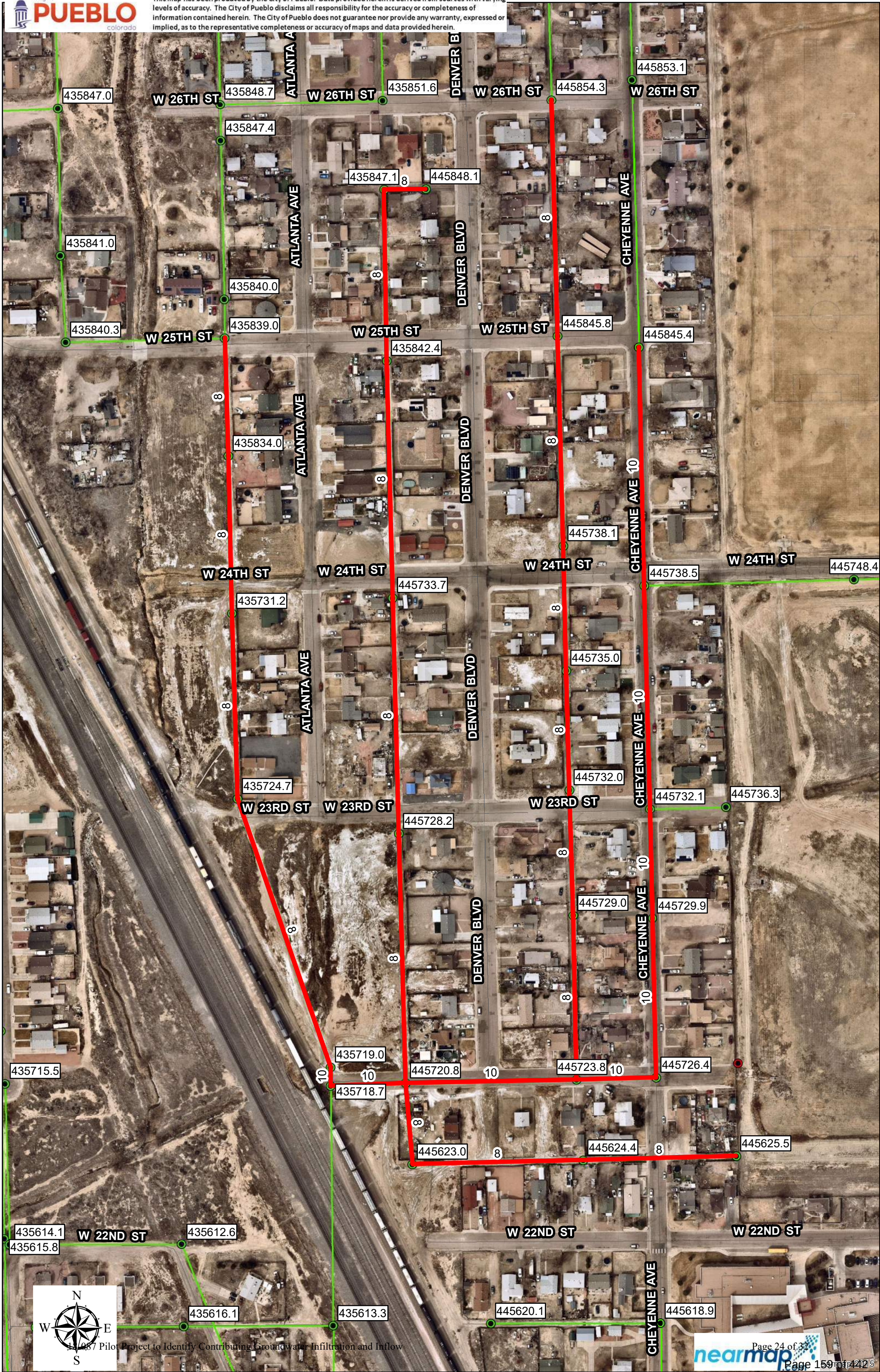
BC has identified two adjacent sewer lines to the project area where there is value in obtaining additional data. This task includes fee to provide cleaning, FELL, CCTV, DTS and associated activities for data collection of approximately 1,600 linear feet of sewer (see Figure 7). Activities for this project task must be approved by COP and take place in conjunction with Phase 200 scope of services.



Figure 7. Adjacent Project Site (blue dashed area).

3.4 Owner's Contingency

Upon written authorization by COP and mutual agreement on scope and fee, BC shall provide additional services as required by the project. Contingency services may be required due to unavoidable schedule delays, unforeseeable issues, or other items as authorized by COP.

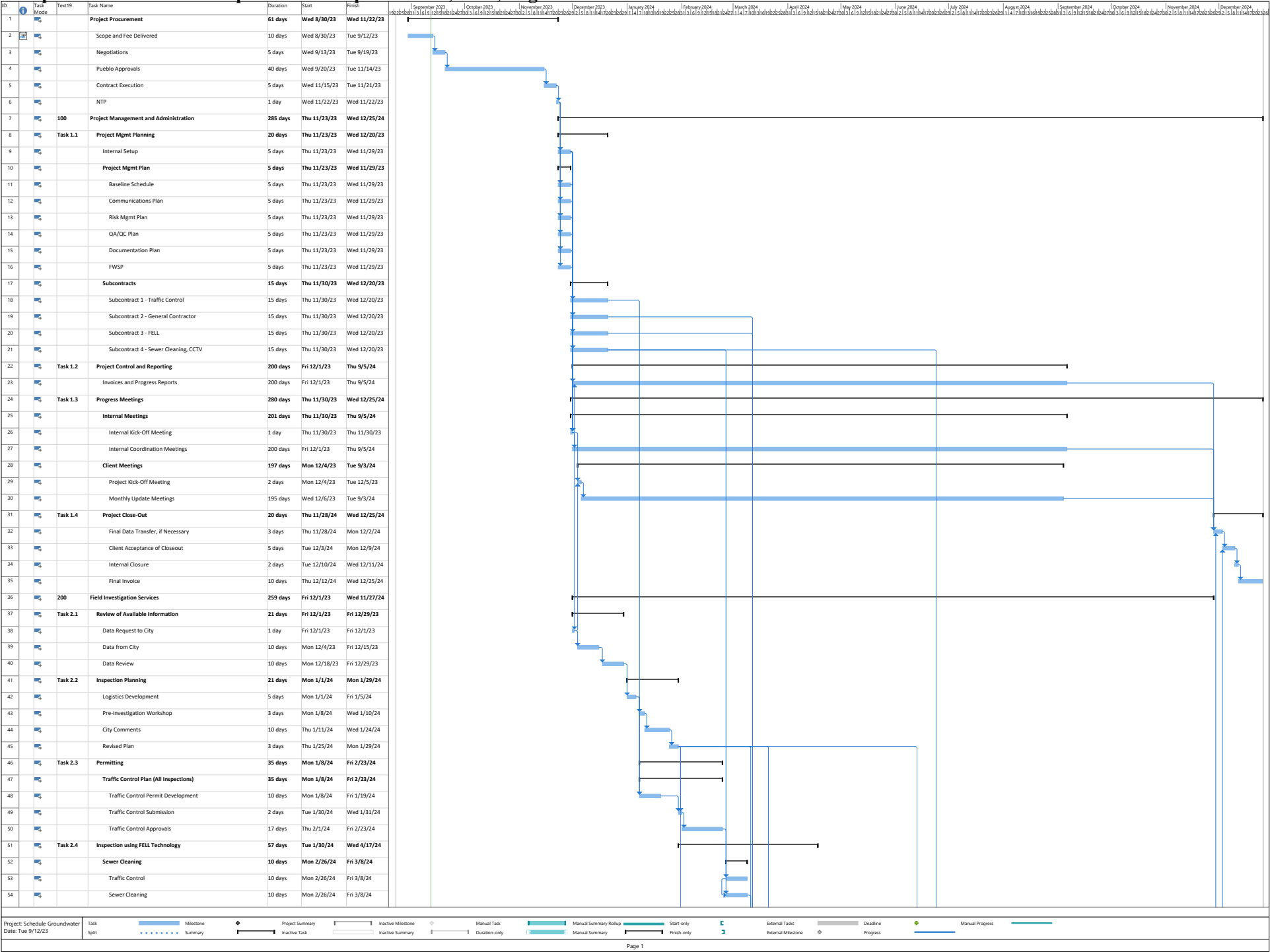


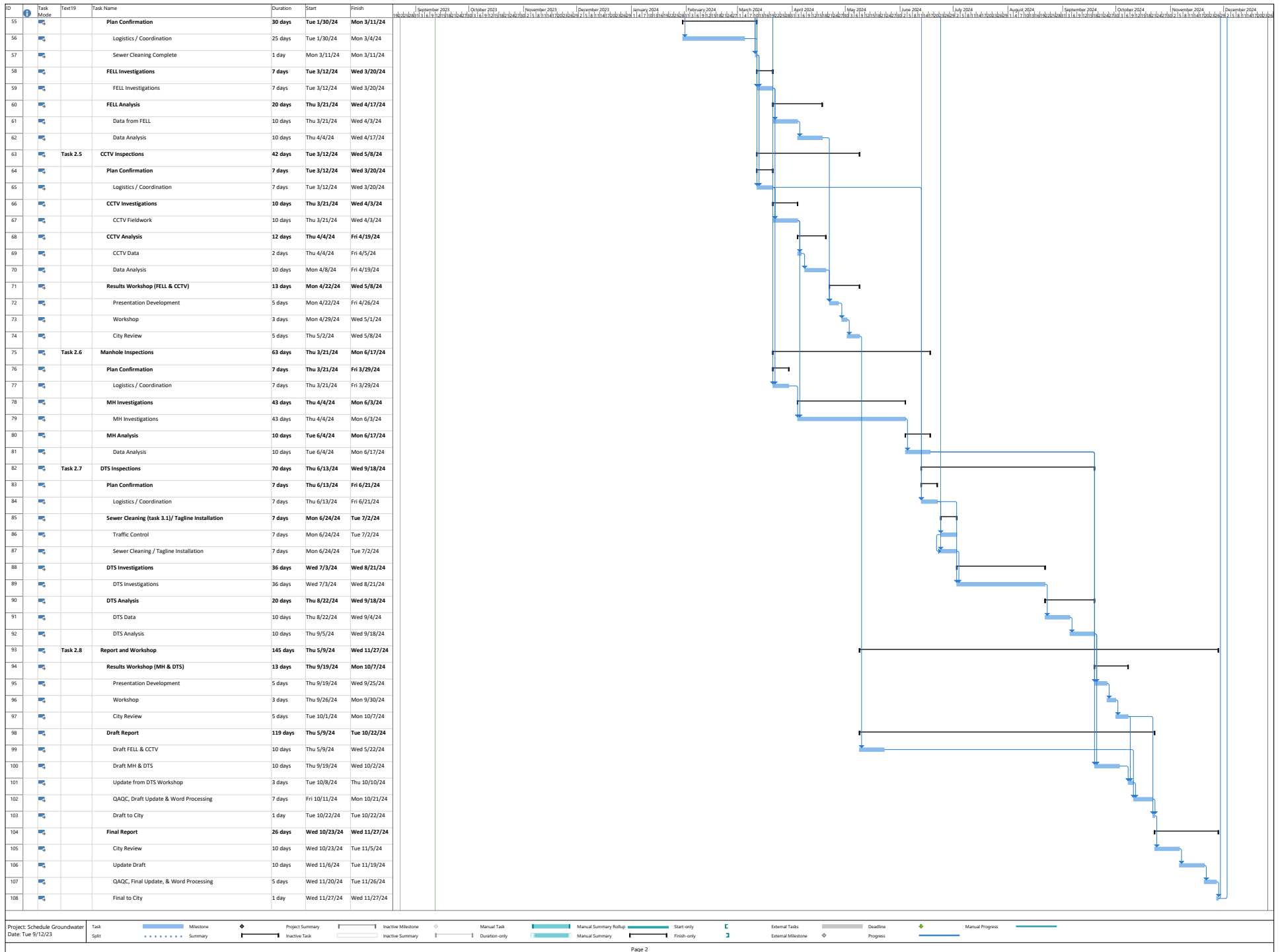
Schedule 2 - Fee Schedule
Excerpt from Consultant Proposal dated September 12, 2023, Page 22

			Chandler Wilson	Keli Lambert	Mike Thorlenson	Sara Everman	Gary Skipper	Mike Metcalf	Mark Poppe	David Hill	Andy Lukas	Matt Davis	Rhys McDonald	Drew Skipper	Jr. Engineer	Admin Asst.			Equipment - Supplies & Shipping	Travel Costs		Propipe - Cleaning and CCTV	M.E. Simpson - FELL Provider	Traffic Control Provider	Wildcat - Confined Space Entry	Contingency		Subcontractor and ODC Markup	
Phase	Task	Phase / Task Description	Project Manager	Project Analyst	Principal	H&S	SME	SME	Sr. Eng	Jr. Eng	SME	Sr. Eng	Sr. Eng	Field Tech / Support	Jr. Engineer	Word Processing	Total Labor Hours	Labor Effort			Subtotal ODCs						Subtotal Subs	Subtotal Markup	Total Effort
		Rate =	\$220.00	\$120.00	\$265.00	\$235.00	\$280.00	\$265.00	\$235.00	\$190.00	\$280.00	\$265.00	\$265.00	\$165.00	\$165.00	\$110.00													
100		Project Management	97.00	64.00	3.00	4.00	12.00	0.00	4.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	188.00	\$35,715.00	\$0.00	\$1,700.00	\$1,700.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$170.00	\$37,585.00
	1.1	Project Mgmt Planning	48.00	32.00	2.00	4.00	8.00							4.00			98.00	\$18,770.00			\$0.00						\$0.00	\$0.00	\$18,770.00
	1.2	Project Controls & Reporting	24.00	30.00	1.00												55.00	\$9,145.00			\$0.00						\$0.00	\$0.00	\$9,145.00
	1.3	Progress Meetings	24.00				4.00		4.00								32.00	\$7,340.00	\$1,700.00		\$1,700.00					\$0.00	\$170.00	\$9,210.00	
	1.4	Project Close-Out	1.00	2.00													3.00	\$460.00			\$0.00					\$0.00	\$0.00	\$460.00	
200		Installation and Data Acquisition	28.00	0.00	0.00	0.00	64.00	62.00	144.00	44.00	12.00	32.00	28.00	202.00	128.00	8.00	752.00	\$157,300.00	\$8,000.00	\$9,010.00	\$17,010.00	\$66,583.00	\$53,480.00	\$14,850.00	\$50,000.00	\$0.00	\$184,913.00	\$20,192.30	\$379,415.30
	2.1	Review of Available Information	2.00				8.00	2.00	16.00					8.00			36.00	\$8,290.00			\$0.00						\$0.00	\$0.00	\$8,290.00
	2.2	Inspection Planning	8.00				24.00	8.00	40.00								80.00	\$20,000.00	\$1,700.00	\$1,700.00						\$0.00	\$170.00	\$21,870.00	
	2.3	Permitting	2.00						2.00					2.00			6.00	\$1,240.00			\$0.00			\$2,100.00		\$2,100.00	\$210.00	\$3,550.00	
	2.4	Inspection using FELL Technology																											
	2.4.1	Cleaning in advance of FELL												24.00	8.00		32.00	\$5,280.00	\$1,600.00	\$1,600.00	\$31,100.00			\$3,750.00		\$34,850.00	\$3,645.00	\$45,375.00	
	2.4.2	Inspection using FELL Technology	2.00				4.00	16.00	8.00					24.00	8.00		62.00	\$12,960.00	\$500.00	\$1,600.00	\$2,100.00	\$53,480.00	\$2,625.00			\$56,105.00	\$5,820.50	\$76,985.50	
	2.5	Visual Inspections by CCTV																											
	2.5.1	CCTV Inspections	2.00				6.00	2.00	14.00	20.00				40.00	8.00		92.00	\$17,660.00	\$250.00	\$1,950.00	\$2,200.00	\$14,843.00		\$3,750.00		\$18,593.00	\$2,079.30	\$40,532.30	
	2.5.2	CCTV Inspections - Laterals															0.00	\$0.00				\$20,640.00				\$20,640.00	\$2,064.00	\$22,704.00	
	2.6	Manhole Inspections	2.00						8.00	24.00				48.00	48.00		130.00	\$22,720.00	\$250.00		\$250.00					\$0.00	\$25.00	\$22,995.00	
	2.7	DTS Inspections	2.00				2.00	2.00	8.00		10.00	32.00	24.00	56.00	56.00		192.00	\$39,530.00	\$7,000.00	\$2,160.00	\$9,160.00		\$2,625.00	\$50,000.00		\$52,625.00	\$6,178.50	\$107,493.50	
	2.8	Report and Workshop	8.00				20.00	32.00	48.00		2.00		4.00			8.00	122.00	\$29,620.00			\$0.00					\$0.00	\$0.00	\$29,620.00	
300		Additional Services	10.00	0.00	2.00	0.00	2.00	0.00	2.00	16.00	0.00	0.00	0.00	0.00	16.00	0.00	110.00	\$19,670.00	\$0.00	\$2,950.00	\$2,950.00	\$31,848.00	\$13,895.00	\$5,150.00	\$10,000.00	\$50,000.00	\$110,893.00	\$6,384.30	\$139,897.30
	3.1	Sewer Cleaning / Traffic Control in Advance of DTS Activities	4.00		2.00									28.00	10.00		44.00	\$7,680.00		\$1,600.00	\$1,600.00	\$21,048.00		\$3,750.00		\$24,798.00	\$2,639.80	\$36,717.80	
	3.2	Stand-by Subcontractor Cost	2.00											8.00			10.00	\$1,760.00			\$0.00	\$5,600.00	\$5,900.00	\$1,000.00	\$5,000.00	\$17,500.00	\$1,750.00	\$21,010.00	
	3.3	Adjacent Project Site	4.00				2.00		2.00	16.00				32.00			56.00	\$10,230.00	\$1,350.00	\$1,350.00	\$5,200.00	\$7,995.00	\$400.00	\$5,000.00		\$18,595.00	\$1,994.50	\$32,169.50	
	3.4	Owner's Contingency															0.00	\$0.00			\$0.00				\$50,000.00	\$50,000.00	\$0.00	\$50,000.00	
		GRAND TOTAL	135	64	5	4	78	62	150	60	12	32	28	206	144	8	1,050	\$212,685.00	\$8,000.00	\$13,660.00	\$21,660.00	\$98,431.00	\$67,375.00	\$20,000.00	\$60,000.00	\$50,000.00	\$295,806.00	\$26,746.60	\$556,897.60

Schedule 3 - Work Schedule

Excerpt from Consultant Proposal dated September 12, 2023, Pages 24 - 25





Additional Information for Agreement

Colorado Secretary of State Registration

PERA Questionnaire

Insurance Certificate(s) – Requested 10/6/2023 – To be added prior to signature

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FAQs, Glossary and Information

Summary

Details			
Name	BROWN AND CALDWELL, INC.		
Status	Good Standing	Formation date	03/20/1978
ID number	19871067502	Form	Foreign Corporation
Periodic report month	March	Jurisdiction	California
Principal office street address	201 North Civic Drive, Suite 300, Walnut Creek, CA 94596, US		
Principal office mailing address	201 North Civic Drive, Suite 300, Walnut Creek, CA 94596, US		

Registered Agent	
Name	Corporation Service Company
Street address	1900 W Littleton Blvd, Littleton, CO 80120, US
Mailing address	1900 W Littleton Blvd, Littleton, CO 80120, US

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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,
BROWN AND CALDWELL, INC.

is an entity formed or registered under the law of California, 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 19871067502.

This certificate reflects facts established or disclosed by documents delivered to this office on
paper through 10/05/2023 that have been posted, and by documents delivered to this office
electronically through 10/06/2023 @ 15:03:42.

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 10/06/2023 @ 15:03:42 in accordance with applicable law.
This certificate is assigned Confirmation Number 15382696.



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."

**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, contract employee, consultant, independent contractor, or through other arrangements, is subject to employer contributions to PERA by the City of Pueblo. Therefore, as a condition of contracting 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 contractor, a PERA Retiree who will perform any services for the City of Pueblo? Yes____, No X. (If you answered "no" please proceed to signature section at bottom of this page.)

(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? For purposes of responding to this question, an "affiliated party" includes (1) any person who is the named beneficiary or cobeneficiary 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. 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), 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 contractor 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 contract or other arrangement for services between you and the City of Pueblo.

Please provide the name, address, date of birth, and social security number of each such PERA Retiree. If more than two, please attach a supplemental list.

Name	Address	DOB	Social Security Number
Name	Address	DOB	Social Security Number

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

Company Name: Brown and Caldwell

Authorized Signature:  Title: Managing Director, CS

Printed Name: Michael J. Thorstenson Date: September 22, 2023

ADD INSURANCE



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 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
George Andrews

SUBJECT: AN ORDINANCE ACCEPTING A SMALL DOLLAR GRANT FROM THE COLORADO ENERGY OFFICE IN THE AMOUNT OF \$45,000.00, ESTABLISHING FINANCE ACCOUNT PROJECT NO. CI2217 - CHARGE AHEAD COLORADO, BUDGETING AND APPROPRIATING \$45,000.00 INTO SAID PROJECT ACCOUNT, AND AUTHORIZING THE MAYOR TO EXECUTE THE PURCHASE ORDER ON BEHALF OF THE CITY

SUMMARY:

An Ordinance accepting a small dollar grant from the Colorado Energy Office in the amount of \$45,000.00; establishing finance account Project No. CI2217 - Charge Ahead Colorado, and budgeting and appropriating \$45,000.00 into said project account, and authorizing the Mayor to execute the purchase order agreement on behalf of the City.

PREVIOUS COUNCIL ACTION:

Resolution No.13612 dated February 13, 2017, established that the Pueblo community will be entirely powered by renewable sources of energy by 2035. The all-renewables plan tethers the City Pueblo to planning strategies that promote a more equitable, democratic energy marketplace.

Ordinance No. 10563, dated October 10, 2023, established the EV Readiness Plan project.

BACKGROUND:

Pueblo City Council set a bold goal on February 13, 2017 to make the City of Pueblo fully powered by renewable energy by 2035, as outlined in Resolution No. 13612.

Under the guidance of the Mayor's Energy Advisory Commission, progress has been made in

shaping building codes, sustainable transportation investments, and clean energy policies. However, EV infrastructure challenges currently exist due to limited availability of charging stations for public use. The City of Pueblo is determined to overcome these hurdles and establish itself as a pioneer in Electric Vehicle (EV) adoption by installing additional charging capacity.

This grant will provide funding for five EV chargers. This modest grant injection will facilitate development of the City of Pueblo's EV infrastructure.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$45,00.00 are budgeted and appropriated into account Project No.CI2217 - Charge Ahead Colorado.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Not approving the Ordinance will preclude the City of Pueblo from accepting the small dollar grant which would provide funding for five electric vehicle chargers.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. CEO POGG1 24-2306 City of Pueblo
2. GRANT CERTIFICATION



STATE OF COLORADO

Office of the Governor
Colorado Energy Office

Page 1 of 1

ORDER		*****IMPORTANT*****				
Number:	POGG1,EFAA,202400002306	The order number and line number must appear on all invoices, packing slips, cartons, and correspondence.				
Date:	9/7/23	BILL TO				
Description:	CAC Grant	Colorado Energy Office - Broadway 1600 Broadway Suite 1960 Denver, CO 80202				
Effective Date:	09/08/23					
Expiration Date:	05/31/24					
BUYER		SHIP TO				
Buyer:		Colorado Energy Office - Broadway 1600 Broadway Suite 1960 Denver, CO 80202				
Email:						
VENDOR		SHIPPING INSTRUCTIONS				
CITY OF PUEBLO PO BOX 1427 PUEBLO, CO 81002-1427		Delivery/Install Date: - FOB:				
Contact:	George Andrews					
Phone:	(719) 553-2245					
VENDOR INSTRUCTIONS						
EXTENDED DESCRIPTION						
Grantee shall complete the work as outlined in Exhibit A, the Statement of Work, attached hereto and incorporated by reference herein.						
Line Item	Commodity/Item Code	UOM	QTY	Unit Cost	Total Cost	MSDS Req.
1	G1000		0	0.00	\$45,000.00	☐
Description: Grant Commodity						
Service From: 09/08/23		Service To: 05/31/24				
TERMS AND CONDITIONS						
https://www.colorado.gov/osc/purchase-order-terms-conditions						
DOCUMENT TOTAL = \$45,000.00						

I. Project Title: Charge Ahead Colorado

II. Background/Objective

The Grantee was awarded grant funding as a result of the competitive Electric Vehicle Supply Equipment (EVSE) Incentives Request for Applications (RFA). The Colorado Energy Office (hereinafter called "CEO" or the "State") agrees to provide funding to City of Pueblo. (hereinafter called "Grantee") towards the costs associated with EVSE.

III. Project Description

Charge Ahead Colorado is a program administered by the Colorado Energy Office (CEO) to encourage use of electric vehicles because they reduce greenhouse gas emissions, promote energy security through reliance on domestic electricity, and drive an innovative market for new technology.

The general purpose of this project is to encourage the installation of electric vehicle charging stations throughout the state of Colorado. Installing charging stations, known as Electric Vehicle Supply Equipment (EVSE), enables electric vehicles to proliferate.

Grantee is installing 5 level II dual port charging stations at:

- Three Level 2 stations at 120 Main Street, Pueblo CO 81003
- Two Level 2 stations at 227 Court Street, Pueblo CO 81003

IV. Work Tasks, Deliverables and Timeline

Grantee shall be responsible for the following work tasks and deliverables upon the final approval and discretion of the CEO:

- i. Purchase EVSE from vendors. Grantees are strongly encouraged to complete a competitive procurement process. The EVSE station must have networked data reporting capabilities that are active, collecting data, and accessible to administrators of the Charge Ahead Colorado program via cloud computing software at all times. See additional requirements in section V. Reporting.
- ii. Install the EVSE. Grantee may either contract with personnel who have expertise in electrical installations or pay Grantee labor staff with expertise in electrical installations for the installation of the unit and associated labor costs.
- iii. Construct foundation, if necessary.
- iv. Dedicate at least two parking spaces for EV charging per Level 2 charger and/or at least one parking space for EV Charging per Level 3 charger depending on the applicable technology being installed.
 1. Accessible design standards must be incorporated, where feasible, per the Access Board design standard for EV Charging Stations.
- v. Provide CEO with invoices by the PO end date for work completed. The costs must be directly associated with installation of EVSE equipment.
- vi. Submit a final project report, with documentation of EVSE installation by the PO end date. The following documentation is required for CEO to reimburse eligible costs on the project:
 1. Final Report
 2. Summary Invoice/Reimbursement Request
 3. Legible copies of all sales invoices showing the purchase price and amount paid by the applicant for the EV/EVSE, number of units purchased and serial numbers from the units.
 4. Legible copies of all invoices/receipts showing installation costs and number of labor hours spent by the installers and any subcontractors on the project.

5. Date(s) of installation, installation completion and when the unit(s) are operational and available for use.
6. Digital photograph(s) of the completed unit(s) and dedicated EV charging spaces(s).
 - a. Photographs must demonstrate adherence to the Access Board design standards. Photographs should be from a perspective that clearly shows adherence to the accessibility standards including wider spacing and a path of travel to the charging station. Additional photographs may be requested prior to reimbursement being finalized if this is not clearly demonstrated.
- vii. All deliverables shall be adjusted to the final approval and discretion of the CEO.

V. Reporting

Grantee shall be responsible for the following reporting requirements: Written analysis shall be in accordance with the procedures developed and prescribed by the State. Required reports shall be submitted to the CEO upon completion of all work tasks, or at such time as otherwise specified. The preparation of reports in a timely manner shall be the responsibility of Grantee and failure to comply may result in the delay of payment of funds and/or termination of this PO. Grantee must provide written communication to CEO if the project experiences significant changes or delays in the schedule via email.

VI. Final Report & Invoice Documentation

The Grantee shall submit a final report by the PO end date. This report will demonstrate the completion of the project and installation of the EVSE. To be acceptable, the final report must explain the Grantee's procurement and installation process, lessons learned from procurement and installation, and the data reporting capabilities of the EVSE, and it must identify the location of the EVSE unit accompanied with a picture of the installed unit. The Grantee shall provide an invoice to CEO for the purchase of the unit and associated equipment, permitting costs, and the labor costs associated with the installation. To be acceptable, the invoice must be supported by receipts or invoices for all equipment, permits, and labor. The invoice must include an itemized list of all project costs being considered under the grant, including a breakdown of those covered under Charge Ahead Colorado and by the project match (20% project cost match per unit).

VII. Post EVSE Installation Reporting

Upon EVSE installation, the Regional Air Quality Council (RAQC) and CEO may send out a form requesting information on EV and/or EVSE usage (i.e. time of use, duration of use, kWh, # of customers, mileage, etc.). By accepting funding through the Charge Ahead Colorado program, Grantee agrees to provide all information requested within this form. Furthermore, by accepting funding for EVSE through the Charge Ahead Colorado program, Grantee is required to provide full access to the charger network information to both RAQC and CEO. The Grantee shall report data for a minimum of five years on all EVSE unit metrics as requested by RAQC and CEO.

VIII. Budget

CEO will pay the Grantee the lesser of \$45,000 or up to 80% (not to exceed \$9,000 per L2) of allowable project costs for the EVSE installation. Grantee is responsible for any cost overruns. Grantee is entitled to payment only after successfully completing the EVSE installation and submitting an acceptable invoice and an acceptable final report to CEO.

IX. Payment Terms – Billing Procedures

Exhibit A Statement of Work

The State shall pay the Grantee the reasonable, allocable, and allowable costs for work performed based on satisfactory progress of the work defined in this Agreement. Grantee shall be compensated only for work and services performed by Grantee and accepted by CEO pursuant to the terms of this Agreement. Payment shall also be contingent upon CEO's timely receipt and acceptance of required reports described herein. Grantee shall be reimbursed based on the submission of Grantee's invoice and documentation as outlined in Section IV (vi). To be considered for payment, billings for payment pursuant to this Agreement must be received by the State by the end of the Agreement Term.

Payment will be made upon final completion of the project. CEO shall make no payment until the Grantee successfully completes the EVSE installation and submits an invoice and final report to CEO, including verification that the station is operational and available for use. CEO shall make payment within 45 days of receiving the final report and invoice. If installation is not completed by May 31, 2024, or the invoice and final report are not submitted by May 31, 2024, CEO is under no obligation to pay the Grantee.

X. Testing and Acceptance Criteria

The EVSE units will be acceptable to the CEO if they are installed, operational, and available for use by May 31, 2024. The Grantee's invoice to CEO will be acceptable if it is properly supported by invoices or receipts and the costs are associated with procurement of EVSE, construction materials, permitting, construction labor costs, and installation costs. The final report will be acceptable to CEO if it explains the Grantee's procurement and installation process, lessons learned from procurement and installation, the data reporting capabilities of the EVSEs, and it identifies the location of the EVSE units accompanied with a picture of the installed units. If the units, invoice, and report are acceptable, the CEO Program Manager will submit the invoice to the accounting department for payment.

If the units, invoice, and report are unacceptable, the CEO Program Manager will work with the Grantee to correct, modify, or replace as needed. If Grantee fails to perform, the CEO Program Manager will submit a report to CEO's Director of Transportation Fuels and Technology and Director of Accounting & Budget explaining why funding should be denied or reduced. The two directors and the CEO Program Manager will determine whether funding should be denied or reduced, and the CEO Program Manager will inform the Grantee of their decision.

XI. Small Dollar Grant Award Amount

The maximum amount payable under this Agreement to Grantee by the CEO shall be \$45,000, as determined by the State from available funds. Satisfactory performance under the terms of this Agreement shall be a condition precedent to the CEO's obligation to compensate the Grantee. The CEO shall not be liable to pay or reimburse Grantee for any performance hereunder prior to the Service From Date as shown on the face of the Small Dollar Grant Award.

XII. Small Dollar Grant Award Term

The Grantee shall begin work upon the later of the Service From Date as shown on the face of this Small Dollar Grant Award or upon Grantee's acceptance of this Agreement. This Small Dollar Grant Award shall terminate on May 31, 2024, unless sooner terminated or further extended as specified elsewhere herein.

GRANT CERTIFICATION

To: Heather Graham, President of the City Council
Nicholas Gradisar, Mayor

Re: Charge Ahead Colorado Grant

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) George Andrews

Date: September 25, 2023

Title: Energy Coordinator



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 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 ACCEPTING FUNDS IN THE AMOUNT OF \$16,742.00 FROM H.W. HOUSTON, LLC, A COLORADO LIMITED LIABILITY COMPANY, FOR COSTS ASSOCIATED WITH THE REPAIR OF W. 20TH STREET, AND BUDGETING AND APPROPRIATING SAID FUNDS TO ACCOUNT CI2309 - ROAD & STREET REPAIRS

SUMMARY:

The attached Ordinance will accept funds in the amount of \$16,742.00 from H.W. Houston Construction, LLC to cover a share of the cost associated with road repairs on the segment of W. 20th Street between Freed Middle School and West Street. The Ordinance also budgets and appropriates those funds into project account number CI2309 - Road & Street Repairs.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

During a recent construction project at Freed Middle School, the pavement on W. 20th Street was damaged due to heavy construction traffic. The segment of the road between Freed Middle School and West Street will be repaired by the City and the funds received from H.W. Houston are anticipated to cover approximately half of the repair cost. While the existing pavement already showed some signs of deterioration, the heavy construction traffic accelerated that damage and H.W. Houston has agreed to reimburse the City for a portion of the repairs.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$16,742.00 will be budgeted and appropriated into project account number CI2309 - Road & Street Repairs.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

None.

ALTERNATIVES:

Failure to approve this Ordinance will prevent the City from receiving the funds from H.W. Houston Construction, LLC.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Eva Cosyleon, MPO Manager

SUBJECT: AN ORDINANCE ESTABLISHING 2024 PUEBLO RURAL TRANSPORTATION PLANNING PROJECT, TP2401, AND BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT OF \$7,400 FOR SAID PROJECT

SUMMARY:

This Ordinance establishes the SFY2024 Pueblo Area Council of Government (PACOG) Rural Transportation Planning Project, Project No. TP2401, and budgets and appropriate funds in the amount of \$7,400 from the Pueblo Area Council of Governments (PACOG) received from the Colorado Department of Transportation (CDOT) Rural Planning Grant (RPG) funds.

PREVIOUS COUNCIL ACTION:

The establishment of the Project and budgeting of funds has been approved by City Council on an annual basis once the purchase order is issued by the State of Colorado to PACOG.

BACKGROUND:

The PACOG receives an annual award of funds from CDOT for rural and statewide transportation planning and associated allowable expenses that provides \$7,400 in RPG funds to PACOG for July 1, 2023 through June 30, 2024. The City and PACOG annually enters a delegation agreement that authorizes the City to complete the transportation planning tasks on behalf of PACOG and be reimbursed at 100% for eligible expenses. This Ordinance establishes the TP2401 Pueblo Rural Transportation Planning Project and budgets and appropriates funds in the amount of \$7,400 allocated for PACOG to complete rural transportation planning services in compliance with the state requirements for the use of the RPG grant funds.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$7,400 shall be budgeted and appropriated for the Rural Transportation Planning Project. It is estimated that approximately two (2%) of the Project cost or approximately \$150 in staff time from the Finance department will be spent on the Project.

BOARD/COMMISSION RECOMMENDATION:

The Rural Planning Grant funding is included as a component of the Delegation Agreement between the City of Pueblo and PACOG and approved by Ordinance No. 10378 on February 15, 2023.

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

If City Council does not approve this Ordinance, the CDOT funding will not be expended by the City's Urban Transportation Planning Division and funds for transportation planning outside of the urbanized area, and travel expenses for outside of Pueblo will not be reimbursed through these funds.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. CDOT P.O.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING 2024 PUEBLO RURAL
TRANSPORTATION PLANNING PROJECT, TP2401, AND
BUDGETING AND APPROPRIATING FUNDS IN THE AMOUNT
OF \$7,400 FOR SAID PROJECT

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

SECTION 1.

The 2024 Pueblo Rural Transportation Planning Project No. TP2401 is hereby established.

SECTION 2.

Funds in the amount of \$7,400 from the SFY2024 Pueblo Area Council of Governments (PACOG) Rural Transportation Planning Grant as authorized in the 2023 City and PACOG Delegation Agreement approved by Ordinance No. 10378 on February 15, 2023 are hereby budgeted and appropriated for said Project.

SECTION 3.

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

SECTION 4.

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

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

Colorado Dept of Transportation
2829 W. Howard Place
Denver CO 80204

DATE: 08/10/2023



Purchase Order
State of Colorado

Buyer: Lisa Hollerbach
Phone Number: 303-512-5511
Agency Contact: KAREN Rand (Peterson)
Phone Number: 303-757-9760

IMPORTANT
The PO# and Line#
must appear on all
invoices, packing
slips, cartons and
correspondence

PO# 411036210
Award#:
BID#:



Page# 1 of 1

Vendor Master#: 2000241
Phone: 719-583-6379
Vendor Contact: LOUELLA SALAZAR

V
E
N
D
O
R
PUEBLO AREA COUNCIL OF GOVERNMENTS
229 WEST 12TH STREET
PUEBLO CO 81003-2810

Invoice
TO: CDOT DTD Business Office
2829 W. Howard Place
Denver CO 80204

Payment will be made by this agency

Ship
TO: Colorado Dept of Transportation
2829 W. Howard Place
Denver CO 80204

Delivery/Installation Date: 06/30/2024

INSTRUCTIONS TO VENDOR

1. If for any reason, delivery of this order is delayed beyond the delivery/Installation date shown, please notify the agency contact named at the top left (Right of cancellation is reserved in instances in which timely delivery is not made). 2. All chemicals, equipment and materials must conform to the standards required by OSHA. 3. NOTE: Additional terms and conditions on reverse side or at address shown in Special Instructions.

SPECIAL INSTRUCTIONS
*The terms of the attached SOW and State of Colorado purchase order terms and conditions supercede any other agreement. This PO is effective 8/11/2023 through 6/30/2024.

LINE	PRODUCT NUMBER PRODUCT CATEGORY DESCRIPTION	UOM PLANT	QUANTITY	UNIT COST	TOTAL ITEM COST
00001	96287 FY24 Rural Planning Assistance	AU 7001	7,400.00	1.00	7,400.00

DOCUMENT TOTAL: 7,400.00

THIS PO IS ISSUED IN ACCORDANCE WITH STATE AND FEDERAL REGULATIONS
<https://docs.google.com/document/d/163tsdL-HL3aALGtSuB8n37nDs0jVdrLk/edit?usp=sharing&ouid=115488077715681115005&rtpof=true&sd=true>
DP-01 (R-02/06)

FOR THE STATE OF COLORADO

Authorized Signature Date

Signature not required if PO transmitted electronically.

RURAL PLANNING WORK PROGRAM

Pueblo Area Regional Planning Commission (RPC) and Transportation Planning Region (TPR)

AMOUNT NOT TO EXCEED: \$7,400

Designated Contacts for TPR:

For the purpose of this Purchase order, Aaron Willis is hereby designated representative of the State and Eva Cosyleon is hereby designated representative of Pueblo Area Council of Governments (a.k.a. Vendor), fiscal entity for the Pueblo Area TPR. The Vendor's representative (or Administrator) is responsible for providing the TPR's Representative and Alternate(s) to the State Transportation Advisory Committee (STAC) with copies of this Scope of Work, so they are aware of the tasks for which the TPR is responsible and related eligible expenses. Either party may from time to time designate in writing new or substitute representatives including new or substitute addresses where notices shall be sent. All notices required to be given by the parties hereunder shall be sent by US mail (certified, registered or regular postal) to the individuals at the addresses set forth below:

To CDOT:

Aaron Willis
DTD Statewide & Regional Planning Section
Colorado Department of Transportation
2829 W. Howard Place, 4th Floor
Denver, CO 80204

To STAC Representative:

Zach Swearingen
Pueblo County Commissioner
Pueblo County Courthouse
215 W. 10th Street
Pueblo, CO 81003

To the Vendor/Contract Administrator:

Eva Cosyleon, MPO Manager
PACOG/Pueblo MPO
229 W. 12th Street
Pueblo, CO 81003

REQUIREMENTS

Conforming to the standards set forth in Sections IV, V, VI, VII and VIII of 2 CCR 601-22 (the Rules) for the expenditure standards of State Planning and Research (SPR) funds during the Program Period (beginning July 1 of the issuing year and expiring June 30 of the ending year), the Vendor shall cooperatively undertake the activities related to the statewide and regional transportation planning process to perform the tasks identified in the Scope of Work herein.

The State and FHWA are specifically authorized to review and inspect, at all reasonable times, all such records, including all technical and financial aspects of the tasks described in the Scope of Work. The State will arrange such reviews and inspections with monitoring to be done no more than quarterly. The State reserves the right to a mid-year review of the cost data and other progress associated with the tasks. The State will provide at least one week's notice of the date and time for any meeting to discuss said review.

The Vendor shall assure that SPR funds spent during the Program Period are for activities directly related to the statewide and regional transportation planning process as articulated in the tasks section of the Scope of Work. Throughout the duration, all activities must be in accordance with all applicable State and Federal requirements and within the terms and conditions of this purchase order.

The State has the right to disallow any costs incurred by the Vendor which are inconsistent with or not in compliance with the authorized tasks of the Scope of Work. Prior approval must be obtained in writing from the State's designated representative for any expenses not explicitly authorized in the tasks section below.

All requests for reimbursement shall include documentation of all expenditures in accordance with 2 CFR 200, 49 CFR Part 18, 23 CFR 420 and the attached Scope of Work Guidance. The attached Rural Planning Assistance Contract Reimbursement Request Form must be filled out in its entirety and include specific tasks and the date the tasks were performed.

Requests for reimbursement for the expenditure of funds must be submitted to the State at least quarterly. Pursuant to 49 CFR 18.41, grantees are required to submit invoices on at least a quarterly basis and within 30 days of the close of each billing period. Vendors may elect to submit invoices on a more frequent basis, but at a minimum, invoices must be submitted no less frequent than the billing schedule below:

Quarter	End Date	Billing Due Date
1st	September 30	October 30
2nd	December 31	January 31
3rd	March 31	April 1
4th	June 30	July 30

Final billings are due to the State by July 30. Upon the expiration of this purchase order, all unclaimed funds will revert to the State, and will not carry forward into the next year.

To assure SPR funds conform with the tasks of the Scope, pursuant to 49 CFR 18.42, the Vendor shall maintain a complete file of all records, communications, and other written materials which pertain to the performance and cost of services for the duration of this purchase order and further such period (up to three years) as may be necessary to resolve all financial matters. The Vendor shall permit the State, FHWA or the Comptroller General of the United States to audit and/or inspect Vendor's records pertaining to the services of this purchase order for the specified period to evaluate Vendor's performance assuring compliance with the terms and conditions hereof. Copies of these records shall be furnished, if requested, to the State, FHWA, or the Comptroller General. The Vendor shall include this record keeping/audit requirement in any purchase order with any consultant who performs tasks, by expressly requiring the consultant, and/or other agencies, to comply with this requirement.

All reports pertaining to the performance of this purchase order shall be reviewed and approved pursuant to the procedures established under 2 CCR 601-22, but no report will be published without the prior approval of FHWA. Any published material shall acknowledge the participation of the State and the FHWA in recognition of the cooperative nature of the statewide transportation planning process, for example, "FUNDED BY THE FHWA AND THE FTA". Published materials include any non-internal documents, reports, maps, photographs, computer software or like materials that are intended to be viewed by those outside of FTA, FHWA, CDOT and the TPR.

Vendor shall take responsibility to ensure the fulfillment of the Scope of Work and take all reasonable steps to obtain the necessary staff, or consultant services, required to carry out all tasks described and identified in the Scope and this section. The selection for consultant services, pursuant to 49 CFR 18.36, shall be in compliance with all federal procurement requirements. In addition, any Request for Proposal (RFP) used by the Vendor to secure consultant services must be reviewed and approved by the State prior to release. The Vendor shall obtain written authorization from the State before executing any contract for consultant services, which utilizes SPR funds.

SCOPE OF WORK

The purpose of the Scope of Work is to present procedures for the statewide and regional transportation planning process within the TPRs. If you have any questions, please contact your MPO & Regional Planning Liaison.

The following tasks are incorporated herein to describe the work program for the continuation of the statewide and regional transportation planning process within the TPRs. The purpose of the work is to implement the provisions of C.R.S. § 43-1-1101 et seq. and Rules and Regulations for the Statewide Transportation Planning Process and the Transportation Planning Regions, 2 CCR 601-22 (The Rules). **The primary intended use for these funds are described in tasks 1 and 2, which include the regular activities of the TPR. Secondary intended uses are described in tasks 3-6 which may occur periodically throughout the planning cycle.**

TPR designated STAC representatives and alternates are eligible for reimbursement of allowable travel expenses related to the tasks listed below. Eligible expenses may include, but are not limited to, transportation, lodging, and meals as per State Travel Policy and applicable CDOT procedural directives. CDOT will provide a travel reimbursement form to document the aforementioned expenses. In lieu of submitting a signed CDOT travel reimbursement form, TPRs may submit alternate signed travel documentation, as long as it provides the same information as required in the CDOT form.

PRIMARY TASKS

1 – Participation in the Statewide Transportation Advisory Committee (STAC)

The TPR shall have a designated representative to carry out the duties of the STAC pursuant to C.R.S. § 43-1-1104 (STAC Responsibilities) as amended, and Section V. of the Rules. The TPR shall also designate a STAC Alternate to attend regularly scheduled meetings and carry out these duties if the designated representative is unable or unavailable.

STAC representatives shall attend monthly STAC meetings, as well as other official STAC events. A STAC representative's duties include, but are not limited to:

1. Serving as the communication liaison between the Department, the STAC and the members of the TPR and constituents.
2. Providing advice to the Department on the needs of the transportation system.
3. Reviewing and commenting on updates and amendments to the Regional and Statewide Transportation Plans.
4. Providing assistance in resolving transportation related conflicts which arise between TPRs, or between the Department and a TPR.
5. Making recommendations to the Department concerning the integration and consolidation of Regional Transportation Plans (RTPs) into the Statewide Transportation Plan.
6. Furnishing regional perspectives on transportation problems requiring statewide solutions.
7. Providing advice and comment on TPR boundaries.

2 – Provide Opportunities for Public Participation in TPR Meetings

Please reference Section VI (Public Participation Rules) of 2 CCR 601-22 (The Rules), which includes specific public participation provisions required in the transportation planning process.

The TPR shall work in cooperation with CDOT in carrying out the requirements for public participation as described in The Rules and Title 23 CFR Part 450 of the federal regulations. Public participation shall include, but not be limited to:

1. Providing a proactive process that allows the public the opportunity to participate in the transportation planning process. The process shall provide a mechanism for public perspective, ideas and needs to be incorporated into the planning process, developing the public's understanding of the problems and opportunities facing the transportation system.
2. Conducting meetings, transportation forums, open houses or other means of public meetings for the purpose of providing information about transportation issues, receiving comments, consideration and response to public input and building consensus on transportation priorities. The TPR shall record the proceedings of meetings, forums and other public meetings concerning transportation in their TPR and make those notes available to the TPR constituency, especially interested parties unable to attend the meetings.
3. Providing mailings, either electronic or regular, containing information about transportation issues. The TPR shall maintain a mailing list of all known parties interested in transportation planning in the TPR including but not limited to: elected officials, municipal and county planning

staffs, affected public agencies, local state and federal agencies eligible for federal and state transportation funds, local representatives of public transportation agency employees and users, freight shippers and providers of freight transportation services, private transportation providers, representatives of alternative transportation mode users, such as pedestrian walkways and bicycle transportation facilities; representatives of the disabled, private industry, environmental and other interested groups, Indian tribal governments and the US Secretary of the Interior when tribal lands are involved, representatives of persons or groups that may be underserved by existing transportation systems such as minority, low-income and disabled populations; and members of the general public.

4. Utilizing available media opportunities to provide timely notice of planning related activities; this includes, but is not limited to, electronic mail, newspapers, social media and other means.

SECONDARY TASKS

3 – Long-Range Regional Transportation Plan (RTP)

Continue efforts to update and/or maintain the Regional Transportation Plan (RTP) and maintain up to date and relevant distribution lists, etc. The TPR shall work in conjunction with the Department and its consultants to develop new RTPs.

4 – Regional Transportation Plan Amendments

Federal and State legislation altering the transportation planning factors upon which the RTP is based may change the TPR's corridor priority recommendations to the Department and require amending the RTP. The TPR shall amend the RTP as necessary to make additions or deletions on review and analysis of the RTP to insure successful implementation throughout the Statewide Transportation Plan, pursuant to Section VIII of the Rules for the Statewide Planning Process (2 CCR 601-22).

5 – Development and Amendment of the Statewide Transportation Improvement Program (STIP)

The TPR will undertake activities and meetings necessary to participate in and provide input on the update (at least every four years) of the Statewide Transportation Improvement Program (STIP), and to review and comment on proposed policy amendments to the STIP, as needed.

To update the STIP, TPR representatives meet with their appropriate CDOT Engineering Region(s) and Transportation Commissioner(s) to cooperate in the project prioritization process within that CDOT Engineering Region. Additional information on the STIP development process is available in the *Project Priority Programming Process (4P) and STIP Development Guidelines* available at: <https://www.codot.gov/programs/planning/transportation-plans-and-studies/stip>

Whenever a policy amendment is proposed for the STIP, the TPR shall review and comment on the proposed amendment. The STIP amendment review process is as follows:

1. The CDOT Office of Financial Management and Budget (OFMB) will post notice of the proposed STIP amendment on the CDOT website for a 30 day review and comment period.

2. The TPR needs to determine if the policy amendment is of such significance as to establish a meeting within the 30 day comment period if a meeting is not already scheduled, or discuss the amendment at an already scheduled meeting within the 30 day review and comment period to provide for public input.
3. The TPR may elect to not hold a meeting or not discuss the proposed amendment if the RPC determines that the amendment is not significant enough to require such action.
4. The TPR should post the notice of proposed STIP amendment, if it has an office and a public place for posting such notices.
5. Comments on the proposed amendment need to be received within the 30 day review period via the CDOT website or by direct mail to the CDOT Chief Financial Officer.

6 – Long-Range Statewide Transportation Plan

In conjunction with its RTP, the TPR will provide input and advice on the development of the Statewide Transportation Plan. Duties include but are not limited to:

1. Providing input on the integration and consolidation of RTPs with the Statewide Transportation Plan.
2. Reviewing and providing comment, through the STAC representative, on elements of the Statewide Transportation Plan, including drafts of the Statewide Transportation Plan, and the final Statewide Transportation Plan pursuant to C.R.S. § 43-1-1101 through 1105 and U.S.C. Section 135 Title 23.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Eva Cosyleon, MPO Manager

SUBJECT: AN ORDINANCE APPROVING A DELEGATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE PUEBLO AREA COUNCIL OF GOVERNMENTS FOR 2024 TRANSPORTATION PLANNING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves the annual delegation agreement between Pueblo Area Council of Governments (PACOG) and the City of Pueblo for Transportation Planning Services from January 1, 2024 to December 31, 2024 as specified in the approved FY 2024-25 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 10378, February 13, 2023.

BACKGROUND:

This Ordinance approves the annual delegation agreement for Transportation Planning Services between PACOG and the City of Pueblo. The agreement establishes the responsibilities of the City of Pueblo and PACOG for the implementation of the tasks in the FY 2024-25 UPWP, adopted by PACOG Resolution 2023-013 on September 28, 2023.

FINANCIAL IMPLICATIONS:

PACOG will reimburse the City up to \$932,107 Consolidated Planning Grant Funds, which includes all estimated federal and local carryover funds from previous fiscal years. The City Finance Department will expend staff time to prepare and submit monthly financial reports for reimbursement of City transportation planning expenditures.

BOARD/COMMISSION RECOMMENDATION:

The 2024 Delegation Agreement was approved by the PACOG Board by unanimous consent at their October 26, 2023 meeting. (Signed Agreement will be available prior to second reading)

STAKEHOLDER PROCESS:

Not Applicable.

ALTERNATIVES:

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

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

1. 2024 PACOG - City Delegation Agreement

ORDINANCE NO.

AN ORDINANCE APPROVING A DELEGATION AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE PUEBLO AREA COUNCIL OF GOVERNMENTS FOR 2024 TRANSPORTATION PLANNING SERVICES AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Agreement for Transportation Planning Services effective January 1, 2024, between the Pueblo Area Council of Governments (PACOG) and the City of Pueblo, a Municipal Corporation, to provide transportation and planning services, a copy of which is attached and incorporated herein, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

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

SECTION 3.

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

SECTION 4.

This Ordinance shall become effective immediately upon final action by the Mayor and City Council.

Action by City Council:

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

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

AGREEMENT FOR TRANSPORTATION PLANNING AND IMPROVEMENT SERVICES FOR 2024

THIS AGREEMENT (Agreement) is made and entered into effective the 1st day of January 2024, by and between the Pueblo Area Council of Governments, hereinafter referred to as "PACOG", the City of Pueblo, a Municipal Corporation, hereinafter referred to as "CITY".

WITNESSETH THAT:

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

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

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

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

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

1. WORK TASKS; RESPONSIBILITIES OF CITY

(a) CITY agrees to satisfactorily perform and complete, using its own employees, employees of Pueblo County (herein after referred to as "COUNTY" or such consultants or contractors selected by PACOG in accordance with the regulations and policies of the Colorado Department of Transportation (CDOT) and the Federal Highway Administration (FHWA), the planning services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the amended FY 2024-2025 Unified Planning Work Program adopted by PACOG Resolution 2023-013 on September 28, 2023 incorporated herein by reference, in full compliance with all provisions of this Agreement.

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

(c) CITY represents that it: (i) has the requisite authority and capacity to perform the services and work contemplated in the FY 2024-2025 UPWP, as approved, and; (ii) that it is a home rule city and political subdivision of the State of Colorado; (iii) that it is fully aware of and understand its duty to perform all functions and services in accordance with the regulatory requirements set forth in 23 CFR Parts 420 and 450 and 49 CFR Part 18 and those identified

in the Memorandum of Agreement (MOA) adopted by PACOG on October 26, 2023, and incorporated herein by reference, in full compliance with all the provisions of this Agreement.

2. RESPONSIBILITIES OF PACOG

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

3. CITY'S COMPENSATION AND METHOD OF PAYMENT

(a) PACOG will pay to CITY, an amount up to that specified in subparagraph (d) of this paragraph as full compensation for all services and work to be performed or undertaken by CITY under this Agreement which is within the FY 2024-2025 UPWP, as approved. Payment of funds to CITY are subject to the following requirements, which shall be conditions precedent to payment: (i) that CITY staff time has been expended for eligible activities or CITY has obligated or expended funds for eligible approved expenditures, (ii) that CITY is not in default of any material provisions of this Agreement nor applicable law or regulation, (iii) that CITY has submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items, (iv) that, if required by the terms or conditions of an applicable financial assistance agreement, CITY has certified with each payment or reimbursement request compliance with the requirements identified in the MOA and that all staff time and obligations or expenditures for which payment is sought were made for and in furtherance of an approved project or work and are an eligible use of assistance under the law and regulations applicable to such assistance, and (v) that PACOG has timely received from CDOT and local agency matches sufficient funds to make the payment or reimbursement hereunder.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable regulations including but not limited to those contained in the MOA and those set forth in 49 CFR Part 18, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the FY 2024-2025 UPWP, as amended.

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

(d) PACOG shall pay to CITY for services covered by the FY 2024-2025 UPWP, as approved a sum not to exceed the amounts identified in the FY 2024 PACOG budget (\$932,107.00) and/or rates set forth in those documents as incorporated herein by reference and as may be amended in writing, in full compliance with all the provisions of this Agreement.

(e) In the event PACOG requests or authorizes work beyond or in addition to that set forth in the FY 2024-2025 UPWP, as approved, PACOG shall pay additional compensation to the CITY. The amount of such additional compensation shall be negotiated, but in the event the parties fail to negotiate or are unable to agree regarding compensation, CITY shall be compensated for staff time and its costs at the rates set forth in paragraph (d), above, and for the work of subcontractors and consultants in an amount equal to the reasonable actual cost to CITY.

4. TERM OF AGREEMENT.

The term of this Agreement shall be from January 1, 2024 to December 31, 2025 unless sooner terminated as herein provided.

5. TERMINATION OF AGREEMENT.

(a) For Cause. This Agreement may be terminated by PACOG for cause, including any nonperformance by CITY, upon thirty (30) days written notice to CITY including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the PACOG's governing body at a regular or special meeting of same whose decision shall be final. The determination of the PACOG as to the cause of termination and the appropriateness thereof shall be final and binding upon both PACOG and the CITY. Cause for termination shall mean any material failure by CITY to comply with any term of this Agreement.

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

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

6. ASSIGNABILITY.

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

7. CONFLICT OF INTEREST.

CITY certifies that neither it nor any members of its City Council, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. CITY shall avoid all conflicts of interest which are prohibited by applicable federal regulations, if any, including but not limited to those set forth in 49 CFR 18/36(b)(3) as presently promulgated and as same may be revised from time to time in the future.

8. CITY RECORDS.

CITY shall maintain records as to services provided, reimbursable expenses incurred in performing the Work Tasks, and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by the PACOG's auditor and acceptable to COOT and FHWA. CITY agrees to comply with all applicable uniform administrative requirements described or referenced in applicable state or federal regulations,

including those set forth in the MOA as a part of this Agreement. PACOG, COOT, the Comptroller General of the United States, the Inspector General of the U.S. Department of Transportation, and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers, electronic media, and records of CITY which relate to this Agreement for the purpose of making an audit or examination. Upon completion of the work and end of the term of this Agreement, the PACOG may require that a copy of all of CITY's financial records relating to this Agreement to be turned over to PACOG.

9. MONITORING AND EVALUATION.

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

10. CITY FILES AND INFORMATION REPORTS.

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

11. INDEPENDENCE OF CITY.

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

12. LIABILITY: INSURANCE.

As to PACOG, CITY agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including the loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by CITY or by the conditions created thereby; provided, however, that nothing in this paragraph is intended, nor should it be construed, to create or extend any right, claims or benefits or assume any liability for or on

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

13. SPECIAL REQUIREMENTS APPLICABLE TO IMPROVEMENTS TO PROPERTY.

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

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

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

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

14. EQUAL EMPLOYMENT OPPORTUNITY.

In connection with the performance of this Agreement, CITY shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by PACOG and the State of Colorado under 23 U.S.C. 324 and 29 U.S.C. 794 and the provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the U.S. DOT implementing regulations (49 CFR 27,37, and 38) as certified in the FY 2024-2025 UPWP.

15. ENTIRE AGREEMENT; AMENDMENTS.

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

16. SIGNATURES.

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

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

ATTEST:

PUEBLO AREA COUNCIL OF GOVERNMENTS

Secretary

By _____
Chairperson

ATTEST:

CITY OF PUEBLO

City Clerk

By _____
President, Pueblo City Council

APPENDIX A

SCOPE OF WORK

CITY is authorized to pre-approved staff from COUNTY to work mutually with CITY staff, and consultants to complete work for transportation planning services, activities, and project execution required of PACOG for planning services and items of work including all labor and materials encompassed within or reasonably necessary to accomplish the assigned tasks and functions described in the amended FY 2024-2025 Unified Planning Work Program adopted by PACOG Resolution 2023-013 on September 28, 2023.

PROFESSIONAL FEE SCHEDULE

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

1. An hourly fee comprised of the employee's hourly rate and benefits, excluding administrative and overhead charges, for the completion of approved work documented and approved from invoices submitted by COUNTY.
2. Reimbursement of qualifying additional expenses authorized for the satisfactory performance and completion, of the planning services and items of work in accordance with the regulations and policies of the Colorado Department of Transportation (CDOT) and the Federal Highway Administration (FHWA), encompassed within or reasonably necessary to accomplish the tasks and functions described in the FY 2024-2025 UPWP, as adopted by PACOG Resolution 2023-013 on September 28, 2023.
3. The Scope of Work for COUNTY staff that is subject to approval by CITY shall be specifically for eligible transportation planning activities that include work tasks the following tasks identified in the FY 2024-2025 UPWP:
 - i) Initiate discussions with MPO stakeholders regarding the creation of a Pueblo Regional Transportation Authority (RTA) or other dedicated funding sources for transportation.
 - ii) Integrating transit, bicycle and pedestrian planning into all transportation planning efforts.
 - iii) Review proposed major county subdivision proposals, zoning changes, site plans, planned developments and land use issues for impacts to the transportation system and require amendment of the PACOG Long Range Transportation Plan.
 - iv) Assist PACOG members by providing information and other assistance with transportation

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



**Background Paper for Proposed
Resolution**

COUNCIL MEETING DATE: October 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 PUEBLO FRIENDS OF THE ARKANSAS RIVER IN THE AMOUNT OF \$1,000 TO SPONSOR THE YOU DON'T STAND ALONE SCULPTURE

SUMMARY:

Attached for consideration is a request for support of the You Don't Stand Alone sculpture, fiscally sponsored by Pueblo Friends of the Arkansas River, in the amount of \$1,000 to sponsor a sculpture on the Pueblo Levee north of Dutch Clark Stadium.

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

After the tragic loss of Erric "Mikey" Lopez, friends and family faced continuous road blocks with accessing mental health resources. Because of these heartbreaking difficulties, we have formed the "Erric's Promise" committee to address these challenges and ensure that no one stands alone when in crisis. Michael D. Montoya, a Central High School Senior, reached out with an idea to build a sculpture to bring awareness to mental health and suicide prevention. In August, the committee connected with renowned local sculptor, Eric McCue, and are working together with friends, family, and community members to design and place a sculpture on the Pueblo Levee north of Dutch Clark Stadium to remind us all that we don't stand alone.

Since its inception in June 2023, the committee has participated in various community events, organized fundraising activities, and we meet regularly to plan next steps. Members of the committee include many teens and young adults, and the adult mentors are committed to elevating the voices and ideas of the younger members by giving them leadership roles, supporting their suggestions, and finding ways to connect

them with resources that will help them to be successful with fundraising, creating community awareness and building the sculpture.

Eric McCue, Michael D. Montoya, and other young welders are creating a 6-7 foot metal sculpture of a football player fixed to a concrete pad on the Pueblo Levee north of Dutch Clark Stadium just above the Central mascot. The sculpture will include a plaque with a QR code with additional information about Erric's Promise and resources for mental health and suicide prevention. The goal is to create a place where people can reflect and be at peace, while also having access to additional resources. The sculpture has been approved by the Conservancy Board, and the plan is to have the sculpture built and placed by the end of 2023.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,000 would be paid from the Council Contingencies Account in the 2023 General Fund Budget to Pueblo Friends of the Arkansas River.

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. Request for funding - You Don't stand Alone Sculpture
2. You Don't Stand Alone Sculpture Committee Sponsorship Request
3. 2023 Contingencies (Council) You Don't Stand Alone

RESOLUTION NO. 15407

A RESOLUTION AUTHORIZING PAYMENT FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO PUEBLO FRIENDS OF THE ARKANSAS RIVER IN THE AMOUNT OF \$1,000 TO SPONSOR THE YOU DON'T STAND ALONE SCULPTURE

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 Pueblo Friends of the Arkansas River to sponsor the You Don't Stand Alone sculpture.

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 policies and procedures described herein.

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: October 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 

Request for Donation for “You Don’t Stand Alone” Sculpture by The Erric’s Promise Committee

Date: 10/03/2023

Contact name: Tamara Trujillo

Phone Number: 719-369-6390

Email: [erricspromise@ gmail.com](mailto:erricspromise@gmail.com)

Project: “You Don’t Stand Alone” Sculpture to raise awareness for mental
health and suicide prevention

Fiscal sponsor name and contact information:

Pueblo Friends of the Arkansas River

Contact: Corinne Koehler

cor_koehler@yahoo.com

1. Organization description

- After the tragic loss of Erric "Mikey" Lopez, friends and family faced continuous road blocks with accessing mental health resources. Because of these heartbreaking difficulties, we have formed the "Erric's Promise" committee to address these challenges and ensure that no one stands alone when in crisis. Michael D. Montoya, a Central High School Senior, reached out with an idea to build a sculpture to bring awareness to mental health and suicide prevention. In August, the committee connected with renowned local sculptor, Eric McCue, and are working together with friends, family, and community members to design and place a sculpture on the Pueblo Levee north of Dutch Clark Stadium to remind us all that we don't stand alone.

Since its inception in June 2023, the committee has participated in various community events, organized fundraising activities, and we meet regularly to plan next steps. Members of the committee include many teens and young adults, and the adult mentors are committed to elevating the voices and ideas of the younger members by giving them leadership roles, supporting their suggestions, and finding ways to connect them with resources that will help them to be successful with fundraising, creating community awareness and building the sculpture.

2. Describe program/activity and date for the activity for which you are requesting funding.

- Eric McCue, Michael D. Montoya, and other young welders are creating a 6-7 foot metal sculpture of a football player fixed to a concrete pad on the Pueblo Levee north of Dutch Clark Stadium just above the Central mascot. The sculpture will include a plaque with a QR code with additional information about Erric's Promise and resources for mental health and suicide prevention. The goal is to create a place where people can reflect and be at peace, while also having access to additional resources. The sculpture has been approved by the Conservancy Board, and the plan is to have the sculpture built and placed by the end of 2023.

3. What are the goals of the program/activity? How many Pueblo city/county residents will be impacted and what specific impacts or benefits will they receive?

- The goal of this project is to remind everyone that "you don't stand alone." Suicide is the second leading cause of death for kids, teens, and young adults between 10-24 years old. Some feel there is no place to turn to or feel no one is listening. There is help; there are places and people that will be there when needed. Suicide is not the answer, with hope and support, we can prevent suicide.

4. How will the program/activity promote a more inclusive, engaged and respectful community?
 - Erric “Mikey” Lopez Jr., 18, died by suicide on Jan. 7. He was a Pueblo Central High School senior, football team captain and "School Spirit Leader." Mikey had a contagious smile and always lit up the room. His interests included being outdoors, fishing, hunting, camping, and football. Mikey loved listening to music, dancing and loved to eat, but above all he had a great love for his friends and family.
 - The inspiration for the sculpture is based on Erric's Promise:
 - Everyone is seen & heard
 - Love people for who they are
 - Never miss an opportunity to say “I love you”
 - You are important and LOVED
 - While the sculpture is inspired by how Erric lived, it is being constructed to help others have a place where they can go when they feel alone. As one teen said, “Sometimes we just need a place to sit and breathe.” An opportunity to slow down. A place to gather our thoughts. A chance to connect with people who can help. And the choice to continue our story.
5. How will the effort be promoted?
 - The committee has created “Erric’s Promise” social media accounts on TikTok, Facebook & Instagram. We use these platforms to connect with our community to let them know about the project and various fundraising activities. We have also created pamphlets, flyers and letters that we share at various events throughout the community. Members have recently attended two suicide prevention walks, Teen Kickbacks at El Pueblo History Museum, and participated in tabling events at Pueblo Pride and the Chile & Frijole Festival
6. List ALL other sources of funding for this event, both cash and in-kind.
 - Silent Disco Fundraiser \$785
 - Broncos Board \$985
 - Pass the Can at Big Daddy’s \$311
 - Individual Donations \$507
 - Concrete Pad In-Kind

August 6, 2023

To Whom It May Concern,

I am writing on behalf of the You Don't Stand Alone Sculpture Committee. We are a passionate group of students, parents, mental health professionals, and stewards of the community dedicated to promoting mental wellness and raising awareness about the devastating impacts of suicide in our community.

We are asking for donations from committed community members like you to help build a sculpture and bench dedicated to providing spaces of reflection and connection, as well as to remind those who need the message that they do not stand alone.

In return for your generous support, you or your organization will be recognized and remembered on a plaque with the sculpture as a valued partner in our ongoing efforts to address mental health issues and create more awareness.

We will have a **Top Donor** who sponsors the most at \$2,500 or more

A **Second Tier** for sponsors at \$1,000 or more

And a **Third Tier** for sponsorships at \$500 or more

Our Top Donor will have their name or organization name written at the top in the largest font, with Second Tier and Third Tier sponsor's names displayed in smaller font below.

If you would like to make a donation or discuss sponsorship opportunities further, please do not hesitate to contact us at ErricsPromise@gmail.com or ask for Tamara Trujillo at 719-369-6390.

Together, we can make a lasting impact in the lives of those affected by mental health challenges and work towards a brighter future for our community. Thank you for your consideration and support, and we hope to hear from you soon.

Sincerely,

Cheyenne Romero

Fundraising Committee Representative **Sculpture Memorial Committee**

Philanthropy Coordinator of the Community Museums **El Pueblo History Museum**

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10/10/23	Pueblo Area Agency on Aging Senior of the year Event		\$ 2,000.00		\$ 7,451.00
10/10/23	Latino Chamber Lifetime Achievement Award		\$ 1,000.00		\$ 6,451.00
10/23/23	You Don't Stand Alone Sculpture - Pueblo Friends of Arkansas		\$ 1,000.00		\$ 5,451.00
					\$ 5,451.00
					\$ 5,451.00



Background Paper for Proposed Resolution

COUNCIL MEETING DATE: October 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 A TRANSFER OF FUNDS IN THE AMOUNT OF \$1,000 FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO THE PUEBLO POLICE DEPARTMENT FOR SPONSORSHIP OF THE 7TH ANNUAL CHARITY ICE CUP HOCKEY GAME BETWEEN THE FIRE DEPARTMENT AND POLICE DEPARTMENT ON OCTOBER 21, 2023 AT 3 PM

SUMMARY:

Attached for consideration is a request for sponsorship of Pueblo Police Department's 7th Annual Charity Hockey game between Fire Dept and Police Dept on October 21, 2023.

PREVIOUS COUNCIL ACTION:

City Council supported this event for \$1,000 in 2019 and 2018 and for \$500 in 2017 and 2016.

BACKGROUND:

City Council member Sarah Martinez is requesting sponsorship of this annual charity event. Funds raised from this event supports the Heroes and Helpers community event where underprivileged youth get to go on holiday shopping trips with local officers and ensures children and families have gifts to open on Christmas morning.

FINANCIAL IMPLICATIONS:

Funds in the amount of \$1,000 would be transferred from the Council Contingencies Account in the 2023 General Fund Budget to the Pueblo Police Department.

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. Ice Cup Request Letter 2
2. Ice Cup Request Letter
3. 2023 Contingencies (Council) - Ice Cup Hockey Game

RESOLUTION NO. 15408

A RESOLUTION AUTHORIZING A TRANSFER OF FUNDS IN THE AMOUNT OF \$1,000 FROM THE COUNCIL CONTINGENCIES ACCOUNT IN THE 2023 GENERAL FUND BUDGET TO THE PUEBLO POLICE DEPARTMENT FOR SPONSORSHIP OF THE 7TH ANNUAL CHARITY ICE CUP HOCKEY GAME BETWEEN THE FIRE DEPARTMENT AND POLICE DEPARTMENT ON OCTOBER 21, 2023 AT 3 PM

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

Funds in the amount of \$1,000 from the Council Contingencies Account in the 2023 General Fund Budget are hereby authorized to be transferred to the Pueblo Police Department for the sponsorship of the 2023 Ice Cup Hockey Game.

SECTION 2.

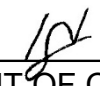
The officers and staff of the City are authorized to perform any and all acts consistent with this Resolution to implement the policies and procedures described herein.

SECTION 3.

This Resolution shall become effective upon passage and approval.

INTRODUCED: October 23, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 

- 8 tickets
 • Food Voucher \$1,500
 • Challenge Coins (8)
 • Pucks (8) and Voucher
 • Social Media Thank You
 • Logo on Social Media Thank You
 • DJ Shoutout Business \$200-\$499
 • 2 tickets
 • Feature on Social Media Thank You

- | | | |
|--|--------------------|---|
| <ul style="list-style-type: none"> • Wrap up Post • Logo featured on sponsors banner | Platinum | <ul style="list-style-type: none"> • Pucks (4) • Feature on Social Media Thank You Wrap up Post |
| <ul style="list-style-type: none"> • 8 tickets • Food Voucher • Challenge Coins (8) • Pucks (8) and Voucher • Social Media Thank You Pucks (5) • Logo on Featured Sponsors Banner • DJ Shoutout | \$1,500 | <ul style="list-style-type: none"> • 20% off additional tickets (limit 10) • VIP parking for 2 vehicles • Promotional sponsor video created by Pueblo Police Department • Challenge Coins (5) • Pucks (30-60) (30-60 seconds) • Logo on Featured Sponsors Banner • DJ Shoutout |
| <ul style="list-style-type: none"> • 2 tickets • Feature on Social Media Thank You | \$200-\$499 | <ul style="list-style-type: none"> • 4 tickets off additional tickets (limit 10) • Feature on Social Media Thank You • Challenge Coins (4) |

- | Platinum | Silver | Gold | 2025 Cup |
|--|--|--|--|
| <ul style="list-style-type: none"> • Logo featured on sponsors banner • 8 tickets | <ul style="list-style-type: none"> • Food Voucher • Challenge Coins (8) • Pucks (4) • Social Pucks (5) • Logo on Social Media Thank You • DJ Shoutout | <ul style="list-style-type: none"> • Food Voucher • Challenge Coins (6) • Pucks (4) • Social Pucks (5) • Logo on Social Media Thank You • DJ Shoutout | <ul style="list-style-type: none"> • Promotional sponsor video created by Pueblo Police Department • Challenge Coins (6) • Pucks (4) • Social Pucks (5) • Logo on Social Media Thank You • DJ Shoutout |
| \$4,500 | \$1,500 | \$3,000 | \$3,000 |
| <ul style="list-style-type: none"> • 20% off additional tickets • VIP parking for 2 vehicles | <ul style="list-style-type: none"> • 20% off additional tickets • VIP parking for 2 vehicles | <ul style="list-style-type: none"> • 20% off additional tickets • VIP parking for 2 vehicles | <ul style="list-style-type: none"> • 20% off additional tickets • VIP parking for 2 vehicles |
| \$200-\$499 | \$200-\$499 | \$200-\$499 | \$200-\$499 |
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| \$4,500 | \$4,500 | \$4,500 | \$4,500 |

Ice Cup also allows for these children and families to have a positive experience with law enforcement and helps to establish the foundations of trust in our officers. These events help us to strengthen our community and allows us to better serve the City of Pueblo. The sponsorship funds from this year's supporters will allow us to purchase merchandise to be sold on game day. Advertising and marketing and funds to give back to our community.

We are excited to play for the Pueblo Police vs. Fire Ice Cup hockey game. The game is scheduled for Saturday, October 21st with puck drop scheduled for 3p.m. at the Pueblo Ice Arena located in downtown Pueblo. Funds raised from this event helps to support children in Pueblo with most funds going to our annual Heroes and Helpers event where children in our community are taken on a shopping trip for Christmas to ensure the children and their families have gifts to open on Christmas morning.

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10/10/23	Pueblo Area Agency on Aging Senior of the year Event		\$ 2,000.00		\$ 7,451.00
10/10/23	Latino Chamber Lifetime Achievement Award		\$ 1,000.00		\$ 6,451.00
10/23/23	You Don't Stand Alone Sculpture - Pueblo Friends of Arkansas		\$ 1,000.00		\$ 5,451.00
10/23/23	Police vs. Fire Hockey Game - 7th Annual Ice Cup		\$ 1,000.00		\$ 4,451.00
					\$ 5,451.00



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Alexandria Romero, Director of Finance
Nicholas Gradisar, Mayor
George Hypolite, City Attorney
Barb Huber, Fire Chief
Andrew Hayes, Public Works Director

SUBJECT: AN ORDINANCE AUTHORIZING A SITE LEASE AND LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AND BOKF, N.A. (SOLELY IN ITS CAPACITY AS TRUSTEE) FOR THE PURPOSE OF FINANCING THE CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF THREE FIRE STATIONS; APPROVING NOT TO EXCEED \$37,000,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION, SERIES 2023 IN CONNECTION THEREWITH; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS

SUMMARY:

This Ordinance authorizes the City to issue Series 2023 Certificates of Participation for the purpose of financing the construction, improvement and equipping of three fire stations.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Three new fire stations are to be built in the City of Pueblo. Fire Station #6 and Fire Station #8 will be replaced with new fire stations. Fire Station #11 will be a new fire station on the west side of Pueblo. Series 2023 Certificates of Participation (COP) are to be issued to fund the projects. The amount of the 2023 COP shall not exceed \$36,000,000 in principal.

FINANCIAL IMPLICATIONS:

On a year to year basis, subject to annual appropriations, the City shall be obligated to make lease payments on the three new fire stations equal to the principal amount of the 2023 COP and the net effective interest rate of the 2023 COP.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If City Council does not approve this Ordinance, a site lease and lease purchase agreement for the purpose of financing the construction, improvement and equipping of three fire stations will not take place.

RECOMMENDATION:

Approval of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10570

AN ORDINANCE AUTHORIZING A SITE LEASE AND LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AND BOKF, N.A. (SOLELY IN ITS CAPACITY AS TRUSTEE) FOR THE PURPOSE OF FINANCING THE CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF THREE FIRE STATIONS; APPROVING NOT TO EXCEED \$37,000,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION, SERIES 2023 IN CONNECTION THEREWITH; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS

WHEREAS, the City of Pueblo, Colorado (the "City"), is authorized, pursuant to the Home Rule Charter of the City (the "Charter") to enter into lease purchase agreements in order to provide lands and facilities for governmental purposes; and

WHEREAS, in order to provide for the capital asset needs of the City, the City Council of the City (the "City Council") hereby determines that it is necessary and in the best interests of the City and its citizens that the City undertake lease-purchase financing for the construction, improvement and equipping of three fire stations or for other governmental or proprietary purposes (the "Project"); and

WHEREAS, the City Council wishes to fund the Project from the proceeds of a lease-purchase financing (the "Financing") to be completed within 12 months of the date hereof; and

WHEREAS, to provide financing for the completion of the Project, Certificates of Participation, Series 2023 (the "Series 2023 Certificates") in an aggregate amount not to exceed \$37,000,000 will be executed, sold and delivered pursuant to an Indenture of Trust (the "Indenture") entered into by BOKF, N.A. (the "Trustee"); and

WHEREAS, in connection with the Series 2023 Certificates, it will be necessary to execute and deliver a Site Lease (the "Site Lease") and a Lease Purchase Agreement (the "Lease") between the City and the Trustee; and

WHEREAS, the City desires to delegate to the City Finance Director the ability to make certain determinations regarding the Series 2023 Certificates, including without limitation whether such Series 2023 Certificates, if issued, shall be sold by negotiated public offering with an underwriter pursuant to a Certificate Purchase Agreement or by competitive sale pursuant to a Notice of Sale; and

WHEREAS, the City shall prepare and an official statement (the "Official Statement") providing details with respect to the City and the Series 2023 Certificates to prospective investors; and

WHEREAS, there have been filed for public inspection with the City Clerk in connection herewith the proposed forms of the Site Lease, the Lease, and the Indenture (collectively, the "Financing Documents"); NOW, THEREFORE,

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

SECTION 1.

Ratification of Actions. All action heretofore taken, not inconsistent with the provisions of this ordinance (the "Ordinance"), by the City Council or the officers of the City, directed toward the implementation of the Project, including the preparation of the forms of the Site Lease, the Lease and the Indenture as well as other related documents, are hereby ratified, approved and confirmed.

SECTION 2.

Findings; Authorizations. The City Council hereby finds and determines, pursuant to the laws of the State of Colorado, that the Project is necessary, convenient, and in furtherance of the governmental purposes of the City and in the best interests of the City and its citizens; and the City Council hereby authorizes the Project.

SECTION 3.

Approval and Execution of Documents; City Representatives. The Site Lease, the Lease and the Indenture, in substantially the forms filed in the office of the City Clerk prior to the final adoption of this Ordinance, are in all respects approved, authorized and confirmed, and the Mayor or the Deputy Mayor of the City are hereby authorized and directed to execute and deliver, and the City Clerk of the City is hereby authorized and directed to affix the seal of the City to, and attest, the Site Lease and the Lease, in substantially the forms filed with the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the City Attorney. The City Council hereby designates the Mayor and the City Finance Director (and any persons authorized by law to act on their behalf in their absence) to act as "City Representatives" under the Lease and any related documents. In the event that bond insurance or other credit enhancement is deemed advantageous to the City in connection with the Series 2023 Certificates by the City Representatives, they may insert provisions, not inconsistent herewith, required by the provider of such credit enhancement. Prior to the execution of the Site Lease, the Lease, or any other instrument contemplated by this Ordinance, or the issuance of the Series 2023 Certificates, the final Base Rentals due under the Site Lease and Lease, and the principal amount, interest rates and other terms of the Series 2023 Certificates, not inconsistent herewith, shall be approved by a certificate executed by the City Finance Director (the "Final Terms Certificate") not later than the date that is one year from the effective date of this Ordinance.

SECTION 4.

The Series 2023 Certificates. The City Council hereby acknowledges and consents to the sale, execution and delivery of the Series 2023 Certificates pursuant to the Indenture. The

City Council hereby acknowledges and approves the forms, terms and provisions of the Series 2023 Certificates contained in the Indenture, in substantially the form filed with the City Clerk prior to the final adoption of this Ordinance.

The Series 2023 Certificates shall be issued in a principal amount not to exceed \$37,000,000, shall mature not later than December 1, 2053, shall bear interest at a net effective interest rate not exceeding 6.00%, and may be made subject to redemption at redemption prices which may include redemption premiums not exceeding 3% of their principal amount, all as may be approved by Final Terms Certificate. The proceeds of the Series 2023 Certificates shall be used to accomplish the Project in the manner required under the Site Lease, the Lease and the Indenture.

SECTION 5.

Additional Documents. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor, the Deputy Mayor and the City Representatives are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The Mayor, the Deputy Mayor and the City Representatives are hereby authorized to cause the preparation and distribution of an Official Statement describing the Series 2023 Certificates, the Site Lease, the Lease, the City, the Leased Property and other matters material to the offering of the Series 2023 Certificates. The appropriate officers of the City are also authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

SECTION 6.

No General Obligation or Other Indebtedness. The obligation of the City to make rental payments under the Lease is subject to annual appropriation by the City Council and constitutes an undertaking of the City to make current expenditures. No provision of this Ordinance, the Lease, the Indenture or the Series 2023 Certificates shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City shall have no obligation to make any payment with respect to the Series 2023 Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments are subject to termination and nonrenewal by the City in accordance with the provisions of the Lease.

SECTION 7.

Expression of Need; Reasonable Rentals. The City hereby declares its current need for the Leased Property, which is considered to be essential to the governmental operations of the City. It is hereby declared to be the present intention and expectation of the City Council that the Lease will be renewed annually until all of the Leased Property is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

The maximum Base Rentals payable under the Lease shall be an amount which would provide Revenues, as defined in the Lease, sufficient to pay the maximum principal and interest authorized herein for the Series 2023 Certificates. The City Council hereby determines and declares that the Base Rentals due under the Lease will represent the fair value of the use of the Leased Property and the Purchase Option Price (as defined in the Lease) will represent, as

of any date upon which the City may exercise its option to purchase such Leased Property, the fair purchase price of such Leased Property. The City Council further hereby determines and declares that the Base Rentals due under the Lease will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the City Council has given consideration to the cost of acquiring and installing the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefit to the citizens of the City by reason of the acquisition and installation of the Leased Property and the use of the Leased Property pursuant to the terms and provisions of the Lease, the City's option to purchase the Leased Property, and the expected eventual vesting of title to the Leased Property in the City. The City Council hereby determines and declares that the acquisition and installation of the Leased Property and the leasing of the Leased Property pursuant to the Lease will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Leased Property were performed by the City other than pursuant to the Lease. The City Council hereby determines and declares that the maximum duration of the portion of the Lease allocable to any item of Leased Property separately identified in the Lease will not exceed the weighted average useful life of such item of Leased Property.

SECTION 8.

Severability. If any section, paragraph, clause or provision of this Ordinance or the Lease (other than provisions as to the payment of Base Rentals by the City during the term of the Lease, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease, and provisions for the transfer of the Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 9.

Repealer of Measures. All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

SECTION 10.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Benjamin Valdez, Transit Director

SUBJECT: AN ORDINANCE TRANSFERRING FUNDS IN THE AMOUNT OF \$9,942.85 FROM PUEBLO TRANSIT ARPA AWARD NO. CO-2023-019-00, INTO PROJECT NUMBER PT2201 SHOP TRUCK REPLACEMENT PROJECT TO PURCHASE A NEW MAINTENANCE VEHICLE

SUMMARY:

This Ordinance transfers \$9,942.5 from Pueblo Transit ARPA Award No. CO-2023-019-00 into Project Number PT2201 Shop Truck Replacement Project for the replacement of a Transit Maintenance Vehicle that has exceeded useful life and is no longer cost effective to maintain.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

Unit 13 has exceeded useful life and is no longer financially viable to maintain. The need for a maintenance vehicle exists and this ordinance will enable the purchase of a replacement vehicle.

FINANCIAL IMPLICATIONS:

Pueblo Transit will be responsible for the replacement of Unit 13. Funds in the amount of \$9,942.85 from Project Number PT2302 are being transferred into Project Number PT2201 which will enable the purchase of a replacement vehicle.

BOARD/COMMISSION RECOMMENDATION:

Pueblo Transit Board recommends approval.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Should this Ordinance not pass, Pueblo Transit would have to make up the \$9,942.80 for a new vehicle.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10571

AN ORDINANCE TRANSFERRING FUNDS IN THE AMOUNT OF \$9,942.85 FROM PUEBLO TRANSIT ARPA AWARD NO. CO-2023-019-00, INTO PROJECT NUMBER PT2201 SHOP TRUCK REPLACEMENT PROJECT TO PURCHASE A NEW MAINTENANCE VEHICLE

WHEREAS, in 2023, Unit 13 has exceeded useful life and financial viability

WHEREAS, the City has received grant funding to replace the vehicle; NOW, THEREFORE,

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

SECTION 1.

Funds in the amount of \$9,942.85 are hereby transferred from Pueblo Transit ARPA AWARD NO. CO-2023-019-00, into Project Number PT2201 Shop Truck Replacement Project and will be used to purchase a maintenance vehicle.

SECTION 2.

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

SECTION 3.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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: October 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 A LICENSE FOR COMMUNICATION LINE, TELEVISION CABLE, AND/OR FIBER OPTIC LINE ACROSS OR ALONG RAILWAY PROPERTY BETWEEN THE CITY OF PUEBLO AND BNSF RAILWAY COMPANY, A DELAWARE CORPORATION, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This Ordinance approves the attached License for Communication Line, Television Cable, and/or Fiber Optic Line across or along railway property between the City of Pueblo and BNSF Railway Company, a Delaware Corporation.

PREVIOUS COUNCIL ACTION:

City Council previously passed Resolution 15168 on March 13, 2023, authorizing six hundred thousand dollars (\$600,000) from Project CI2113 – American Rescue Plan Act for the purposes of constructing broadband infrastructure.

BACKGROUND:

The City is building a new fire station on the west side of Pueblo on W. 24th Street. Pueblo County ("County") is building a new county jail near W. 24th Street on the west side of Pueblo Blvd. The City and County are cooperating to install fiber-optic infrastructure to both facilities to connect the technological resources necessary to support the operations required by each agency. The build-out of this infrastructure requires a directional-bore under BNSF railroad tracks installing three (3) conduits, together with all conductors and their supporting or containing structures, across the BNSF rail corridor at or near the station of Pueblo, County of Pueblo, State of Colorado, Line Segment 7357, Mile Post 117.17. BNSF Railway requires a railroad permit, in the amount of \$25,000, to be approved prior to the city installing the conduit and fiber-optic cables under their rails. The funding for this project was approved via Resolution 15168.

FINANCIAL IMPLICATIONS:

There are no additional costs to the City with respect to this Ordinance. There is a one-time cost of twenty-five thousand dollars (\$25,000) in licensing and permitting fees which are payable to BNSF Railway Company. These licensing and permitting fees were contemplated and accounted for within the amount approved under Resolution 15168.

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 and Pueblo County will not be able to install the fiber-optic cable required to connect the technological resources of each entity to the network resources needed to conduct their daily business operations.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 23w-17124 Permit

ORDINANCE NO. 10572

AN ORDINANCE APPROVING A LICENSE FOR COMMUNICATION LINE, TELEVISION CABLE, AND/OR FIBER OPTIC LINE ACROSS OR ALONG RAILWAY PROPERTY BETWEEN THE CITY OF PUEBLO AND BNSF RAILWAY COMPANY, A DELAWARE CORPORATION, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

WHEREAS, City desires to utilize and install a fiber-pathway, by installing three (3) conduits, together with all conductors and their supporting or containing structures, across the BNSF rail corridor at or near the station of Pueblo, County of Pueblo, State of Colorado, Line Segment 7357, Mile Post 117.17; NOW, THEREFORE

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

SECTION 1.

The License for Communication Line, Television Cable, and/or Fiber Optic Line Across or Along Railway Property License ("License") between the City of Pueblo, a Colorado Municipal Corporation, and BNSF Railway Company, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is 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 October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 25, 2023.

☐ Disapproved on _____ based on the following objections:



Mayor

Action by City Council After Disapproval by the Mayor:

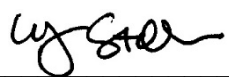
☐ Council did not act to override the Mayor's veto.

☐ 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



Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive, MOB-2
Fort Worth, Texas 76131
tel +1 817-352-1048

September 5, 2023

CITY OF PUEBLO
1 City Hall Place
Pueblo, CO 81003

23w-17124

Dear Mr. Gloss:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Payment can be made online or you can mail check with tracking number payable to BNSF and sent to this office at the top of this letter and in my email signature block. **DO NOT PAY THE CONVIENCE FEE IF MAILING A CHECK.**

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement sent to bnsf@vertikalrms.com and the holder address is:
BNSF Railway Company
P.O. Box 140528
Kansas City, MO 64115
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract.

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any funds by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the funds in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$800.00.

Sincerely,

Melissa Woodruff
Manager - Permits
Attachment

**LICENSE FOR COMMUNICATION LINE, TELEVISION CABLE,
AND/OR FIBER OPTIC LINE ACROSS OR ALONG RAILWAY PROPERTY**

THIS LICENSE FOR COMMUNICATION LINE, TELEVISION CABLE AND/OR FIBER OPTIC LINE ("License") is made to be effective _____, 2023 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF PUEBLO**, a Municipal Corporation, ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**") a communication line, television cable, and/or a fiber optic line containing a maximum of three (3) conduits, together with all conductors and their supporting or containing structures (collectively, the "**Communication Line**"), across or along Licensor's rail corridor at or near the station of Pueblo, County of Pueblo, State of Colorado, Line Segment 7357, Mile Post 117.17 as shown on the attached Drawing No. 87340, dated April 5, 2023, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**"). Licensee warrants that it has exercised due care in establishing the Drawings and Specifications and has conducted testing and carefully assessed the design process to conclude that the risks associated with using and operating the Communication Line as intended by Licensee will not pose any unreasonable risks to Licensor or to the Premises.
2. Term. This License shall commence on the Effective Date and shall continue for so long as Licensee utilizes the Communication Line, as describe herein, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Communication Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of twenty-five thousand and no/100 dollars (\$25,000.00) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Communication Line, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-

half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensors, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. Payment Terms. All invoices are due forty-five (45) days after the date of invoice.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensors excepts and reserves the right, to be exercised by Licensors and any other parties who may obtain written permission or authority from Licensors:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Communication Line) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as Licensors in its sole discretion deems appropriate, provided Licensors uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensors desires the use of its rail corridor in such a manner as would, in Licensors's reasonable opinion, be interfered with by the Communication Line, Licensee shall, at its sole expense, within sixty (60) days after receiving written notice from Licensors to such effect, make such changes in the Communication Line as in the sole discretion of Licensors may be necessary to avoid interference with the proposed use of Licensors's rail corridor, including, without limitation, the relocation of the Communication Line, or the construction of a new line to replace the Communication Line. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensors in its sole discretion, to the Communication Line promptly upon Licensors's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Communication Line.
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensors's representative, the Scheduling Agent or its designee. Licensee shall notify Licensors's Roadmaster, gregory.leonard@bnsf.com or 719-960-7156, at least ten (10) business days prior to installation of the Communication Line and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensors of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
 - 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
 - 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensors's tracks to the other.
 - 11.4 Any contractors or subcontractors performing work on the Communication Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Electric Supply Line, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Communication Line in such a manner and of such material that the Communication Line will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Communication Line shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation of said maintenance. Within fifteen (15) days after completion of the construction of the Communication Line or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Communication Line at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Communication Line by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Communication Line, it being solely Licensee's responsibility to ensure that the Communication Line is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.
- 11.8 Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles on the Premises, if any, and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to with fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
- 11.9 Licensee shall, at its sole cost and expense, construct and at all times maintain the Communication Line in accordance with the National Electric Code. The use of a rail mounted cable plow to install the Communication Line is strictly prohibited unless advance written approval is granted by Licensor, which approval Licensor may grant or withhold in its sole and absolute discretion. Unless otherwise specified, all underground line shall be installed at least forty-eight (48) inches below grade level.

- 11.10 Cutting head must travel at 0.0% grade (or downward) beginning 25' (minimum) from centerline of track until it reaches a point 25' (minimum) from the centerline of track. Minimum pressure must be applied to pumping the slurry to the cutting head during drilling. This will deter the bentonite slurry used for lubrication from seeping up and fouling the track roadbed. A Flagman must be present during installation and will monitor the ballast and roadbed.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3rd parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Communication Line by contacting Licensor's Telecommunications, currently at 1-800-533-2891, option 1, then option7, Helpdesk at least thirty (30) business days prior to installation of the Communication Line. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Communication Line and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
 - 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
 - 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
 - 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY,**

AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$2,000,000 per occurrence and an aggregate limit of at least \$4,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing operations and completed operations;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance

- a. The policy will provide coverage of all employees performing any part of the work or services including coverage for, but not limited to:
 - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
 - b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor.
- 15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:
- Endorsed to include the Pollution Exclusion Amendment.
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to remove any exclusion for punitive damages.
 - Endorsed to include Evacuation Expense Coverage Endorsement.
 - No other endorsements restricting coverage may be added.
 - The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
 - The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$506.00.

- ☐ Licensee **elects** to participate in Licensor's Blanket Policy;
- ☐ Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Other Requirements:

15.5.1 Intentionally omitted.

15.5.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.5.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

15.5.4 Licensee is allowed to self-insure, with the exception of Railroad Protective liability coverage, without the prior written consent of Licensor. Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

- 15.5.5 Prior to entering the Premises or commencing the services or work, Licensee shall furnish to Licensors an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.5.6 Licensee agrees to provide evidence to Licensors that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- 15.5.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensors or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.5.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.5.9 Licensee agrees to provide evidence to Licensors that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- 15.5.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.5.11 Not more frequently than once every five years, Licensors may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.5.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensors as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensors under this agreement.
- 15.5.13 Failure to provide evidence for more than thirty (30) day and as required by this section shall entitle, but not require, Licensors to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.5.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensors shall not be limited by the amount of the required insurance coverage.
- 15.5.15 In the event of a claim or lawsuit involving Licensors arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to Licensors.
- 15.5.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, Licensors requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Licensors.
- 15.5.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services performed under this License is performed.
- 15.5.18 For purposes of this **Section 15**, Licensors shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS AND ENVIRONMENTAL MATTERS**16. Compliance with Laws, Rules, and Regulations.**

16.1 Licensee shall observe and comply with any and all applicable federal, state, local and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance and use of the Communication Line and the use of the Premises.

16.2 This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of Licensee 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 Licensee. Licensee may in its sole and absolute discretion terminate this Agreement for reasons of non-appropriation immediately upon written notice without causing default or breach.

Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensors' applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that employees of Licensee, its contractors, agents and invitees who enter upon the Premises, possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable renew) the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Communication Line and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Communication Line in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by

Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body on the Premises. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Communication Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

- 18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE COMMUNICATION LINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. Liens and Charges. Intentionally omitted.
22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Communication Line or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within sixty (60) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 Intentionally Omitted.
- 23.5 Licensee agrees not to assert that termination of this License is a discontinuance in service that requires prior approval by the FCC and represents and warrants that it has redundant facilities that would allow it to continue the provision of service after termination of this License.
24. Surrender of the Premises.
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Communication Line and all appurtenances thereto, or, at the sole discretion of Licensor, appropriately decommission the Communication Line with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date or as otherwise agreed to by Licensor.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee

to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 24.3 If Licensee fails to complete the Restoration Obligations within sixty (60) days after the date of such termination of its tenancy, then Licenser may, at its election, either: (i) remove the Communication Line and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licenser for undisputed costs incurred, (ii) upon written notice to Licensee, take and hold the Communication Line and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licenser has consented to the Communication Line and the other Improvements remaining on the Premises following termination, Licensee may, upon request by Licenser, provide a bill of sale in a form acceptable to Licenser conveying the Communication Line and the other Improvements to Licenser for no additional consideration at no additional cost.

MISCELLANEOUS

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licenser and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. **Assignment.**

- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licenser, which consent may not be unreasonably withheld or delayed by Licenser. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licenser in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "Purported Assignment") to another party (a "Purported Transferee"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of Section 15 above concerning insurance requirements. In addition to and not in limitation of the foregoing, to the fullest extent permitted by Law, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licenser for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Licensor shall have the right to transfer or assign, in whole or part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive, MOB-2
Fort Worth, TX 76131
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2650 Lou Menk Dr.
Fort Worth, TX 76131-2830
Attn: Senior Manager Real Estate

If to Licensee: CITY OF PUEBLO
1 City Hall Place
Pueblo, CO 81003

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Communication Line and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law and Venue. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Colorado without regard to conflicts of law provisions. 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 or in the United States District Court for the District of Colorado.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensors Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive, MOB-2
Fort Worth, TX 76155

By: _____

Title: _____

Date: _____

LICENSEE:

CITY OF PUEBLO

By: _____

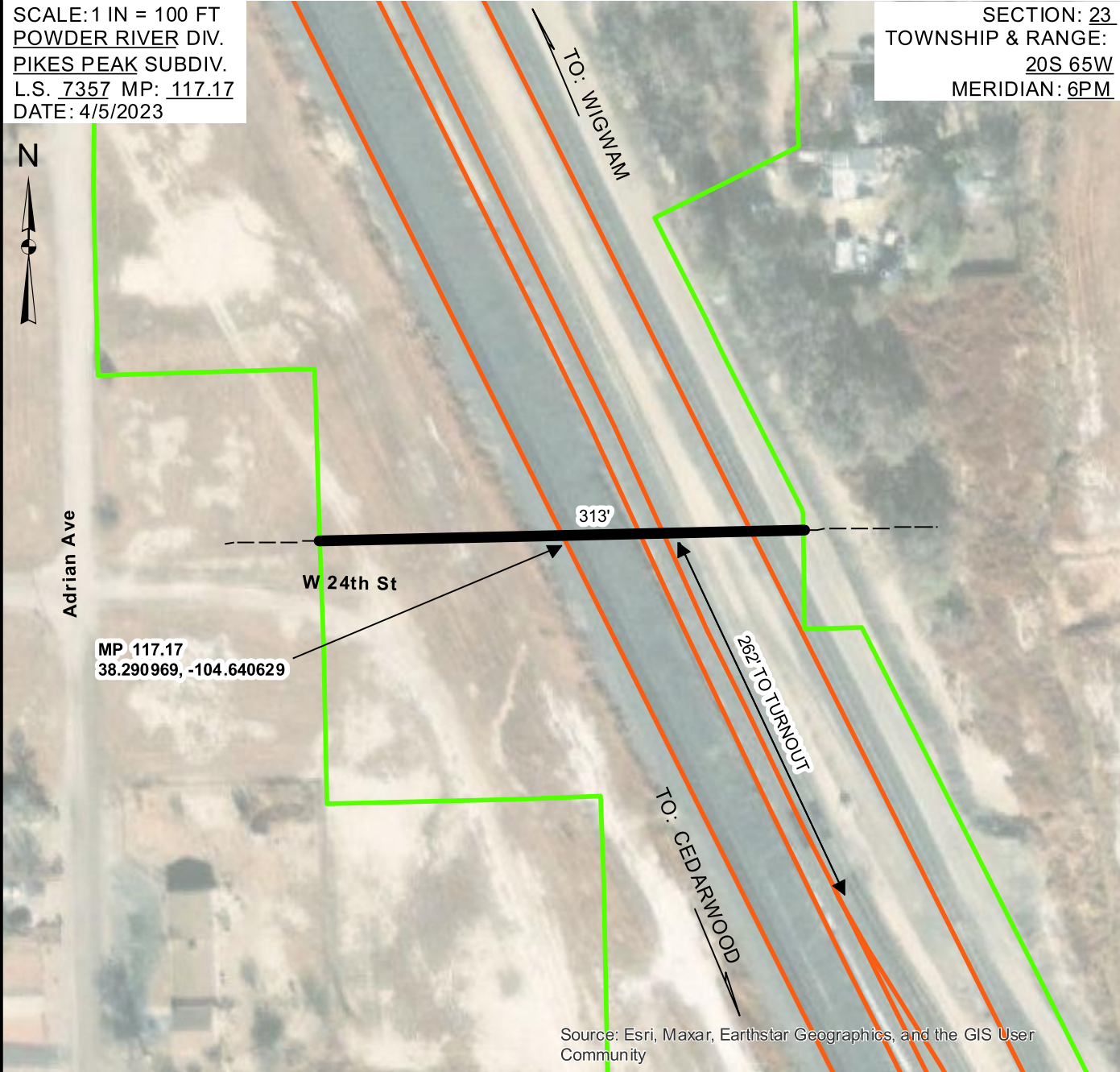
Title: _____

Date: _____

EXHIBIT "A"

SCALE: 1 IN = 100 FT
POWDER RIVER DIV.
PIKES PEAK SUBDIV.
L.S. 7357 MP: 117.17
DATE: 4/5/2023

SECTION: 23
TOWNSHIP & RANGE:
20S 65W
MERIDIAN: 6PM



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

NOTE:
1 - 4" HDPE CONDUIT W/
3 - 1.25" INNERDUCTS
1 OCCUPIED W/
1 FIBER OPTIC CABLE
2 VACANT

DESCRIPTION OF WIRES UNDER TRACK
WIRES LOCATED AS SHOWN BOLD

TYPE	FIBER OPTIC	SIZE OF CONDUIT	4"
NUMBER OF CONDUITS	1	CONDUIT MATERIAL	HDPE SDR 11
VOLTAGE	-	WALL THICKNESS	0.409"
		LENGTH ON R/W	313'
		BASE OF RAIL TO TOP OF CONDUIT	12'

NOTE: CONDUIT TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL

PUEBLO
COUNTY OF PUEBLO

STATE OF CO

ANA



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Marisa Stoller, City Clerk

SUBJECT: AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND DOMINION VOTING SYSTEMS, INC., AS REQUIRED FOR ANY POTENTIAL MAYORAL RUNOFF ELECTION

SUMMARY:

Attached is an Ordinance approving a Hardware Rental, Software License and Services Agreement between the City of Pueblo and Dominion Voting Systems, Inc.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

After discussions with the County Clerk, it was determined that the County would be unable to run the potential January 2024 Mayoral runoff election, meaning the City would have to administer any runoff election.

Due to the timelines associated with any potential runoff election, the City Clerk must put in place election infrastructure that can be utilized in the event a runoff election is necessary. This rental agreement will allow for tabulation equipment and software to count the ballots for any potential runoff election the City is required to administer.

FINANCIAL IMPLICATIONS:

The contract with Dominion will be approximately \$30,000. This amount has been budgeted for the election project in the 2024 Capital Campaign budget.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could choose to reject this Ordinance. If City Council choose not to pass this Ordinance, the City will be unable to administer any Mayoral runoff election during this election cycle.

RECOMMENDATION:

Passage of the Ordinance.

ATTACHMENTS:

1. City of Pueblo CO Rental Agreement

ORDINANCE NO. 10573

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND DOMINION VOTING SYSTEMS, INC., AS REQUIRED FOR ANY POTENTIAL MAYORAL RUNOFF ELECTION

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

SECTION 1.

The Hardware Rental, Software License, and Services Agreement between the City of Pueblo, a Colorado municipal corporation and Dominion Voting Systems, Inc, a copy of which is attached hereto ("Agreement") is hereby approved.

SECTION 2.

After the Agreement is approved as to form by the City Attorney, the Mayor is hereby authorized to execute and deliver the Agreement in the name 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 all acts consistent with this Ordinance and the attached Agreement to implement the policies and procedures described herein.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT

This Hardware Rental, Software License and Services Agreement (hereafter the “Agreement”) dated this September 1, 2023, (the “Effective Date”) is made between the City of Pueblo, Colorado, a municipal corporation under the laws of the State of Colorado (“Customer”) and Dominion Voting Systems Inc., (“Dominion”). This Agreement may refer to Dominion and the Customer together as the “Parties,” or may refer to Dominion or the Customer individually as a “Party.”

1. **Composition of Agreement.** Exhibit A is attached and incorporated herein by reference and forms a part of this Agreement. This Agreement consists of the general terms and conditions contained in the following Sections, together with Exhibit A:

Exhibit A: Hardware Rental, Services, Pricing and Payment Summary

2. **Definitions.** For the purposes of this Agreement, the following are defined terms:

- 2.1. “Dominion Software” means the Dominion Democracy Suite® software certified for use in the Customer’s State.
- 2.2. “Hardware” means the ImageCast® system hardware as more specifically described in Exhibit A and certified for use in the Customer’s State.
- 2.3. “Specifications” means descriptions and data regarding the features, functions and performance of the Dominion Software, as set forth in user manuals or other applicable documentation provided by Dominion.

3. **Term of Agreement.** The term of this Agreement (“Term”) shall begin on the Effective Date and shall continue until February 29, 2024. The payment terms of Section 5, to the extent any payments are still due, shall survive any expiration of termination of this Agreement in accordance with their respective terms.

4. **Dominion's Responsibilities.**

- 4.1. Dominion shall provide the Customer with the rental Hardware and Dominion Software, and the services described in Exhibit A.
- 4.2. Dominion shall grant to the Customer a non-exclusive, non-transferable (except as provided herein), license (“License”) to use the Dominion Software provided by Dominion pursuant to Section 6 of this Agreement.
- 4.3. Dominion shall provide the invoice to the Customer for the items described in Exhibit A, upon the signing of the Agreement.

5. **Customer's Responsibilities.**

- 5.1. In consideration for the rental, licenses and services described in this Agreement, Customer shall pay the amounts specified in Exhibit A within thirty days of receiving the Dominion invoice. Customer is responsible for all sales, excise, personal property

or other taxes or duties on the amounts paid or products or services provided under this Agreement. If Customer is exempt from such taxes or duties, Customer shall provide Dominion with a tax exemption certificate.

- 5.2. If applicable, Customer shall provide Dominion with reasonable accommodations required for Dominion to perform its obligations, including premises access and electrical power.
- 5.3. Customer is solely responsible for assuring all relevant federal, State, and local laws, ruling and ordinances are complied with in regard to the use of Dominion's system for any Customer election, including all associated election guidelines and applicable election due dates. Notwithstanding any other provision in this Agreement to the contrary, to the extent permitted by law, Customer shall hold Dominion harmless from and against any and all claims, demands, damages, injuries, expenses (including reasonable attorneys' fees and court costs) and liability arising in connection with the Customer's responsibility pursuant to this Section 5

6. Dominion Software and Hardware Rental, License and Use.

- 6.1. Dominion agrees to rent the Hardware to Customer during the Term as described in Exhibit A herein.
- 6.2. License. Dominion grants Customer a non-exclusive, non-transferrable license to use the Dominion Software solely for the Customer's use in an election. The Customer cannot transfer or sublicense the License to any other third party.
- 6.3. No Other Licenses. Other than as expressly set forth in this Agreement, (a) Dominion grants no licenses, expressly or by implication, and (b) Dominion's entering into and performing the Agreement will not be deemed to license or assign any intellectual property rights of Dominion to Customer or any third party. Without limiting the foregoing sentence, Customer agrees to use the Dominion Software outlined in Exhibit A herein, and agrees not to use any Dominion Software as a service bureau for elections outside the Customer's jurisdiction and agrees not to reverse engineer or otherwise attempt to derive the source code of any Dominion Software. The Customer shall have no power to grant sub-licenses for the Dominion Software. Any use of all or any portion of the Dominion Software not expressly permitted by the terms of this Agreement is strictly prohibited.
- 6.4. Prohibited Acts. The Customer shall not:
 - 6.4.1. Transfer or copy onto any storage device or hardware or otherwise copy the Dominion Software in whole or in part;
 - 6.4.2. Reverse engineer, disassemble, decompile, decipher or analyze the Dominion Software in whole or in part;
 - 6.4.3. Alter or modify the Dominion Software in any way or prepare any derivative works of the Dominion Software;

- 6.4.4. Alter, remove or obstruct any copyright or proprietary notices from the Dominion Software, or fail to reproduce the same on any lawful copies of the Dominion Software;
 - 6.4.5. Provide or transfer any Software or System component to any third party unless explicitly authorized in writing by Dominion.
- 6.5. Proprietary Rights. Customer acknowledges and agrees that Dominion owns the Dominion Hardware, Dominion Software, all documentation and training materials provided by Dominion, the design and configuration of the Dominion Hardware and the format, layout, measurements, design and all other technical information (except for Customer supplied information such as election information) associated with the ballots to be used with the Dominion Hardware. Customer has the right to use the aforementioned items to the extent specified in this Agreement. Dominion likewise owns all patents, trade-marks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of Dominion which are protected by law and are of substantial value to Dominion.

7. Limited Warranties.

- 7.1. Dominion Software. Dominion warrants that, during the term of this agreement, the Dominion Software will function in accordance with the Specification. If the Customer believes that the Dominion Software is not functioning substantially in accordance with this agreement, the Customer shall provide Dominion with written notice of the material failure within three (3) days of discovering the material failure. Dominion shall use reasonable efforts to correct the material failure of the Dominion Software. The foregoing warranty shall be void in the event of the Dominion Software (i) has been modified by any party other than Dominion or (ii) has been used by the Customer for purposes other than those described herein.
- 7.2. Third-Party Products. The warranties herein do not apply to any third-party products. However, to the extent permitted by the manufacturers of third-party products, Dominion shall pass through to the Customer all warranties such manufacturers make to Dominion regarding the operation of such third party products.
- 7.3. NO OTHER WARRANTIES. DOMINION DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

- 8. Indemnification.** To the extent permitted by law, each Party to this Agreement shall indemnify, defend, and hold harmless the other Party and its officers, directors, agents, employees, and owners from and against any and all demands, claims, damages to persons or property, losses, and liabilities, including reasonable attorneys' fees (collectively,

"Claims"), arising out of or caused by the indemnifying party's gross negligence or willful misconduct in connection with the services contemplated by this Agreement. In addition, to the extent permitted by law, Customer shall indemnify and hold harmless Dominion from any third party claims arising from, or alleged to arise from, Customer's failure to operate properly the Software and Hardware licensed under this Agreement, in the manner designated by Dominion.

- 9. Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, DOMINION'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, LOSS, DAMAGE, COSTS OR EXPENSES CAUSED BY BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY OR ANY OTHER DUTY SHALL IN NO CIRCUMSTANCES EXCEED THE TOTAL DOLLAR AMOUNT OF THE AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Confidential Information.

- 10.1. For purposes of this Agreement, confidential information ("Confidential Information") is defined as those materials, documents, data, and technical information, specifications, business information, customer information, or other information that the disclosing Party maintains as trade secrets or confidential and which are disclosed to a receiving Party in tangible form conspicuously marked as "confidential," or with words having similar meaning or which are expressly identified in this Subsection 10.1. Confidential Information includes all Dominion Software source and object code and written documentation associated therewith.
- 10.2. Each Party shall treat the other Party's Confidential Information as confidential within their respective organizations.
- 10.3. Neither Party shall disclose the other Party's Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of, an obligation to any federal, state, or local governmental agency or court with appropriate jurisdiction, to any person properly seeking discovery before any such agency or court, or as may be required by law.
- 10.4. Each Party shall be given the ability to defend the confidentiality of its Confidential Information to the maximum extent allowable under the law prior to disclosure by the other Party of such Confidential Information.

11. **Termination.** If either Party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching Party, the non-breaching Party may terminate this Agreement as of a termination date specified in that notice or in a subsequent notice delivered within the 30-day period. If the breach cannot be completely cured within the 30-day period, no default will occur if the Party receiving the notice begins curative action within the 30-day period and thereafter proceeds with diligence and in good faith to cure the breach as soon as practicable.
12. **Risk of Loss Insurance, Title.** Customer shall bear the risk of loss or damage to the Hardware and Dominion Software after Customer receipt of the Hardware and Dominion Software to the degree that Dominion demonstrates that the Customer is responsible for the loss or damage to the Hardware and Software. The occurrence of any such loss or damage shall not permit Customer to delay or reduce the payment of any fees prescribed under this Agreement. Customer may, at its own expense and option, obtain and maintain property and casualty insurance for the Hardware and Dominion Software against all risks of loss or damage. The amount of such insurance shall not be less than the replacement cost of the Hardware and Dominion Software. All policies for such insurance shall (i) designate Dominion as an additional insured and Dominion and Customer as loss payees, as their interests may appear and (ii) contain a provision that entitles Dominion to written notice prior to cancellation or modification of such insurance policy. Title to the Hardware and Dominion Software will remain with Dominion and will not pass to the Customer.
13. **Assignment and Right to Subcontract.** Neither Party may assign its rights, obligations, or interests in this Agreement without the written consent of the other Party.
14. **Governing Law.** This Agreement will be construed under the laws of the Customer's State, and the courts within the Customer's State shall have jurisdiction for all actions to enforce this Agreement.
15. **Survival.** The provisions of Sections and Subsections 1, 2, 3, 7, 8, 9, 14, and 18 shall survive the expiration or termination of this Agreement.
16. **Force Majeure.** Should any circumstances beyond the control of Dominion or Customer occur that delay or render impossible the performance of any obligation due under this Agreement, such obligation will be postponed for the period of any delay resulting from any such circumstances, plus a reasonable period to accommodate adjustment to such extension, or cancelled if performance has been rendered impossible thereby. Such events may include, without limitation, war, acts of terrorism; natural disasters; pandemic; industry-wide labor disputes; acts, laws, rules or regulations of any government or government agency; or other events beyond the control of both Dominion and Customer. Neither party shall be liable under this Agreement for any loss or damage to the other Party due to such delay or performance failures. Notwithstanding the foregoing, both Parties shall use their best efforts to minimize the adverse consequences of any such circumstances.
17. **No Third Party Beneficiaries.** Dominion and Customer agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any

third party, and that there are no third-party beneficiaries of this Agreement or any part or specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

- 18. Legality and Severability.** This Agreement and the Parties' actions under this Agreement shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, court orders, and applicable governmental agency orders. If any term or provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The Parties agree that any court reviewing this Agreement shall reform any illegal or unenforceable provision to carry out the express intent of the parties as set forth herein to the fullest extent permitted by law.
- 19. Waiver.** Any failure of a Party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any provisions herein.
- 20. Notices.** All notices required or permitted to be given hereunder shall be given in writing and shall be deemed to have been given when, personally delivered or by nationally recognized overnight carrier or mailed, certified or registered mail, return receipt requested, addressed to the intended recipient as follows:

If to Dominion:

Dominion Voting Systems Inc.
PO Box 343
Broomfield, CO 80038

If to the Customer:

Marisa Stoller
City Clerk, City of Pueblo
1 City Hall Place
Pueblo, CO 81003
mstoller@pueblo.us

CC: City Attorney
1 City Hall Place
Pueblo, CO 81003
cityattorney@pueblo.us

- 21. Entire Agreement.** This Agreement and its Exhibits incorporated herein by reference constitute the entire agreement, understanding and representations between Dominion and the Customer, and supersede and replace all prior agreements, written or oral. No modifications or representations to the Agreement shall be valid unless made in writing and signed by duly authorized representatives of both the Customer and Dominion, and incorporated as an Addendum hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

DOMINION VOTING SYSTEMS, INC.



AUTHORIZED SIGNATURE

John Poulos

PRINTED NAME

President & CEO

TITLE

9/21/2023

DATE

FOR CUSTOMER

City of Pueblo, Municipal Corporation

By: _____ Date: _____
Nick Gradisar, Mayor

ATTEST:

By: _____ Date: _____
Marisa Stoller, City Clerk

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

By: _____ Date: _____
Alexandria Romero, Finance Director

APPROVED AS TO FORM:
Attorney for City of Pueblo

By: _____ Date: _____
City Attorney

EXHIBIT A

HARDWARE RENTAL, SOFTWARE LICENSE AND SERVICES AGREEMENT

Hardware Rental, Services, Pricing and Payment Summary

System Description. Prices of equipment rental, licenses, and related services for voting, vote counting, and result processing. Note: There may be additional costs for consumable items, such as iButtons. These will be invoiced at a later date. Payment on additional invoices will be due within thirty (30) days of issuance by Dominion.

Product/Service	Qty	Rental Price	Extension
Central Scanning: Absentee / Vote By Mail Hardware			
ImageCast Central Kit - G2140	3	\$4,000.00	\$12,000.00
		Sub-Total	\$12,000.00
Election Management Hardware			
EMS Express Server Kit	1	\$0.00	\$0.00
EMS Adjudication Workstation Kit	1	\$0.00	\$0.00
		Sub-Total	\$0.00
Election Management Software			
Democracy Suite Standard - Level 1	1	\$5,000.00	\$5,000.00
Adjudication Module	1	\$0.00	\$0.00
		Sub-Total	\$5,000.00
Support Services			
Election Database Setup - Tier 3	1.0	\$2,448.00	\$2,448.00
On-site Services - Election Day	1.0	\$4,500.00	\$4,500.00
		Sub-Total	\$6,948.00
Training			
Training (/day)	1.0	\$2,000.00	\$2,000.00
		Sub-Total	\$2,000.00
Estimated Shipping			
Shipping (estimated)	1	\$1,400.00	\$1,400.00
		Sub-Total	\$1,400.00
		TOTAL	\$27,348.00

Rental Pricing Notes:

- The above pricing involves the **rental** of the tabulators and software for the election event.
- The above pricing does not include applicable taxes, which will be charged extra.
- The Estimated Shipping rate charge shown above is based on Dominion's standard shipping plan and schedule for equipment and consumables. Any extra shipping charges incurred due to the Customer causing a deviation from Dominion's standard shipping plan and schedule will be charged extra.

- After the election, the Customer must repackage the tabulators and peripheral equipment in the same manner in which they were delivered, for pickup by the Dominion shipper. This includes packing equipment in their respective boxes. If the equipment was delivered via skids, the Customer will place the equipment back on the same skids and wrap the skids with shrink wrap. Dominion reserves the right to charge the Customer extra if equipment is not repackaged for pickup in the same way it was delivered.
- The above pricing does not include ballots.
- All equipment must be returned to Dominion no later than February 29, 2023, or additional equipment rental charges may apply (at Dominion's discretion).

Payment Terms. Payment in full is due on January 23, 2024.



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Lisa Macchietto, Assistant City Attorney

SUBJECT: AN ORDINANCE ELECTING TO CERTIFY ABATEMENT ASSESSMENT ROLL NO. 2023-1 TO THE COUNTY TREASURER AND TO HAVE THE COUNTY TREASURER COLLECT IN THE SAME MANNER AS OTHER TAXES

SUMMARY:

Attached is an Ordinance by which City Council is electing to certify to the County Treasurer certain abatement liens that have remained unpaid for more than six months. All abatement liens certified to the County Treasurer will be collected in the same manner as other taxes.

PREVIOUS COUNCIL ACTION:

On September 14, 2015, City Council approved ordinance No. 8917, which provides for the assessment of abatement costs. Since that time, Council has routinely every August by resolution directed the appointment of a hearing officer and set a hearing date. In addition, Council every year approves the final abatement assessment roll via ordinance. On July 22, 2019, Council approved Ordinance No. 9502 which amended the notice of hearing and protest deadlines by expanding each by five days to create more time between the protest filing deadline and hearing date. On August 14, 2023, City Council approved Resolution No. 15336 which set the hearing on protests for September 15, 2023, at 9:00 A.M. and directed the Mayor to appoint a hearings officer.

BACKGROUND:

On or about July 2015, City Council became aware that the City had over \$600,000 in unpaid weed and trash abatement liens. In the past, the City did not generally recover the amount owed for a weed or trash lien unless and until the property affected was sold or transferred. The majority of the outstanding liens are for relatively small amounts and therefore, it is not cost effective to collect the amounts owed through civil litigation or foreclosure.

All of the outstanding liens resulted from costs actually incurred and paid by the City to remove weeds and trash from the properties subject to the liens. All of the liens that the City seeks to certify to the County Treasurer by this Ordinance have been outstanding for more than six months. Most of the liens have been pending since late 2021 and throughout 2022.

Pursuant to Colorado Revised Statute §31-20-105, any municipality, in addition to the means provided by law, if by ordinance it so elects, may cause any or all delinquent charges, assessments, or taxes made or levied to be certified to the treasurer of the county and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be collected. Certifying the weed and trash abatement lien assessments to the County Treasurer is a more efficient method to collect the amounts owed.

FINANCIAL IMPLICATIONS:

The cost of the weed and trash abatement has already been incurred by the City. Certification of the abatement lien assessments to the County Treasurer is anticipated to increase the amount collected by the City for the liens.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Council may choose to deny the Ordinance in which case the City will continue to collect the liens by other means.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Ruling on Protests dated September 15, 2023
2. Report of Lien Abatement Assessments dated September 15, 2023

ORDINANCE NO. 10574

AN ORDINANCE ELECTING TO CERTIFY ABATEMENT ASSESSMENT ROLL NO. 2023-1 TO THE COUNTY TREASURER AND TO HAVE THE COUNTY TREASURER COLLECT IN THE SAME MANNER AS OTHER TAXES

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

SECTION 1.

The City Council of Pueblo, a municipal corporation, pursuant to the provisions of Section 31-20-105 of the Colorado Revised Statutes and Chapter 8 of Title VII of the Pueblo Municipal Code, hereby acknowledges receipt of the Report of Abatement Lien Assessments dated September 15, 2023, attached hereto.

SECTION 2.

A hearing was scheduled at 9:00 A.M. on September 15, 2023, in the City Council Chambers at which time any protests or objections to the lien assessments were heard. Any person interested in or affected by a proposed charge and who filed a written protest with the City Clerk on or before 5:00 P.M. on September 8, 2023, had the ability to present testimony and evidence at the hearing.

SECTION 3.

The City Clerk's Office received three (3) protests before the September 8, 2023, at 5:00 P.M. deadline. One additional protest was filed untimely on Monday, September 11, 2023.

One of the four protestors appeared for the protest hearing on September 15, 2023 at 9:00 A.M. That protest and one other was resolved by separate agreement. As a result, the hearing officer took the remaining two protests under advisement and later issued a ruling affirming the protested liens. With respect to the two resolved independent from the hearing, if payment is made or the payments plans executed, the liens will not be assessed to the County Treasurer.

The hearing officer filed a written report regarding the hearing on September 15, 2023, and the same is attached hereto.

SECTION 4.

The Code Compliance Unit Supervisor is directed to thereafter prepare an Assessment Roll, showing in suitable columns for each piece of land assessed: the property Parcel number, assessed owner, complete mailing address and/or post office box number of the assessed owner, complete and accurate legal description, and the amount to be collected, and deliver the same to the Director of Finance. The Director of Finance is directed to thereafter certify and deliver the Assessment Roll, together with a copy of this Ordinance certified by the City Clerk under seal of Pueblo, a Municipal Corporation, to the County Treasurer, therein showing all payments made thereon, with the date of each payment, together with her warrant for the collection of same. The County Treasure is requested to receive the same, and such Assessment Roll shall be numbered as follows:

ASSESSMENT ROLL NO. 2023-1

SECTION 5.

The County Treasurer is requested to receive payment of all assessments and interest appearing upon said Assessment Roll. In case of default in payment of any assessment when due, the County Treasurer is requested to advertise and sell any of the property concerning which such default is suffered, for the payment of the whole of the unpaid assessments thereon.

Said advertisements and sale shall be made at the same time, in the same manner, under all the said conditions and penalties, with the same effect as are provided by general law for sales of real estate in default of payment of taxes.

SECTION 6.

Any person may pay the City for any assessment hereby certified on the Report of Abatement Lien Assessments dated September 15, 2023, with accrued interest and applicable filing fees, up to the date the Report is certified to the County Treasurer. The Report of Abatement Lien Assessments dated September 15, 2023, may be certified to the County Treasurer any time after October 23, 2023. Any such payments shall be made at the City of Pueblo Finance Department. All monies received for the payment of assessments shall be deposited into the General Fund.

SECTION 7.

The officers and staff of the City are directed to perform any and all acts consistent with the intent of this Ordinance to effectuate 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 October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

PUEBLO CITY HALL, PUEBLO, COLORADO #1 City Hall Place, 3 rd Floor, Pueblo, CO 81003	
IN RE: PUBLIC HEARINGS CONCERNING ASSESSMENT OF COSTS ASSOCIATED WITH ABATEMENTS CONDUCTED ON, AND CORRESPONDING ABATEMENT LIENS AGAISNT PROPERTY PURSUANT TO PUEBLO MUNICIPAL CODE TITLE VII	 ▲ COURT USE ONLY ▲
RULING ON PROTESTS AT THE SEPTEMBER 15, 2023 HEARINGS	

This Matter came before the Hearing Officer on September 15, 2023 at 9:00 a.m. for hearing on the Complaints, Objections and Protests filed by owners or interested parties with respect to abatement costs and the related liens filed against property. The City of Pueblo was represented by assistant city attorney, Lisa Macchietto.

35 Caledonia, Pueblo, CO

This case comes before the Hearing Officer on a protest filed on September 1, 2023 by Linda Sloan. Ms. Sloan failed to appear at the hearing. Protest was based upon inability to pay and removal of personal items that were not litter.

Having failed to appear, no evidence was submitted to support this claim. City states that an agreement for a payment plan had been reached and that Ms. Sloan had withdrawn her protest.

1019 E. River St, Unit A, Pueblo, CO

This case comes before the Hearing Officer on a protest filed on September 11, 2023 by Alfred and Desiree Gonzalea. Mr. and Mrs. Gonzalez failed to appear at the hearing. Protest was based upon the protestors timely clean up of the property and the City's removal of items that were not trash.

Having failed to appear, no evidence was submitted to support this claim. Hearing officer further notes that the protest was not timely filed.

Therefore, based upon the protestant's failure to appear and the untimely filing of the protest, the Hearing Officer affirms the lien as recorded.

201, S. Joplin Street Pueblo, CO

This case comes before the Hearing Officer on a protest filed on September 8, 2023 by Chad DeMarco as a representative of the landowner. Mr DeMarco appeared. Protest was based upon lack of notice and prior clean up before abatement.

Hearing officer notes that she has a conflict of interest as Mr. DeMarco is a client of her law firm, Kwitek McMillan, P.C. Nevertheless the City and Mr. DeMarco represent that an agreement has been reached as to payment and the protest has been withdrawn.

Therefore, based upon the protestant's failure to appear, the Hearing Officer affirms the lien as recorded.

1230 Elm, Pueblo, CO

This case comes before the Hearing Officer on a protest filed on or about August 28, 2023 by Dr. Heidi Wodiuk. Ms. Wodiuk failed to appear at the hearing. Protest of the trash lien was based upon illegality of the proceedings.

Because of the nature of the protest, the Hearing Officer requested that the City make an Offer of Proof.

The City presented exhibits 1-6 which were admitted into evidence.

After hearing the City's Offer of Proof and reviewing exhibits the following facts were found:

- Pursuant to Sec. 7-3-2, 7-3-1, 7-3-5 and 7-3-16 of the Pueblo Code of Ordinances, a Notice of Violation and Order to Correct was posted on the property on April 22, 2022 directing the owner to remove litter from the premises by April 30, 2022 days was posted on the property. Notice was laso mailed by certified mail on that date, which was returned unclaimed as to the addresses: Heidi Wodiuk and Oprah Gail Winfrey. A receipt for delivery was signed by "Occupant" on April 26,

2022

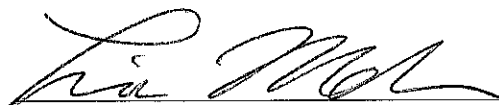
- The Premises were inspected and photographs taken on June 7, 2022.
- On or about June 14, 2022 Litter Clean-up request was submitted.
- The Premises were re-inspected, cleaned, and photographs taken on June 23, 2022.
- The cost for the trash removal performed by the City was \$62.32, pursuant to Section 7-4-4 \$100.00 was added for incidental costs and \$100.00 was added for administrative expenses for a total lien of \$262.32.
- Upon review of the photographs taken before and after clean up, the costs are found to be reasonable and the administrative expenses are as provided by the Ordinance.
- On July 1, 2022 an invoice requesting payment was sent to Oprah Winfrey and Heidi Wodiuk who were still the record owners at that time.
- Upon Ms. Winfrey and Dr. Wodiuk's failure to pay, a lien upon the property was recorded with the Pueblo County Clerk and Recorder on August 28, 2022 at reception number 2286842.
- Pursuant to Section 7-4-4 the liens constitute perpetual liens and accrue interest at the rate of 10% per annum.

As neither Ms. Winfrey nor Dr. Wodiuk appeared, no evidence was presented to support the protest.

Given the state of the property as shown in the offered photographs, the costs were reasonable and the administrative fees and interest are as provided by Section 7-4-4 of the Ordinances.

The Hearing Officer therefore affirms the lien.

DONE this 15th day of September 2023


Linda McMillan, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September 2023, a true and correct copy of the foregoing document, was placed in the United States mail, sufficient postage pre-paid and addressed to:

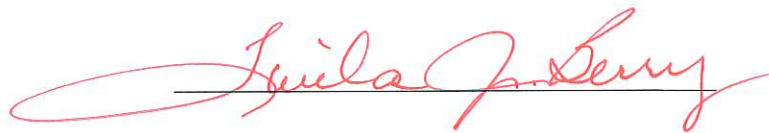
Chad DeMarco
P.O. Box 8876
Pueblo, CO 81001

Alfred and Desiree Gonzalez
1019 E. River, Unit A
Pueblo, CO 81001

Linda Sloan
35 Caledonia
Pueblo, CO 81001

Heidi Wodiuk
8448 Hwy 78W
Beulah, CO 81023

Lisa Macchiato
Assistant City Attorney
City of Pueblo
#1 City Hall Place, 3rd Floor
Pueblo, CO 81003



Report of Lien Abatement Assessments dated September 15, 2023

Parcel #	Name and Mailing Address	Location	Legal Description	Amount
407417005	Susan Elaine Steele 61 Ironweed Drive Pueblo, Colorado 81001	61 Ironweed Drive Pueblo, Colorado 81001	LOT 13 BLK 25 UNIVERSITY PARK SUB 11TH	\$806.24
407417006	Corey Manfredi 59 Ironweed Drive Pueblo, Colorado 81001	59 Ironweed Drive Pueblo, Colorado 81001	LOT 14 BLK 25 UNIVERSITY PARK SUB 11TH	\$805.12
419127025	Linda J. Sloan 35 Caledonia Road Pueblo, Colorado 81001	35 Caledonia Road Pueblo, Colorado 81001	LOT 22 BLK 202 BELMONT 16TH	\$471.60
428414002	Maria Felonie Gomez 10350 Dover Street Broomfield, Colorado 80021	1022 Fearnow Avenue Pueblo, Colorado 81001	S 50 FT OF LOT 9 BLK 6 FEARNOWVILLE	\$901.60
429125014	Della M. Manchego 2009 E. 15th Street Pueblo, Colorado 81001	2009 E. 15th Street Pueblo, Colorado 81001	LOTS 27 + 28 BLK 136 EAST PUEBLO HEIGHTS SUB 2ND	\$676.62
429135005	Brandon Sosock and Cassandra Peterson 1926 E. 14th Street Pueblo, Colorado 81001	1926 E. 14th Street Pueblo, Colorado 81001	LOTS 13 + 14 BLK 155 EAST PUEBLO HEIGHTS SUB 2ND	\$1,052.02
429240003	Justine Valdez 1670 S. Clay Street Denver, Colorado 80219-4818	1550 Pike Avenue Pueblo, Colorado 81001	LOT 9 BLK 7 HARRY O SCHMIDT SUB	\$834.48
429422006	Ellen Patricia McKim 2106 E. 10th Street Pueblo, Colorado 81001	2106 E. 10th Street Pueblo, Colorado 81001	LOTS 5 + 6 BLK 197 ARLINGTON HEIGHTS	\$1,415.40
429429010	Bluehorseshoetrust 455 Mackenzie Avenue Canon City, Colorado 81212-9334	1901 E. 8th Street Pueblo, Colorado 81001	LOTS 21 + 22 BLK 205 EAST PUEBLO HEIGHTS SUB 2ND	\$531.90
430312015	Water of Life Ministries 625 E. 7th Street Pueblo, Colorado 81001	625 E. 7th Street Pueblo, Colorado 81001	LOT 16 BLK 94 CONLEYS ADD	\$1,147.32
431107009	Timothy Cordova, Jr. 2017 Carmela Road Pueblo, Colorado 81006	721 E. 5th Street Pueblo, Colorado 81001	LOT 14 BLK 28 EAST PUEBLO	\$1,374.04
431112012	Stone Water Real Estate, LLC 16859 Trail View Parker, Colorado 80134	1211 E. 5th Street Pueblo, Colorado 81001	E 10 FT OF LOT 22 + W 20 FT OF 23 BLK 4 WINTERS ADD	\$771.42

431119012	Joseph Leo Roberts 719 E. 3rd Street Pueblo, Colorado 81001	719 E. 3rd Street Pueblo, Colorado 81001	LOT 14 BLK 26 EAST PUEBLO	\$1,955.30
431120006	Catherine C. Garcia 1906 Rose Lane Pueblo, Colorado 81001	811 E. 3rd Street Pueblo, Colorado 81001	LOTS 12 + 13 BLK 46 EAST PUEBLO	\$1,080.40
431127003	Southern Colorado Soap Box Derby Inc c/o Mary Scarcello 1216 Russ Avenue	Vacant Lot	LOTS 7-14 INC BLK 13 WINTERS ADD	\$1,840.00
431127007	Southern Colorado Soap Box Derby Inc c/o Mary Scarcello 1216 Russ Avenue Pueblo, Colorado 81006	Vacant Lot	LOTS 19-28 BLK 3 MATTICES ADD	\$914.22
431129009	Kristen K. Miller 801 E. 2nd Street Pueblo, Colorado 81001	801 E. 2nd Street Pueblo, Colorado 81001	LOT 15 BLK 5 MATTICES ADD	\$829.58
431139013	Alfred Gonzales & Desiree Gonzales 1019 E. River Street Pueblo, Colorado 81001	1019 E. River Street Pueblo, Colorado 81001	LOTS 23 TO 24 INC BLK 15 MATTICES ADD FORMERLY #04-311-39-008	\$780.78
431144017	Manuel Sanchez 12209 Dehougne Street North Hollywood, California 91605-5611	Vacant Lot	E 20 FT LOT 19 + W 15 FT OF LOT 20 BLK 20 MATTICES ADD	\$864.96
431218006	Gwyn and Tony, LLC 503 N. Main Street, Ste. 350 Pueblo, Colorado 81003	305 N. Bradford Avenue Pueblo, Colorado 81003	S 27 FT 6 IN OF N 60 FT OF LOTS 15-16 + OF E 12 FT OF S 27 FT 6 IN OF N 60 FT OF LOT 14 BLK 12 PUEBLO	\$1,253.80
431417016	Jada Duran 1221 Damson Street Pueblo, Colorado 81001	1102 Catalpa Street Pueblo, Colorado 81001	LOTS 11 - 14 BLK 35 MATTICE + GIBSONS ADD FORMER #04-314-17-013 + 014	\$719.38
432111001	Andrea Striowski 2112 W. University Drive, #1045 Edinburg, Texas 78539-2862	2130 E. 5th Street Pueblo, Colorado 81001	LOTS 17 TO 20 BLK 3 FRANCE HEIGHTS	\$1,599.44
432111011	Robert Herrera 7830 W. Alameda Avenue, Suite 174 Lakewood, Colorado 80226	2129 E. 4th Street Pueblo, Colorado 81001	LOTS 26 + 27 LESS S 10 FT + E 17 FT OF LOT 28 BLK 3 FRANCE HEIGHTS	\$818.26
432117007	East 3rd LLC PO Box 21 Louisville, Colorado 80027-0021	1731 E. 3rd Street Pueblo, Colorado 81001	LOTS 35 + 36 BLK 253 EAST PUEBLO HEIGHTS SUB 2ND 2ND	\$842.56
432239012	Vivian C. Lucero 1605 E. Beech Street Pueblo, Colorado 81001	1605 E. Beech Street Pueblo, Colorado 81001	LOTS 25 + 26 BLK 302 EAST PUEBLO HEIGHTS SUB	\$461.64

432306013	Candido Aragon c/o Paul Anthony Aragon 3820 36th Lane Avondale, Colorado 81022	1505 Evergreen Street Pueblo, Colorado 81001	LOTS 25 + 26 BLK 331 WILEY + CHAMBERLINS SUB	\$1,598.24
432311017	Raymond J. Detello 10 Swift Arrow Court Pueblo, Colorado 81001	Vacant Lot	LOTS 4 THRU 11 BLK 352 WILEY + CHAMBERLINS SUB FORMERLY #04323-11-002	\$2,313.40
432313003	Gary R. Fearn PO Box 20368 Colorado City, Colorado 81019-2368	Vacant Lot	LOTS 5 + 6 BLK 361 WILEY + CHAMBERLINS SUB	\$878.40
511102049	Dreambuilders Construction, Inc. 425 W. 3rd Street Pueblo, Colorado 81003	Vacant Lot	LOT 8 BLK 2 EAGLERIDGE ESTATES PHASE 5 RESUB FORMERLY #05-111-02-001 THRU 024	\$1,153.78
514109012	Cynthia D. Frisby 4024 Hillside Drive Pueblo, Colorado 81008	4024 Hillside Drive Pueblo, Colorado 81008	S 23 FT OF LOT 88 BLK 3 NORTHRIDGE 4TH + LOT 89 EXC S 8 FT BLK 3 NORTHRIDGE 3RD	\$1,000.40
514217006	Lloyd Smith, Sharon A. Smith and Martha H. Anderson 4026 Wills Boulevard Pueblo, Colorado 81008	4026 Wills Boulevard Pueblo, Colorado 81008	LOT 6 BLK 8 CRESTVIEW HILLS NO 1	\$782.40
525316003	Jack Christopher Medina 1800 Kingsroyal Ct., Apt. I Pueblo, Colorado 81005	1106 W. 13th Street Pueblo, Colorado 81003	LOT 3 + E 1/2 OF 4 BLK 46 BLAKES ADD	\$797.32
535115009	Empire Realty and Investments, Inc. 710 Wilson Avenue Pueblo, Colorado 81004	710 Wilson Avenue Pueblo, Colorado 81004	LOT 29 BLK G MOORE + CARLILE RESUB	\$725.12
535313007	Benjamin S. Wurster 418 Scranton Avenue Pueblo, Colorado 81004	418 Scranton Avenue Pueblo, Colorado 81004	LOTS 15 + 16 BLK 9 ARVONIA	\$861.90
536303015	Saymi A. Garcia & Joshua Garcia 121 Quincy Street Pueblo, Colorado 81004	121 Quincy Street Pueblo, Colorado 81004	LOT 7 MITCHELLS SUB OF BLK 106 IN COLORADO COAL + IRON COMPANY ADDITION NO 1 OF SOUTH PUEBLO	\$775.68
536303025	Ernest Maldonado 109 Quincy Street Pueblo, Colorado 81004	109 - 111 Quincy Street Pueblo, Colorado 81004	LOTS 1 + 2 MITCHELLS SUB OF BLK 106 IN COLORADO COAL + IRON COMPANY ADDITION NO 1 OF SOUTH PUEBLO FORMERLY #05-363-03-010 + 011	\$1,164.60
536304028	Realty Colorado, LLC 5232 San Jacinto Court Pueblo, Colorado 81005	121 W. Evans Avenue Pueblo, Colorado 81004	LOT 28 + SE 1/2 OF LOT 29 ALSO SW 140 FT OF NW 1/2 OF LOT 29 BLK 116 SOUTH PUEBLO FORMERLY #05363- 04-022 + 027	\$361.40
1406319004	Aaron K. Suazo & Karla J. Suazo 59 Red Creek Springs Road, Apt. 5 Pueblo, Colorado 81005	1110 Bohmen Avenue Pueblo, Colorado 81006	LOTS 5 + 6 BLK 4 LAIBACH	\$655.14

1406326014	Arthur R. Medina c/o Max Leek 707 S. 3rd Street Tucumcari, New Mexico 88401-2874	1254 Mahren Avenue Pueblo, Colorado 81006	LOTS 24 TO 27 BLK 3 WIEN	\$749.84
1406328008	Guadalupe Vigil and Fernando Marrujo 1222 Egan Avenue Pueblo, Colorado 81006	1222 Egan Avenue Pueblo, Colorado 81006	LOTS 17-18-19 BLK 4 AGRAM	\$687.46
1501132001	Joseph Frankmore 216 Carlile Avenue Pueblo, Colorado 81004	Vacant Lot	POR LOTS 11-12 BEG NW COR LOT 11 TH E 27.2 FT TH S 55 DEG 38 MIN 30 SEC E 0.3 FT TH S 47 DEG 04 MIN E 70.9 FT TH W 78 FT N 50 FT TO BEG BLK 3 ELWELL + SMITH	\$460.66
1501211009	Felicity Ann Short 318 Quincy Street Pueblo, Colorado 81004	318 Quincy Street Pueblo, Colorado 81004	LOTS 10 + 11 BLK 114 SOUTH PUEBLO	\$1,409.70
1501317014	Daniel J. Apodaca 630 E. Pitkin Avenue Pueblo, Colorado 81004	1238 Pine Street Pueblo, Colorado 81004	S 1/2 LOT 10 BLK 52 BESSEMER	\$696.80
1501404006	Josie Gonzales 918 E. Abriendo Avenue Pueblo, Colorado 81004	918 E. Abriendo Avenue Pueblo, Colorado 81004	S 1/2 LOT 5 BLK 6 BESSEMER	\$506.32
1501409020	Donn H. Ellington 1989 W. Keota Drive Pueblo West, Colorado 81007	1041 Elm Street Pueblo, Colorado 81004	N 14 FT LOT 13 ALL 14 BLK 2 BESSEMER	\$560.40
1501413008	Juan Francisco Lopez Suarez 1110 E. Abriendo Avenue Pueblo, Colorado 81004	Vacant Lot	LOTS 16 + 17 BLK 38 CITY HALL PL	\$879.42
1501419010	Oprah Gail Winfrey and Dr. Heid Wodiuk 8448 State Highway 78 Beulah, Colorado 81023-9722	1230 Elm Street Pueblo, Colorado 81004	W 95 FT OF S 1/2 OF LOT 15 + W 95 FT OF LOT 16 BLK 47 CITY HALL PL	\$319.50
1501421023	Frank R. Garcia, Sr. and Roy Hockaday, Jr. 1822 W. Pueblo Boulevard Pueblo, Colorado 81005	Vacant Lot	W 11 FT OF LOT 39 + ALL LOTS 40 + 41, BLK 3, CITY HALL PL 2ND	\$113.18
1501421029	Jodi R. Hunt and Damion P. Vasquez 1230 Taylor Avenue Pueblo, Colorado 81006	1230 Taylor Avenue Pueblo, Colorado 81006	LOTS 46 + 47 BLK 3 CITY HALL PL 2ND	\$328.18
1501423021	Kiko Vargas 1404 Northern Avenue Pueblo, Colorado 81004	1238 Eilers Avenue Pueblo, Colorado 81006	LOT 32 BLK 1 CITY HALL PL 2ND	\$2,128.22

1502116008	James Lusero 12 Barrington Court Pueblo, Colorado 81005	802 Palmer Avenue Pueblo, Colorado 81004	LOTS 15-16 BLK 2 WINDOM PL	\$475.90
1502408028	Lawrence M. Montoya 927 Bragdon Avenue Pueblo, Colorado 81004	927 Bragdon Avenue Pueblo, Colorado 81004	N2 LOT 30, ALL LOTS 31 - 33 + S2 LOT 34 BLK 5 MELROSE PL FORMERLY 15-024-08-025 + 016	\$1,663.42
1510122022	Greg Davis 6001 S. Yosemite Street, B 204 Greenwood Village, Colorado 80111-5126	1718 Moore Avenue Pueblo, Colorado 81005	LOT 22 BLK 5 CORKISH-SACKMAN-LITTELL NO 2	\$1,054.18
1510415012	Paul G. Gonzales 6600 Jaguar Drive, Apt.6-708 Santa Fe, New Mexico 87507-1682	2145 Hellbeck Drive Pueblo, Colorado 81005	LOT 12 HELLBECK ACRES	\$478.46
1510415015	Leatrice J. Jones 2129 Hellbeck Drive Pueblo, Colorado 81005	2129 Hellbeck Drive Pueblo, Colorado 81005	LOT 15 HELLBECK ACRES	\$1,515.84
1512108001	William Martinez 1310 E. Routt Avenue Pueblo, Colorado 81004	1310 E. Routt Avenue Pueblo, Colorado 81004	LOT 1 BLK 3 STEELWORKS AMENDED	\$705.54
1512214003	Norman Dover 1608 Wabash Avenue Pueblo, Colorado 81004	1608 Wabash Avenue Pueblo, Colorado 81004	S 1/2 LOT 4 ALL 5 BLK 14 LAKE AVE ADD	\$2,003.22
1512232019	Global Proposal, LLC PO Box 1280 Morrison, Colorado 80465-5280	1331 Spruce Street Pueblo, Colorado 81004	LOT 25 BLK 62 IRONDALE	\$722.88
1512311005	Eli Velarde 1918 Pine Street Pueblo, Colorado 81004	1918 Pine Street Pueblo, Colorado 81004	LOTS 9 + 10 BLK 19 LAKE MINNEQUA ADD	\$1,173.30
1513205001	Joey G. Montano 2202 E. Routt Avenue Pueblo, Colorado 81004	2202 E. Routt Avenue Pueblo, Colorado 81004	LOTS 1 + 2 BLK 5 MINNEQUA HEIGHTS	\$1,054.62
1513226009	Vivian E. Hill and Sandra Bolden 2623 Pine Street Pueblo, Colorado 81004	2623 Pine Street Pueblo, Colorado 81004	LOTS 20-21-22 BLK 26 MINNEQUA HEIGHTS	\$832.96
1513234012	Robert M. Hicks 2714 Pine Street Pueblo, Colorado 81004	2714 Pine Street Pueblo, Colorado 81004	LOTS 7 + 8 BLK 34 MINNEQUA HEIGHTS	\$503.00
1513251003	Enrique M. Navarro 223 E. Northern Avenue Pueblo, Colorado 81006	2526 Lake Avenue Pueblo, Colorado 81004	LOTS 9 TO 16 BLK 24 EAST LAKE	\$1,214.06

1514200001	Douglas J. Cook 2300 Acero Avenue Pueblo, Colorado 81004	2300 Acero Avenue Pueblo, Colorado 81004	NE4 NW4 14-21-65 CONTG 0.954A M/L BEG PT 660 FT W OF N4 COR SEC 14 TH W 630 FT TH S 66 FT TH E 630 FT TH N 66 FT TO BEG.	\$1,018.16
1516439007	Douglas A. Gradisar and Shawwna Leona Santistevan 16 Posada Drive	16 Posada Drive Pueblo, Colorado 81005	LOT 23 BLK 20 EL CAMINO SUB 12TH FORMERLY 15- 164-00-009 + 010 + 011	\$924.48
7360010344	Craig Allen Shriver 137 N. Front Street Sterling, Colorado 80751-4337	2222 E. 8th Street, Sp. 108 Pueblo, Colorado 81001	COUNTRYSIDE ESTATES MHP SP 108 NEW MOON 1978 14X70 VIN: 13502430	\$333.40



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 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 APPROVING AMENDMENT OF TWO SOLAR PRODUCTION AGREEMENTS BETWEEN THE CITY OF PUEBLO AND CEC SOLAR #1117, LLC. AND CEC SOLAR #1118, LLC RELATING TO AND UPDATING THE POWER PURCHASE AGREEMENT RATE SCHEDULES FOR EACH AGREEMENT, AND AUTHORIZING EXECUTION THEREOF BY THE MAYOR

SUMMARY:

Attached is an Ordinance approving the amendment of two Solar Production Agreements between City and CEC Solar #1117, LLC and CEC Solar #1118, LLC relating to and updating the rates for the City's purchase of power produced pursuant to the Solar Production Agreements, and authorizing execution thereof by the Mayor.

PREVIOUS COUNCIL ACTION:

On June 26, 2017, City Council passed Resolution No. 13708, approving two Solar Purchase Agreements between the City and CEC Solar #1117, LLC., and CEC Solar #1118, LLC., respectively.

BACKGROUND:

The rate schedule specified within the original Solar Purchase Agreements set fixed rates for the procurement of electricity starting at \$0.1159 per kilowatt-hour in the first year of the agreement and increasing 2% per year to a maximum of \$0.1689 per kilowatt-hour in the 20th year of the agreement. Since the effective date of the original agreements, market rates outlined in Black Hills Energy's PUC rate structure for Community Solar Garden facilities have not risen as fast as the rates specified in the agreement. The proposed amendments will set the rates to be paid by the City at a rate 10% below the Black Hills Community Solar Garden rate throughout the remainder of the agreements.

FINANCIAL IMPLICATIONS:

The rates specified in the proposed amendments to the Solar Purchase Agreements will ensure the City's cost to purchase power under the agreements will remain 10% below the Black Hills Energy published rate for Community Solar Gardens throughout the remainder of the terms of both agreements.

BOARD/COMMISSION RECOMMENDATION:

Not applicable

STAKEHOLDER PROCESS:

Not applicable

ALTERNATIVES:

Denial of this agreement will prevent the City from amending the Solar Purchase Agreements.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. BHE Amendment to Production Agreements City of Pueblo 2023 (230926)

ORDINANCE NO. 10575

AN ORDINANCE APPROVING AMENDMENT OF TWO SOLAR PRODUCTION AGREEMENTS BETWEEN THE CITY OF PUEBLO AND CEC SOLAR #1117, LLC. AND CEC SOLAR #1118, LLC RELATING TO AND UPDATING THE POWER PURCHASE AGREEMENT RATE SCHEDULES FOR EACH AGREEMENT, AND AUTHORIZING EXECUTION THEREOF BY THE MAYOR

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

SECTION 1.

The Amendment to two Solar Purchase Agreements ("Amendment") by and between CEC Solar #1117, LLC., and CEC Solar #1118, LLC., a copy of which is attached hereto after having been approved as to form by the City Attorney, is hereby approved. The Mayor is authorized to execute said Amendment for and on behalf of the City and the City Clerk is authorized to affix the seal of the City thereto and attest same.

SECTION 2.

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

SECTION 3.

This Ordinance shall become effective immediately upon passage and approval.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

AMENDMENTS TO SOLAR PRODUCTION AGREEMENTS

This Amendment to Solar Production Agreements (this “Amendment”) dated as of the date set forth below, is by and among the City of Pueblo, CO (“Buyer”) and each of CEC Solar #1117, LLC, a Colorado limited liability company and CEC Solar #1118, LLC, a Colorado limited liability company (each a “Seller”, collectively the “Sellers”).

WHEREAS: On or about June 26, 2017 and pursuant to Resolution 13708 approved by Buyer, Buyer entered into Solar Production Agreements (the “Agreements”) with each Seller. Capitalized terms used but not otherwise defined in this Amendment have the meanings given to such terms in the Agreements and the Schedule of Rates, Rules and Regulations for Electric Service, Colo. PUC No. 10, for Black Hills Colorado Electric, Inc., doing business as Black Hills Energy (“Black Hills”).

WHEREAS: The parties acknowledge and agree that:

- A. Pursuant to the Agreements, Buyer purchases a subscription of the Solar Output of the Solar Energy Facilities at a PPA Payment Rate (\$/kWh) set forth on Appendix B to each of the Agreements (the “PPA Rates”). In consideration for the allocation of the Solar Output under each Agreement, Buyer receives a CSG Fixed Bill Credit from Black Hills equal to the applicable CSG Fixed Bill Credit rate in the Community Solar Garden Service Electric rate schedule (the “Credit Rate”) multiplied by Buyer’s allocation of the Solar Output of the Solar Energy Facilities under the Agreements.
- B. The Credit Rate is dynamic and increases or decreases without the approval or consent of Buyer or the Sellers.
- C. The PPA Rates are fixed and do not track any increases or decreases to the Credit Rate.
- D. Since the effective dates of the Agreements, the Credit Rate has decreased such that Buyer is paying more for electricity than it otherwise would if the Agreements were not in effect.
- E. The parties desire to enter into this Amendment to amend the PPA Rates to peg them to the Credit Rate.

Accordingly, the parties agree as follows:

- 1. Pegged PPA Rate. Each Appendix B to the Agreements is deleted in its entirety and replaced with Attachment 1 to this Amendment.
- 2. Annual Rate Adjustment. The Pegged PPA Rate will be adjusted annually based on the adjusted Community Solar Credit rates published by Black Hills on or about December 7 of the year preceding the effective new rates.
- 3. Miscellaneous. This Amendment may be executed and delivered by electronic or facsimile signature and in one or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one agreement. This Amendment, when read in conjunction with an Agreement (including all exhibits, attachments, and schedules thereto) constitutes the entire agreement between the applicable parties with respect to the subject matter of this hereto and thereto. This Amendment supersedes all prior agreements, whether written or oral, with respect to the subject matter of this Amendment. The terms and conditions set forth in this Amendment are deemed a part of each Agreement for all purposes. In the event of a conflict or inconsistency

between the terms and conditions of this Amendment and those set forth in an Agreement, the terms and conditions of this Amendment control. Except as amended and supplemented hereby, all of the terms and conditions of the Agreements remain and continue in full force and effect and apply hereto including expressly but not in any manner by way of limitation Section 7.6 of each of the Agreements.

Dated this _____ day of _____, 2023

CEC SOLAR #1117, LLC

By: _____
Name: _____
Title: _____

CEC SOLAR #1118, LLC

By: _____
Name: _____
Title: _____

CITY OF PUEBLO
ATTEST:

By: _____
Nicholas A. Gradisar, Mayor

City Clerk

ATTACHMENT 1

Appendix B

Price List

Beginning on January 01, 2023, and continuing until the termination or expiration of the Agreement, the PPA Payment Rate (\$/kWh) will equal Ninety (90%) of the then-current CSG Fixed Bill Credit rate in the Utility's Community Solar Garden Service Electric rate schedule (or any successor rate schedule for the Program) that is applicable to Buyer's rate class and respective allocations.

2023 Credit Rates and Allocations

Rate Class	Allocation	2023 Credit rate
710	34.5%	\$0.1195/kWh
711	65.5%	\$0.1066/kWh

Weighted Average Credit Rate: \$0.1110/kWh

2023 PPA Billing rate: $90\% \times \$0.1110/\text{kWh} = \$0.0999/\text{kWh}$



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Chief of Police

SUBJECT: AN ORDINANCE APPROVING AN AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY KNOWN AS LOTS 8 & 9 BLK 70 MATTICE & GIBSON AD, AND LOT 19 BLK 71 MATTICE & GIBSON AD BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND MR. FRED F. JONES AND MRS. MELVA JEAN JONES AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

SUMMARY:

This Ordinance approves a Agreement for the Purchase and Sale of Real Property between the City of Pueblo and Fred F. Jones and Melva Jean Jones for property adjacent to and surrounded by the City of Pueblo Police Department's firearms training facilities.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

The Pueblo Police Department has been using the property located at 900 Gruma since the mid 1980's for firearms training. Mr. and Mrs. Jones currently own two parcels of land that are land locked by the Pueblo Police Department's firearms training facilities. Due to access and safety concerns for training activities, the Police Department has determined it is in the best interest of the City to acquire these parcels of land from Mr. and Mrs. Jones. Mr. and Mrs. Jones have agreed to sell both these parcels to the City of Pueblo for a total of \$20,000.

The purchase of this land will enable the Pueblo Police Department Firearms Training facility to expand the area in which they train, provide additional parking spaces for officers using the facility, and allow for additional access controls on the property.

FINANCIAL IMPLICATIONS:

The cost of these two parcels will be \$20,000. This amount has been budgeted within the Police Department's 2023 budget.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could choose to reject this Ordinance. If the City Council does not pass this Ordinance the City will be unable ensure the safe access to the Police Firearms Training Facility.

RECOMMENDATION:

Passage of the Ordinance.

ATTACHMENTS:

1. AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY - Fred and Melva Jones and City of Pueblo

ORDINANCE NO. 10576

AN ORDINANCE APPROVING AN AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY KNOWN AS LOTS 8 & 9 BLK 70 MATTICE & GIBSON AD, AND LOT 19 BLK 71 MATTICE & GIBSON AD BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION AND MR. FRED F. JONES AND MRS. MELVA JEAN JONES AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

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

SECTION 1.

The Agreement of Purchase and Sale of Real Property between the City of Pueblo, a municipal corporation and Fred F. Jones and Melva Jean Jones, attached hereto, is hereby approved.

SECTION 2.

The Mayor, after approval as to the form of the Agreement by the Department of Law, 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 for this Agreement shall be paid from 2023 allocated and available Pueblo Police Department Budget.

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 therein.

SECTION 5.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

This Agreement of Purchase and Sale of Real Property ("Agreement") is made and entered into on this ____ day of _____, 2023 (the "Effective Date"), by and between the City of Pueblo, a Municipal Corporation, the address is 1 City Hall Place, City Attorney's Office, 3rd Floor, Pueblo, CO 81003, hereinafter referred to as ("Purchaser") and Fred F. Jones and Melva Jean Jones, who's address is 13 Pedragal Lane, Pueblo, CO 81005, hereinafter referred to as ("Seller") and referred to as "Party" in the singular and "Parties" in the plural.

WHEREAS: This Agreement is contingent, and execution by the City will be when the City of Pueblo's City Council's approval granting the Major authority to enter into this Agreement and receive said Properties.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree to be legally bound whereby Seller agrees to convey to Purchaser, and Purchaser agrees to acquire from Seller, the Property as defined below on the terms and conditions set forth in this Agreement.

1. Purchase Price: The total purchase price of the Properties will be Twenty Thousand dollars (\$20,000) in US currency, payable by Purchaser in immediately available funds to the Title Company at the time of closing.
2. Conveyance of the Property, Property Liens, and Encumbrances. Seller will convey the Property to Purchaser at the time of closing by **general warranty deed**, free and clear of all liens and encumbrances.

3. Timetable of Events:

Title Insurance Commitment -	(10) calendar days after the Effective Date
Title Objection -	(15) calendar days after the Effective Date
Off Record Document -	(10) calendar days after the Effective Date
Off Record Objection -	(15) calendar days after the Effective Date
*Closing Date -	(30) calendar days after the Effective Date

(*Closing Date to be moved to the next business day if it falls on a National Holiday or weekend.)

4. Description of Property. The real property which is the subject matter of this Agreement is that certain parcels of real property located in Pueblo County, Colorado, which is legally described as:

Lots 8 & 9, BLK 70 MATTICE GIBSON ADD, County of Pueblo, State of Colorado; and

Lot 19 BLK 71 MATTICE GIBSON ADD FORMALY #04-314-46-006, County of Pueblo, State of Colorado, the ("Properties"). A more accurate property description is attached as Exhibit "A" and is incorporated into this Agreement.

5. Property Improvements. The Property includes all improvements located thereon and all of Seller's rights, title, and interest in and to all appurtenances thereto, including but not limited to all improvements now located thereon, including any fences, buildings, landscaping, and other improvements, and all fixtures of a permanent nature. In addition, the Property shall include all the Seller's right, title, and interest in and to easements, future interests and rights to the same belonging and inuring to the benefit of the Property, and in and to all strips and gores of land lying between the Property and adjoining property or streets, roads or highways, open or proposed.
6. Property minerals. All interests in all minerals, ores, and metals of any kind and character, and all coal, asphalt, oil, gas, or other like substances including sand and gravel, and all geothermal resources in, on, or under the Property and all other mineral rights as are owned by Seller at the time of this Agreement.
7. Title Insurance.
 - A. Within ten (10) calendar days following the Effective Date, Seller will provide to Purchaser a Title Insurance Commitment (the "Title Commitment") from **LAND TITLE GUARANTEE COMPANY** ("Title Company"). The Title Commitment must show title to the Property in Seller, subject only to those exceptions set forth on Schedule B-2 to the Title Commitment that are acceptable to Purchaser. The Seller and Purchaser shall split (50/50) the Title Commitments and Title Insurance costs.
 - B. If the Title Commitment discloses title defects unsatisfactory to Purchaser and subject to which Purchaser need not take title, Purchaser may give Seller written notice of such defects the date fifteen (15) calendar days after the Effective Date. Seller must attempt in good faith to cure such defects prior to the date of closing, at its expense, without in any other manner affecting the terms of this Agreement.
 - C. If any instrument or deposit is necessary in order to correct a defect in or objection to title shall be in a form and contain terms and conditions Title Company may reasonably require so as to be sufficiently satisfied and omit such defects or objection.
 - D. If Title Company refuses to omit any title defect or objection prior to closing, then Purchaser, at its election, has the right to:
 - i. accept such title as Seller is able to convey, without any

reduction of the purchase price; or

- ii. rescind this Agreement and, upon such rescission pursuant to this paragraph and upon proper notice this Agreement will be null and void and of no further effect, and all Parties to this Agreement will be released from all obligations hereunder.

E. Notwithstanding the foregoing,

- i. any title condition consisting of monetary liens, deeds of trust or other financial encumbrances against the Property must be removed by Seller at or prior to closing, and Seller's failure to cause the removal of the same will constitute a default by Seller under this Agreement; and
- ii. in the event Seller fails to cause the removal of a financial encumbrance against the Property prior to closing, Purchaser has the right to pay amounts required to do so at closing, and to receive a credit for such payment against the Purchase Price.

8. Survey/Legal Description. The Parties each acknowledge that a legal description of the Property is attached to and incorporated by reference into this Agreement, and each acknowledges having received a copy of any such description. The Parties agree that it is their intent that the referenced legal description describes the Property except as otherwise expressly provided, and agree to work in good faith and cooperatively to correct technical errors that any such legal description is determined to contain.

9. Maintenance of the Property/Title.

- A. Seller is to provide Purchaser all documentation of unrecorded incumbrances, licenses, or agreements related to any type of current or future interest in the Property within (10) calendar days from Effective Date. Purchaser has (15) calendar days from the effective date to object to any of the off record documents. Seller must attempt in good faith to cure such defects prior to the date of closing, at its expense, without in any other manner affecting the terms of this Agreement.
- B. Seller must keep, or cause to be kept, the Property in its condition as of the Effective Date until the closing of this transaction, subject to normal wear-and-tear and seasonal changes and agrees not to commit or permit waste thereon.
- C. Seller must not cause or permit new liens, easements, or other

encumbrances on the title to the Property, except as expressly agreed by Purchaser in writing.

10. Representations of Seller. Based on a reasonable, Seller represents and warrants to the best of Seller's knowledge, as of the Effective Date and as of the closing, as follows:

- A. There is no litigation proceeding, including but not limited to any eminent domain proceeding, pending (or to Seller's knowledge threatened) against or relating to any part of the Property, nor does Seller know of or have reasonable grounds to know of any basis for any such action.
- B. Seller has not received notice of, and to the best of Seller's knowledge, there are no violations of any laws, orders, regulations or requirements of any governmental authority affecting the Property or any part thereof.
- C. Seller has the unconditional right and power to execute and deliver this Agreement and to consummate the transaction(s) contemplated by this Agreement.
- D. Seller has not received notice of default or breach by Seller of any of the covenants, conditions, restrictions, rights-of-way or easements, or hazardous waste affecting the Property or any portion thereof; no default or breach now exists or will exist on the date of closing; and no event or condition has occurred and is continuing that, with or without notice and/or the passage of time, will constitute such a default or breach.
- E. Seller represents that it has provided to Purchaser all environmental reports and, to the extent permitted by law, any other documentation in Seller's possession related to Seller's ownership of the Property.

11. Condition of the Property. Purchaser acknowledges by closing that it has had the opportunity to inspect the Property, and that with the exception of any representations or warranties specifically set forth in this Agreement and the covenants contained in the warranty deed, Purchaser is relying solely on its own investigation of the Property. Purchaser furthermore acknowledges that its acquisition of the Property shall be on an "AS IS basis" without further improvement or remediation by Seller.

12. Possession. Seller will deliver possession of the Property to Purchaser at closing.

13. Proration. Real property taxes and assessments and similar expenses, in accordance

with local practice, will be prorated as of the date of closing, to the extent such taxes, assessments and expenses apply to Seller.

14. Remedies on Default. If any note or check received hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, the remedies are:

- A. If Seller is in default, Purchaser may elect to treat this Agreement as terminated, in which case all payments and things of value received hereunder will be returned to Seller, and Purchaser may recover such damages as may be proper, or Purchaser may elect to treat this Agreement as being in full force and effect, and Purchaser will have the right to an action for specific performance or damages, or both.
- B. If Purchaser is in default, Seller may recover direct damages as may be proper and Seller expressly waives the remedies of specific performance and additional damages and both Parties will be released from all obligations under this Agreement.

15. Notices. Any notice or other communication given by either Party to the other relating to this Agreement must be in writing and shall be deemed given (i) when delivered personally, or (ii) on the first business day which is three (3) days following mailing by certified mail, return receipt requested and postage prepaid, or (iii) the next business day after sending by a nationally recognized overnight delivery service, and addressed to the Party at its respective address as follows:

Seller: Fred F. Jones & Melva Jean Jones
13 Pedragal Lane
Pueblo, CO 81005

Purchaser: City of Pueblo
City Attorney's Office
1 City Hall Place, 3rd Floor
Pueblo, CO 81003

16. Assignment. This Agreement may not be assigned by either of the Parties hereto without the prior written consent of the other Party.

17. Risk of Loss. Seller shall bear all risk of loss with respect to the Property up to the date title is transferred in accordance with this Agreement. In the event of damage to any portion of the Property by fire or other casualty prior to the closing which damage either affects 5% of the usable facilities on the Property or reduces the value of the Property by 5%, then this Agreement may be terminated at the option of Purchaser. This option shall be exercised, if at all, by Purchaser's written notice thereof to Seller within thirty (30) calendar days after receipt of written notice of such fire or other

casualty. Upon the exercise of such option to terminate, this Agreement shall become null and void, and neither Party shall have any further liability or obligations hereunder, except as otherwise provided in this Agreement. Closing may be delayed for up to thirty (30) calendar days for the Purchaser to decide whether to exercise this option.

18. Recommendation of Legal and Tax Counsel. By signing this document, the Parties acknowledges that they have been advised that this Agreement has important legal consequences and have received the recommendation to consider the examination of title and consultation with legal and tax or other counsel before signing this Agreement.
19. Entire Agreement, Modification. This Agreement constitutes the entire contract between the Parties relating to the conveyance of the Property, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of any of the terms of this Agreement will be valid, binding upon the Parties, or enforceable unless made in writing and signed by the Parties.
20. Headings. Paragraph headings are used for convenience of reference and in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.
21. Construction. Words of the masculine gender include the feminine and neuter gender and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice versa. Definitions of defined terms are intended to apply throughout this Agreement. This Agreement is to be construed according to its fair meaning, and as if prepared by all Parties, and is deemed to be and contain the entire understanding and agreement between the Parties.
22. Time is of the Essence. It is agreed that time is of the essence of this Agreement and each and every provision.
23. Binding Effect / Joint and Several Liability. This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, administrators, successors and assigns. If Seller consists of more than one individual or entity, each such individual or entity is jointly and severally liable for any and all obligations of Seller hereunder.
24. Litigation Expenses. In the event any Party defaults in any of its covenants or obligations and a Party not in default commences and prevails in any legal or equitable action against the defaulting Party, the defaulting Party expressly agrees to pay all reasonable expenses of the litigation, including a reasonable sum for attorneys' fees or similar costs of legal representation.

25. Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Signatures may be delivered by electronic copy. Electronic signatures are binding on the Parties as if they were originals.
26. Authority. Each person executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement in his or her individual or representative capacity as indicated.
27. Recording. Purchaser may record this Agreement in the real property records of the Pueblo County Clerk and Recorder.
28. Governing Law/Venue. The Parties intend and agree that this Agreement is to be construed and enforced according to the laws of Colorado, and that venue in any proceeding related to the subject matter of this Agreement will be in Pueblo County, Colorado.
29. Brokers. Seller has retained a real estate broker and shall be and hereby is solely responsible for paying any and all commission due as a result of this sale transaction to said broker. Seller, shall indemnify and hold Purchaser harmless from and against all claims, demands, causes of action, debts, liabilities, judgments, and damages, including, without limitation, any related litigation expenses, that may be asserted or recovered against the other on account of any breach of this representation and warranty.
30. Access. If Buyer fails to close the Seller will have immediate access to the property and the gate will be removed or the combination for the lock will be provided to the Seller or their agent.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date and year first above written.

Seller:

Fred F. Jones

Melva Jean Jones

PURCHASER:

The City of Pueblo, a Municipal Corporation

Date: _____

By: _____

Nicholas A. Gradisar, Mayor

City Clerk



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Chris Noeller, Chief of Police

SUBJECT: AN ORDINANCE APPROVING AND ACCEPTING A U. S. DEPARTMENT OF JUSTICE 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE (2023 JAG) GRANT, AWARD NO. 15PBJA-23-GG-03201-JAGX, AND APPLICABLE CONDITIONS PERTAINING THERETO, ESTABLISHING PROJECT NUMBER PS2314, BUDGETING AND APPROPRIATING FUNDS NOT TO EXCEED \$111,507, AUTHORIZING THE MAYOR TO EXECUTE SAME AND RELATED CERTIFICATIONS, ASSURANCES AND OTHER DOCUMENTS, APPROVING AND RATIFYING THE JULY 17, 2023 MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME AND RATIFYING HIS SIGNATURE THERETO

SUMMARY:

Attached is Award No. 15PBJA-23-GG-03201-JAGX. It includes 17 pages (numbered 6-22) which are the award's Special Conditions.

PREVIOUS COUNCIL ACTION:

The FY2023 JAG Local Solicitation is an annual formula grant that has been in existence for the past nineteen (19) years. The City and County of Pueblo have received \$2,341,804 in JAG Local Solicitation funds since its inception, including this award. On August 14, 2023 Council approved Resolution No. 15337 authorizing the application for the award and approving the required MOU with Pueblo County.

BACKGROUND:

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program provides funds to units of local government for the purpose of improving law enforcement technology and upgrading necessary equipment. The program is designed to help local communities address problems specific to their area.

The City's share will be used to fund six (6) Police Department equipment projects, including desktop, laptop, and other computer-related equipment for the entire Department, additional investigative tools for the Crimes Against Property Unit, and other law enforcement enhancing equipment projects as determined by the Chief of Police (see attachment for detailed list of proposed equipment). Mr. Gradisar will need to sign the award document and initial the lower right corner of each page of the Special Conditions.

FINANCIAL IMPLICATIONS:

This grant funding represents \$111,507 to the City and County of Pueblo with no required match. The City's share of the \$111,507 is \$84,746 and the remaining amount is paid to the County. The City is responsible for administering the drawdown of the grant. The County provides the City with quarterly reports which are monitored by the Police Department.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable to this Ordinance.

STAKEHOLDER PROCESS:

City and County law enforcement leaders have met and agreed to the distribution terms of this annual formula grant since its inception in 2005. A signed MOU between the City and County is a requirement for acceptance of the award. City Council, and all other related stakeholders, signed the MOU in conjunction with approved Resolution No. 15337. Additionally, a public meeting, to receive public comments on the expenditures, is a requirement of the award. That public meeting occurred on July 17, 2023. The City and County Attorney Offices, as well as the City Finance Department, have reviewed and approved the attached award documents including the Special Conditions.

ALTERNATIVES:

The FY2023 JAG Local Solicitation is an annual formula grant that has been in existence for the past nineteen (19) years. The City and County of Pueblo have received \$2,341,804 in JAG funds since its inception, including this award. In order to receive the funds, the City and County of Pueblo must sign the award document and initial each page of the Special Conditions in the lower right-hand corner.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Signed Memorandum of Understanding (MOU)
2. Resolution No. 15337
3. Award Letter for 15PBJA-23-GG-03201-JAGX
4. Itemization of JAG Projects List
5. 2023 JAG Award Conditions
6. 2023 JAG Annual Solicitation application

ORDINANCE NO. 10577

AN ORDINANCE APPROVING AND ACCEPTING A U. S. DEPARTMENT OF JUSTICE 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE (2023 JAG) GRANT, AWARD NO. 15PBJA-23-GG-03201-JAGX, AND APPLICABLE CONDITIONS PERTAINING THERETO, ESTABLISHING PROJECT NUMBER PS2314, BUDGETING AND APPROPRIATING FUNDS NOT TO EXCEED \$111,507, AUTHORIZING THE MAYOR TO EXECUTE SAME AND RELATED CERTIFICATIONS, ASSURANCES AND OTHER DOCUMENTS, APPROVING AND RATIFYING THE JULY 17, 2023 MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS, AND AUTHORIZING THE MAYOR TO EXECUTE SAME AND RATIFYING HIS SIGNATURE THERETO

WHEREAS, the City Council of Pueblo has the authority on behalf of the City of Pueblo, including its Police Department, to accept grants from the federal government for public and municipal purposes and to enter into agreements relating thereto; and

WHEREAS, the United States Department of Justice (“DOJ”) has tendered a Justice Assistance Grant Award No. 15PBJA-23-GG-03201-JAGX (the “Award”) in the amount of \$111,507 upon conditions recited therein or incorporated therein by reference; and

WHEREAS, acceptance of the Award for the purposes for which it has been made is in the best interest of the City and will benefit the health, welfare and safety of the citizens of the City; NOW, THEREFORE,

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

SECTION 1.

The Awarding of Grant No. 15PBJA-23-GG-03201-JAGX to the City of Pueblo, a true copy of which is attached hereto, is hereby approved and accepted in accordance with its terms and conditions.

SECTION 2.

The Mayor of the City is authorized to execute the Grant Award acceptance in the name of and on behalf of the City, and the Mayor is authorized to execute any and all other certifications, assurances and other documents associated therewith.

SECTION 3.

Project Number PS2314 (2023 JAG) is hereby established, and the amount of \$111,507 is budgeted and appropriated therefore.

SECTION 4.

The Grant Award Funds shall be deposited in an interest-bearing trust fund account that is specifically designated for the Justice Assistance Grants Program ("Program"). The funds in the account, including interest thereon, shall only be expended and used for the Program, and shall be so obligated and expended by September 30, 2027, provided, however, that none of the funds shall be spent or obligated until all applicable conditions precedent for expenditure of Grant Funds have been satisfied, as set forth in the Grant's Special Conditions.

SECTION 5.

The July 17, 2023, Memorandum of Understanding ("MOU"), by and between the City of Pueblo, a Municipal Corporation, and Pueblo County, Colorado concerning the receipt and disbursement of the 2023 JAG funds, a copy of which is attached hereto and incorporated herein, having been approved as to form by the City Attorney, is hereby approved and ratified. The Mayor is hereby authorized to execute said MOU on behalf of the City and his prior signature to same is hereby ratified.

SECTION 6.

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

SECTION 7.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

**MEMORANDUM OF UNDERSTANDING
CONCERNING RECEIPT AND DISBURSEMENT OF
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
FUNDS FOR FY 2023
(GRANT OPPORTUNITY#_O-BJA-2023-171790)**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 17th day of July, 2023, by and between the City of Pueblo, a Municipal Corporation (hereafter referred to as the “City”) and Pueblo County, Colorado (hereafter referred to as the “County”).

WITNESSETH:

WHEREAS, the parties recognize that for FY 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) funding, administered by the U.S. Office of Justice Programs, Pueblo County has been certified as a disparate jurisdiction by the Colorado State Attorney General’s Office; and

WHEREAS, Federal Edward Byrne Memorial Justice Assistance Grant funding requires that a certified disparate county and the city or cities within the county are to divide available funds to their mutual satisfaction, and that if the parties are unable to reach a mutual agreement, no jurisdiction is eligible to receive funds; and

WHEREAS, the parties reached an agreement over the receipt of \$111,507.00 in JAG funds and the disbursement of those funds and wish to set such agreement as follows.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in accordance with Federal law, the parties agree as follows:

1. The \$111,507.00 JAG Grant Funds will be allocated as follows: The City will receive \$84,746.00 and will use these resources to fund one or more projects/programs that are outlined in the Program Narrative attachment of the application. The County will receive \$26,761.00 of which the Pueblo County Sheriff’s Department will receive \$21,409.00 to fund one or more different projects/programs that are outlined in the Program Narrative attachment of the application. The Pueblo County District Attorney will receive \$5,352.00 of the County’s allocation to fund one or more different projects/programs that are outlined in the Program Narrative attachment of the application. The City will serve as the applicant/fiscal agent.

2. The City, County, Pueblo County Sheriff’s Department and Pueblo County District Attorney shall each meet and comply with the assurances, certifications, general and special conditions set forth in the FY 2023 JAG Grant Funds Award which are incorporated herein as if set out herein in full and shall expend their respective funds solely for their approved projects.

Memorandum of Understanding
Concerning Receipt and Disbursement of
Edward Byrne Memorial Justice Assistance Grant Funds for FY 2023

Page - 2

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

ATTEST:

By


Clerk to the Board

PUEBLO COUNTY, COLORADO

By


Chairman, Board of County Commissioners

ATTEST:

By


City Clerk

CITY OF PUEBLO, A Municipal Corporation

By


Mayor

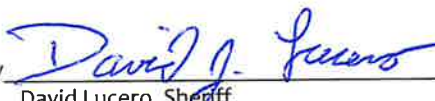
ATTEST:

By



PUEBLO COUNTY SHERIFF

By


David Lucero, Sheriff

ATTEST:

By



CITY OF PUEBLO POLICE DEPARTMENT

By


Chris Noeller, Chief of Police

ATTEST:

By



10TH JUDICIAL DISTRICT ATTORNEY

By


Jeff Chostner, District Attorney

**MEMORANDUM OF UNDERSTANDING
CONCERNING RECEIPT AND DISBURSEMENT OF
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
FUNDS FOR FY 2023
(GRANT OPPORTUNITY#_O-BJA-2023-171790)**

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Memorandum of Understanding
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Edward Byrne Memorial Justice Assistance Grant Funds for FY 2023

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Clerk to the Board

PUEBLO COUNTY, COLORADO

By 
Chairman, Board of County Commissioners

ATTEST:

By 
City Clerk

CITY OF PUEBLO, A Municipal Corporation

By 
Mayor

ATTEST:

By 

PUEBLO COUNTY SHERIFF

By 
David Lucero, Sheriff

ATTEST:

By 

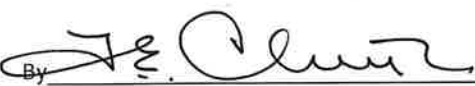
CITY OF PUEBLO POLICE DEPARTMENT

By 
Chris Noeller, Chief of Police

ATTEST:

By 

10TH JUDICIAL DISTRICT ATTORNEY

By 
Jeff Chostner, District Attorney

**MEMORANDUM OF UNDERSTANDING
CONCERNING RECEIPT AND DISBURSEMENT OF
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
FUNDS FOR FY 2023
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Chairman, Board of County Commissioners

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City Clerk

CITY OF PUEBLO, A Municipal Corporation

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ATTEST:

By 

PUEBLO COUNTY SHERIFF

By 
David Lucero, Sheriff

ATTEST:

By 

CITY OF PUEBLO POLICE DEPARTMENT

By 
Chris Noeller, Chief of Police

ATTEST:

By 

10TH JUDICIAL DISTRICT ATTORNEY

By 
Jeff Chostner, District Attorney

**MEMORANDUM OF UNDERSTANDING
CONCERNING RECEIPT AND DISBURSEMENT OF
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
FUNDS FOR FY 2023
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Edward Byrne Memorial Justice Assistance Grant Funds for FY 2023

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ATTEST:

By 
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PUEBLO COUNTY, COLORADO

By 
Chairman, Board of County Commissioners

ATTEST:

By 
City Clerk

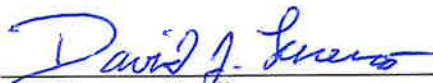
CITY OF PUEBLO, A Municipal Corporation

By 
Mayor

ATTEST:

By 

PUEBLO COUNTY SHERIFF

By 
David Lucero, Sheriff

ATTEST:

By 

CITY OF PUEBLO POLICE DEPARTMENT

By 
Chris Noeller, Chief of Police

ATTEST:

By 

10TH JUDICIAL DISTRICT ATTORNEY

By 
Jeff Chostner, District Attorney

**MEMORANDUM OF UNDERSTANDING
CONCERNING RECEIPT AND DISBURSEMENT OF
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
FUNDS FOR FY 2023
(GRANT OPPORTUNITY#_O-BJA-2023-171790)**

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WITNESSETH:

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2. The City, County, Pueblo County Sheriff’s Department and Pueblo County District Attorney shall each meet and comply with the assurances, certifications, general and special conditions set forth in the FY 2023 JAG Grant Funds Award which are incorporated herein as if set out herein in full and shall expend their respective funds solely for their approved projects.

Memorandum of Understanding
Concerning Receipt and Disbursement of
Edward Byrne Memorial Justice Assistance Grant Funds for FY 2023

Page -- 2

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ATTEST:

By 
Clerk to the Board

PUEBLO COUNTY, COLORADO

By 
Chairman, Board of County Commissioners

ATTEST:

By 
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CITY OF PUEBLO, A Municipal Corporation

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PUEBLO COUNTY SHERIFF

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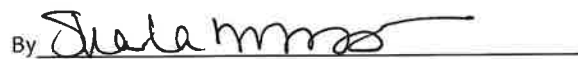
ATTEST:

By 

CITY OF PUEBLO POLICE DEPARTMENT

By 
Chris Noeller, Chief of Police

ATTEST:

By 

10TH JUDICIAL DISTRICT ATTORNEY

By 
Jeff Chostner, District Attorney

RESOLUTION NO. 15337

A RESOLUTION AUTHORIZING THE CITY OF PUEBLO TO APPLY FOR A 2023 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) AND APPROVING A MEMORANDUM OF UNDERSTANDING CONCERNING RECEIPT AND DISBURSEMENT OF FUNDS FROM SAID GRANT, AUTHORIZING THE MAYOR TO EXECUTE SAME AND RATIFYING HIS PRIOR SIGNATURE THERETO

WHEREAS, the City of Pueblo Police Department is requesting the City of Pueblo submit an application to the United States Department of Justice (DOJ) for the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG); and

WHEREAS, the funds from this grant will be utilized by the Police Department, Sheriff's Department, and the District Attorney's Office to benefit the health, welfare, and safety of the citizens of the City; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that

SECTION 1.

The 2023 JAG Local Solicitation Application O-BJA-2023-171790 (Grant Application), a copy of which is attached hereto, is hereby approved and authorized for submittal to the United States Department of Justice.

SECTION 2.

The Memorandum of Understanding dated as of July 17th, 2023, by and between the City of Pueblo, a Colorado Municipal Corporation, and Pueblo County, Colorado concerning the receipt and disbursement of the 2023 JAG funds, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 3.

The Mayor of the City is authorized to execute the Grant Application and Memorandum of Understanding in the name of the City, and his prior signature thereto is hereby ratified and approved. The City Clerk is directed to affix the seal to the Memorandum of Understanding and attest same. The Mayor is also authorized to execute any and all other certifications, assurances and other documents associated therewith.

SECTION 4.

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

SECTION 5.

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

INTRODUCED: August 14, 2023

BY: Vicente Martinez Ortega
MEMBER OF CITY COUNCIL

APPROVED: 
PRESIDENT OF CITY COUNCIL

ATTESTED BY: 
CITY CLERK



Department of Justice (DOJ)

Office of Justice Programs

Office of Communications

Washington, D.C. 20530

AWARD NOTIFICATION		Award Number: 15PBJA-23-GG-03201-JAGX
Name and Address of Recipient:		CITY OF PUEBLO 1 CITY HALL PL
City, State and Zip:		PUEBLO, CO 81003
Recipient Point of Contact:		ANNAMARIE ELLISS
Email:		aelliss@pueblo.us
Phone:		7195532638
Solicitation Title: BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation		
Federal Award Amount: \$111,507.00		Federal Award Date: 9/25/23
Awarding Agency:		Office of Justice Programs Bureau of Justice Assistance
Award Type:		Initial
Statutory Authority:		Title I of Public Law 90-351 (generally codified at 34 U.S.C. 10101-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151-10158); see also 28 U.S.C. 530C(a)
Opportunity Category:	Discretionary	Assistance Listing Number: 16.738

Project Period Start Date: 10/1/22	Project Period End Date: 9/30/26
Project Description: The City of Pueblo is seeking funds to support various law enforcement projects of the Police Department, Sherriff's Office and District Attorney's Office through a joint application.	

For more information about this award, please contact the OJP Office of Communications at 202-307-0703 or OJP.OCOM@ojp.usdoj.gov.

**FY2023 Justice Assistance Grant (JAG) Local Solicitation
Projects & Programs**

Grant # 2023 JAG Project # PSXXXX

Disparate Certification

A disparate allocation occurs when a city or municipality is scheduled to receive one and one-half times (150 percent) more than a county with concurrent jurisdiction, while that county bears more than 50 percent of the costs associated with prosecution or incarceration of the municipality's Part 1 violent crime. Multiple disparate allocations occur when multiple cities or municipalities are collectively eligible to receive four times (400 percent) more than the county.

JAG disparate jurisdictions are certified by the Director of the Bureau of Justice Assistance (BJA), based in part on input from the state's Attorney General. For a listing of disparate jurisdictions, go to www.ojp.usdoj.gov/BJA/recoveryJAG/recoveryallocations.html.

Proj #	Name of Project	Agency	Amount	Description
1	Desktop/Laptop and Related Computer Replacement Project	PPD Services	\$50,279	This project proposes to purchase technical computer equipment for law enforcement and public safety use including desk top computers (towers, monitors, keyboards, etc), laptop computers, and other related computer componets such as mobile printers, and applicable and related software. Actual project cost is \$58,331.75. PPD will pay the extra \$8,052.75 with an IT Project fund, PST2306.
2	6X10 enclosed trailer for hauling crime scene investigation supplies	PPD CSI	\$6,000	Purchase of 8'-10' enclosed box/cargo trailer to store and hold a lot of our shared or bulkier equipment we haul in and out of the office and garage to major crime scenes to make this process more efficient. It would also provide for transport space for larger evidence when needed.
3	2-electric assist bicycles - Bike Patrol	PPD Bike Patrol	\$9,484	Bicycles allow officers to maneuver in smaller spaces as well as work within larger crowds to provide a safer environment and improve the quality of life for all. Electric assist bicycles enhance officer's ability to respond to various parts of town without exhaustion, better engage and communicate with community members at events, cover other officers in need, respond to other calls for service with a much quicker response time.
4	2-rifle rated bullet proof shields for BATTLE	PPD CAProp	\$17,839	Right now, the Pueblo Police BATTLE members operating the pin vehicles do not have any protection against pistol or rifle rounds that the occupants of the stolen vehicle may fire towards the officers in the pin vehicle, other than the engine block. Bullet proof shields would allow the Officers to be protected and allow them to keep eyes on the suspect and suspect vehicle.
5	130 archive storage boxes	PPD VAPP	\$858	The Volunteers Assisting Pueblo Police (VAPP) are requesting 130 archival storage boxes (90 large and 40 small) to move the Pueblo Police Department's historical files into proper protective storage.
6	Electronics training kits for BOMB training	PPD Bomb	\$286	The Pueblo Metro Bomb Squad is in need of training tools for electronic circuits. Current trends in Improvised Explosive Devices have moved to electronic circuits. One of the missions a public safety bomb squad is tasked with is defeating IED's and rendering them safe in situations where they pose an extreme risk to life or critical infrastructure.
\$84,746				
1	2-electric assist bicycles - Bike Patrol	PCSO	\$9,604	When patrolling a community event, its important that deputies are highly visible and can cover a large area in a timely manner. E-bikes are a significant advantage compared to typical marked cruisers. Electric bikes are proving to be a popular choice for deputies on the move. Electric bikes are more quickly deployable than patrol cruisers, allowing deputies to respond to call more quickly in a targeted area, and are more maneuverable.
2	Ballistic Shields	PCSO	\$11,805	The Pueblo County Sheriff's Office needs additional safety equipment for the Law Enforcement division. In 2021, two deputies were shot while trying to make contact at a home. Having rifle rated shields easily accessible for the responding officers as well as detectives, civil fugitive and narcotics detectives for use when conducting any high-risk job function is an additional safety measure. Actual project cost is \$16K. PCSO will fund the additional \$4,194.89 out of their general funds.
\$21,409				
1	Technical projects/training and equipment.	PCDA	\$5,352	Purchase technology, supplies, equipment and system upgrades, including the potential purchase of computers, monitors, color printers, and fax
\$5,352				
Total Grant Amount =			\$111,507	

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

1

Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards

Consistent with Executive Order 14074, "Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety," OJP has prohibited the use of federal funds under this award for purchases or transfers of specified equipment by law enforcement agencies. In addition, OJP requires the recipient, and any subrecipient ("subgrantee") at any tier, to put in place specified controls prior to using federal funds under this award to acquire or transfer any property identified on the "controlled equipment" list. The details of the requirement are posted on the OJP web site at <https://www.ojp.gov/funding/explore/prohibited-and-controlled-equipment> (Award condition: Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards), and are incorporated by reference here.

2

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

3

Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

4

Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2022 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2022 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2022 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

5

Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

6

Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

7

Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

8

Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2022, are set out at <https://www.ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

9

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements

that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

10

Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

11

Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

12

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

13

Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

14

Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

15

OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees>.

16

Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

17

Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

18

Required training for Grant Award Administrator and Financial Manager

The Grant Award Administrator and all Financial Managers for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

In the event that either the Grant Award Administrator or a Financial Manager for this award changes during the period of performance, the new Grant Award Administrator or Financial Manager must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after the date the Entity Administrator enters updated Grant Award Administrator or Financial Manager information in JustGrants. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://onlinegfmt.training.ojp.gov/>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

19

Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

20

Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

21

Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

22

Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

23

Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

24

All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

25

Specific post-award approval required to use a noncompetitive approach in any procurement contract that would

exceed \$250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

26

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

27

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

28

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

29

Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

30

Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

31

Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://it.ojp.gov/gsp_grantcondition. The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

32

Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

33

Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

34

Required monitoring of subawards

The recipient must monitor subawards under this award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

35

Any written, visual, or audio publications funded in whole or in part under this award, with the exception of press releases, shall contain the following statements: "This project was supported by Grant No. <AWARD_NUMBER> awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.

36

Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service: "This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)." The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

37

Verification and updating of recipient contact information

The recipient must verify its Grant Award Administrator, Financial Manager, and Authorized Representative contact information in JustGrants, including telephone number and e-mail address. If any information is incorrect or has changed, the award recipient's Entity Administrator must make changes to contact information through DIAMD. Instructions on how to update contact information in JustGrants can be found at <https://justicegrants.usdoj.gov/training/training-entity-management>.

38

Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA.

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

- a. New construction;
- b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <https://bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

Application of This Condition to Recipient's Existing Programs or Activities: For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

39

Recipients utilizing award funds for forensic genealogy testing must adhere to the United States Department of Justice Interim Policy Forensic Genealogical DNA Analysis and Searching (<https://www.justice.gov/olp/page/file/1204386/download>), and must collect and report the metrics identified in Section IX of that document to BJA.

40

Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 C.F.R. 200.305(b)(8)). The trust fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.

41

All State and Local JAG recipients must submit quarterly Federal Financial Reports (SF-425). Additionally, State JAG and Local JAG Category Two (\$25K or more) must submit semi-annual performance reports through JustGrants and Local JAG Category One (Less than \$25K) must submit annual performance reports through JustGrants. Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website: <https://bjapmt.ojp.gov/>. For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage (<https://bjapmt.ojp.gov/help/jagdocs.html>). Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

42

Required data on law enforcement agency training

Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.

43

Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2022

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2022), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum - (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via an Award Condition Modification (ACM)). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through an Award Condition Modification (ACM), the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

44

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS. With the exception of Forensic Genetic Genealogy, no profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA. Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Booking agencies should work with their state CODIS agency to ensure all requirements are met for participation in Rapid DNA (see National Rapid DNA Booking Operational Procedures Manual).

45

Submission of eligible records relevant to the National Instant Background Check System

Consonant with federal statutes that pertain to firearms and background checks -- including 18 U.S.C. 922 and 34 U.S.C. ch. 409 -- if the recipient (or any subrecipient at any tier) uses this award to fund (in whole or in part) a specific project or program (such as a law enforcement, prosecution, or court program) that results in any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the National Instant Background Check System (NICS), or that has as one of its purposes the establishment or improvement of records systems that contain any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS, the recipient (or subrecipient, if applicable) must ensure that all such court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS

are promptly made available to the NICS or to the "State" repository/database that is electronically available to (and accessed by) the NICS, and -- when appropriate -- promptly must update, correct, modify, or remove such NICS-relevant "eligible records".

In the event of minor and transitory non-compliance, the recipient may submit evidence to demonstrate diligent monitoring of compliance with this condition (including subrecipient compliance). DOJ will give great weight to any such evidence in any express written determination regarding this condition.

46

Prohibition on use of award funds for match under BVP program

JAG funds may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

47

Certification of body armor "mandatory wear" policies, and compliance with NIJ standards

If recipient uses funds under this award to purchase body armor, the recipient must submit a signed certification that each law enforcement agency receiving body armor purchased with funds from this award has a written "mandatory wear" policy in effect. The recipient must keep signed certifications on file for any subrecipients planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

Ballistic-resistant and stab-resistant body armor purchased with award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards, and is listed on the NIJ Compliant Body Armor Model List. In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information and the NIJ Compliant Body Armor List may be found by following the links located on the NIJ Body Armor page: <https://nij.ojp.gov/topics/equipment-and-technology/body-armor>

48

Extreme risk protection programs funded by JAG must include, at a minimum: pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses; the right to be represented by counsel at no expense to the government; pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed, irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation; and penalties for abuse of the program.

49

Expenditures prohibited without waiver

No funds under this award may be expended on the purchase of items prohibited by the JAG program statute, unless, as set forth at 34 U.S.C. 10152, the BJA Director certifies that extraordinary and exigent circumstances exist, making such expenditures essential to the maintenance of public safety and good order.

50

FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$30,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$30,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

51

Exceptions regarding Prohibited and Controlled Equipment under OJP awards

Notwithstanding any provision to the contrary in the other terms and conditions of this award, including in the condition regarding "Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards," the requirements for the "Transfer/Sale of Award-Funded Controlled Equipment to Other LEAs" and the requirements for the "Transfer/Sale of Award-Funded Controlled Equipment to NON-LEAs" do not apply to this award.

52

The recipient agrees that no funds under this grant award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.

53

Initial period of performance; requests for extension.

The recipient understands that for award amounts of less than \$25,000 under JAG (Category 1), the initial period of performance of the award is two years. The recipient further understands that any requests for an extension of the period of performance for an award of less than \$25,000 will be approved automatically for up to a total of two additional years, pursuant to 34 U.S.C. 10152(f) and in accordance with the program solicitation associated with this award.

Any request for an extension of the period of performance beyond a four-year award period will require approval, and the approval (if any) will be at the discretion of the Director of BJA.

54

Applicants must ensure that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the Internet at www.lep.gov.

55

Cooperating with OJP Monitoring

The recipient agrees to cooperate with OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The

recipient agrees to provide to OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may result in actions that affect the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

56

Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

57

Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The recipient may not satisfy such a fine with federal funds.

58

Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

59

Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

60

The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

61

The recipient understands that, in accepting this award, the Authorized Representative declares and certifies, among other things, that he or she possesses the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accepts (or adopts) all material requirements that relate to conduct throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the individual has the requisite legal authority.

62

In accepting this award, the recipient agrees that grant funds cannot be used for Facial Recognition Technology (FRT) unless the recipient has policies and procedures in place to ensure that the FRT will be utilized in an appropriate and responsible manner that promotes public safety, and protects privacy, civil rights, and civil liberties and complies with

all applicable provisions of the U.S. Constitution, including the Fourth Amendment's protection against unreasonable searches and seizures and the First Amendment's freedom of association and speech, as well as other laws and regulations. Recipients utilizing funds for FRT must make such policies and procedures available to DOJ upon request.

63

Withholding of funds – Financial Capability Questionnaire Submission. The recipient may not expend, or draw down any award funds until-- (1) it has submitted a Financial Capability Questionnaire (FCQ) and, if required by OJP, written policies and procedures to address FCQ issues identified; and (2) OJP has issued an Award Condition Modification (ACM) to modify or remove this condition.

[]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Acceptance

Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I--

- A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.
- B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.
- C. Accept this award on behalf of the applicant.
- D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant to civil penalties and administrative remedies under the federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

Agency Approval

Title of Approving Official	Name of Approving Official	Signed Date And Time
Deputy Assistant Attorney General	Maureen Henneberg	9/20/23 8:38 PM

Authorized Representative

Entity Acceptance

Title of Authorized Entity Official
Mayor

Signed Date And Time

City of Pueblo and Pueblo County, Colorado

FY2022 Edward Byrne Memorial Justice Assistance Grant (JAG) Narrative Statement

Opportunity Number: C-BJA-2023-00105-PROD

Package ID: PKG00282389

CFDA 16.738

Grants.gov Deadline: Aug 24, 2023

JustGrants Deadline: Aug 31, 2023

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Current State of Pueblo

Pueblo is the county seat of Pueblo County in Colorado. With a 2020 population of 114,269, it is the 8th largest city in Colorado and the heart of the Pueblo Metropolitan Statistical Area (MSA). According to the US Census Bureau, the average household income is \$56,100, the median income is \$36,280, and the poverty rate of 24.4% -- the highest on the Front Range. Pueblo's neighborhoods with the high levels of poverty also neighborhoods with predominantly BIPOC populations. Pueblo's Economic Dashboard can be found at <https://www.pueblo.us/2820/Economic-Dashboard>

Pueblo is majority-minority community composed of a broad diversity of residents with many linguistic, racial, ethnic, and cultural backgrounds. Census 2020 reported the local Hispanic/Latinx residency to be 52.2%, the highest in all census places in Colorado with a population over 100,000. 13.5% of Pueblo residents speak Spanish; 2.6% of them have limited English speaking skills.

Pueblo's crime rate – 49 per one thousand residents – is one of the highest in the nation. Its violent crime rate (6.49 per 1,000 residents) is 70 percent higher than the Colorado rate (3.81 per 1,000 residents) and 62 percent higher than the national median rate (4.00 per 1,000 residents). Not coincidentally, the geographic distribution of highest crime largely mirrors that of low-income households.

The current state of crime in Pueblo follows:

Current State of Pueblo Crime	#	% of total crime	% change from 2021
Part 1 Persons			
Homicide	28	0.2%	-3.4%
Sexual Assault	178	1.0%	-9.0%
Robbery	358	2.0%	43.0%
Aggravated Assault	925	5.1%	22.0%
Subtotal	1,489	8.3%	20.5%
Part 1 Property			
Burglary	1,294	7.1%	4.0%
Larceny/Theft	3405	19%	-10.0%
Theft from Motor Vehicle	841	4.6%	-37.0%
Motor Vehicle Theft	1,751	10.0%	23.0%
Arson	86	0.5%	-3.4%
Subtotal	7,377	40.3%	-9.1%
Part 1 Total	8,866	48.4%	-2.5%
Other Crimes Against Persons			
Other Assaults	813	4.4%	0.0%
Other Sex Offenses	97	0.5%	-50.3%
Offenses Against Family/Children	1,165	6.3%	-16.1%
Subtotal	2,075	11.2%	-13.4%
Public Order Crimes			
Criminal Mischief	2525	14.0%	23.5%
Prostitution	0	0.0%	-100.0%
Disorderly Conduct	198	1.1%	16.5%
Curfew and Loitering	7	<0.1%	-53.3%
Subtotal	2,730	15.1%	22.0%
Drug/Alcohol Offenses			
Drug/Narcotic Violations	260	1.4%	-25.3%
Liquor Law Violations	10	<0.1%	43.0%
Subtotal	270	1.4%	-24.0%
While Collar Crimes			
Forgery/Counterfeiting	156	1.0%	5.4%
Fraud	735	4.0%	-45.0%
Gambling Offenses	0	0.0%	100.0%
Subtotal	891	5.0%	-65.9%
All Other Crimes			
Stolen Property	10	<0.1%	11.1%
Weapon Law Violations	299	1.6%	-27.3%
All Other Offenses	3,,161	17.3%	-7.1%
Subtotal	3470	18.9%	-9.2%
Part 2 Total	9,136	51.6%	-8.3%
Grand Total	18,302	100.0%	-5.6%

This data set includes completed, attempted, and unfounded incidents. All files utilized in the creation of this report are dynamic. Dynamic files allow additions, deletions and/or modification at any time, resulting in more complete and accurate records in the databases. Due to continuous data entry after reports are filed and compiled, numbers may vary in previous or subsequent reports. This data is based on the National Incident Based Reporting System (NIBRS). Date compiled 02/17/23.

Description of the Issue

Safety is a top priority in the City. In 2022, the City of Pueblo expensed \$111,547,397 to administer its services and programs; 48% of the budget is allocated for public safety (law enforcement and fire safety). Still, additional funds are needed to meet to fully realize departmental needs.

JAG Funding Distribution

Disparate agencies in Pueblo County are submitting a joint application. The Pueblo Police Department (PPD) will receive an aggregate \$111,507. \$21,409 will be distributed to Pueblo County Sheriff's Office (PCSO); \$5,352 to the Pueblo County District Attorney's (PCDA) Office; and the remaining \$84,746 will be retained by PPD.

Timeline

Upon award, PPD will drawdown all grant funds and distribute the applicable amounts, as outlined in the MOU, to the two sub grantee agencies. PPD will continually monitor the sub grantee agencies for compliance with all applicable DOJ policies and procedures.

Progress and challenges

Pueblo Police Department experienced a 3.2% increase in calls for service, and a 12% increase in self-initiated calls for service, where officers are conducting proactive enforcement, often consisting of traffic stops, suspicious persons contacts, Community Oriented Policing (COP) calls, etc. In 2022, officers conducted 29,083 self-initiated calls. Crime increased compared to 2021 with a 13% increase in Part 1 crimes. The largest increases came in the categories of Aggravated Assault (22%), Auto Theft (23%), and Robbery (43%).

While there are a variety of reasons for the increase in crime, PPD continues to focus efforts and resources in a variety of ways to become more proactive in addressing and reducing crime. In April 2022, the Directed Investigations and Community Engagement (DICE) Team was created within the Patrol Division. This unit started with two officers and was directed to focus on low-level crime to include shoplifting, loitering, public decency and other crimes affecting the business community and our citizens quality of life. In November 2022, this unit was increased to include another two officers so that 7-day a week coverage could be implemented. Since its creation, the DICE Team has had a dramatic impact on addressing low-level crime and has received accolades from the community and business owners and has allowed the department to free up patrol officers to handle other higher priority calls and at the same time provided for more proactive patrolling related to these crimes. Since the inception in April of 2022 the DICE Team has made 1,618 citizen contacts, issued 265 citations, recovered eight stolen motor vehicles, made 215 warrant arrests, issued 80 PR bonds, conducted 44 COP calls, recovered \$20,576 in stolen merchandise, handled 52 calls for service, seized 3.38 grams of methamphetamine and 2.18 grams of Fentanyl, issued 146 trespass notices and recovered one stolen handgun.

Traffic safety is an area with significant decrease in productivity. In years past, patrol officers were detailed to help address traffic issues with the Department's Traffic Unit and volunteered to work extra overtime, which is funded through a National Highway Traffic Safety Administration (NHTSA) grant. With the impact to manpower, PPD has not been able to assign patrol officers to work portions of their shift to addressing traffic issues. While traffic accidents in 2022 (3,570) were slightly higher than 2021 (3,566) they remained lower than pre-COVID numbers. For example 2019 saw 3,814 accidents. Pueblo also saw a decrease in the number of fatal traffic accidents (13) to more typical yearly average.

Summary of Projects

Police	Computer replacements	\$50,279	
Police	Enclosed 6'x10' trailer	\$6,000	
Police	Bike patrol equipment (bikes)	\$9,484	
Police	Bullet proof shields for BATTLE members	\$17,838	
Police	Archival storage boxes	\$857	
Police	Electronic circuit training kits	\$286	
Subtotal: Pueblo Police (primary grantee)			\$84,746
Sherriff	e-Bikes for community patrol	\$9,517	
Sherriff	Ballistic Shields	\$11,895	
Subtotal: Sherriff (sub grantee)			\$21,409
District Attorney	Technology, supplies, equipment and upgrades	\$5,352	
Subtotal: District Attorney (sub grantee)			\$5,352
Total JAG Award FY23			\$111,507

No funds will be used for administrative costs (costs associated with administering the award, which can include indirect costs).

Project Design and Implementation

The City and County of Pueblo have been actively involved with the Justice Assistance Grant (JAG) program since 2005 when it was created from the Local Law Enforcement Block Grant (LLEBG) program. We have always been a “disparate jurisdiction” and the three agencies involved have been PPD as the primary grantee and fiscal agent, with the PCS and PCDA as subgrantees. We have established a formula for the distribution of JAG funds that is agreeable to all three agencies and those distributions are outlined in a Memorandum of Understanding (MOU) (attached).

PPD’s strategic planning approach is based on a thorough analysis of crime data. PPD selected the proposed projects to address pressing agency needs. Projects will help with public outreach and officer safety. Aside from statistical analysis, PPD surveys the community’s citizens, daily, through regular interactions on various social media platforms like Facebook (with 44,849 followers), Twitter (with 6,927 followers) and YouTube (with 349 subscribers). Citizen comments and requests related to crime issues that are high priority issues for citizens are heard and measured against the larger scope of needs including coordination with State JAG funds and other restricted funds. For example, PPD coordinates with the PCS to file joint State JAG applications to address both agencies’ common interests and goals. Additionally, PPD hosts a public meeting concerning the proposed use of JAG funds where all stakeholders are present to answer questions and address citizen concern regarding the proposed projects and gather other input.

Upon award, PPD will drawdown all grant funds and distribute the applicable amounts, as outlined in the MOU, to the two sub grantee agencies. PPD will continually monitor the sub grantee agencies for compliance with all applicable DOJ policies and procedures.

Capabilities and Competencies

Describe any additional strategic planning/ coordination efforts in which the units of local government participate with other criminal justice entities within the local jurisdiction.

Additional collaboration examples include PPD's participation with the FBI Safe Streets Task Force where our agency provides two (2) task force officers. Additional task force involvements include four (4) officers assigned to the DEA drug task force, two (2) officers assigned to the ATF regional task force and involvement with the US Marshal Service and Hi-Tech Crimes task forces. PPD and PCS also jointly operate and staff the Pueblo Metro Bomb Squad, a county-wide cooperative operation that also frequently assists smaller agencies outside of Pueblo County.

Performance Measures

OJP will require each successful applicant to submit specific performance data that show the completed work's results.

Performance measures typically statements that quantitatively describe the direct products and services delivered by a program (outputs), as well as the impact of those products and services (outcomes). It is notable that no funding in this request is allocated to staffing – all the requests for material supplies/equipment. The narratives below describe a performance measure, but it is most likely that a receipt of purchase and record of installation will be most appropriate. While the three law enforcement agencies that will receive funding could analyze the proficiency and outcomes of the purchased items, it is reasonable that we can make reasonable assumptions as consumers of goods that equipment, supplies and systems do – at a minimum – what they are supposed to do. All purchases are aligned with goals of the Justice Assistance Grant program.

PPD Projects

Project Title: Desktop Computer Replacements

Benefitting: Pueblo Police Department (primary grantee)

Description: This project includes the purchase of purchase technical equipment for law enforcement and public safety use including desk top computers (towers, monitors, keyboards, etc.). Current computer equipment is beyond its useful life and is no longer under warranty; related operating software is no longer supported. Existing thermal printers are not dependable and consistently malfunction. The City of Pueblo's IT Department will provide technical assistance and training for the installation of the new equipment. The quote used for pricing includes a steep discount for "premier" buyers, totaling \$43,788 – a 44.5% reduction in our favor.

Need: Computer technology and the related operating systems are valuable tools for law enforcement personnel. To maintain current technological requirements, computers and operating systems must be replaced and upgraded. As equipment ages, warranties expire, and operating systems cease to be supported.

Cost:	Description	Units	Cost per Unit	Total
	Computer Towers, OptiPlex Tower Plus	40	\$1,365.30	\$54,612
	Dell 23 Monitors	25	\$148.80	\$3,720
	Complimentary technology grant (secure)			-\$8,053
	Total Project			\$50,279

Objectives: Improve public safety and operational efficiency by purchasing and using new desktop and laptop computers with current operating systems to replace older equipment which is failing, has failed, or has become obsolete. Replacing the technical equipment will minimize downtime and increase officer availability.

Performance 1) Receipt of purchase

Measure: 2) Record of installation

Project Title: Enclosed trailer

Benefitting: Pueblo Police Department (primary grantee)

Description: The PPD Identifications Unit is seeking an enclosed trailer to store and haul specialized crime scene investigation equipment to and from crime scenes. This will improve our ability to efficiently transport equipment and evidence without having to make additional trips. It will allow for a timelier response as we can keep equipment stored in the trailer and not have to load equipment into our trucks prior to departure and reduce the number of trips to and from the station for equipment.

Need: In 2021, the Identifications Unit was equipped with new Ford F150 pickup trucks which replaced the fleet of Ford Utility Style Vans. The trucks are a huge benefit to the unit and a much-needed upgrade, however; they do not have the storage capacity as we did in the past.

The equipment we use varies based on the type of scene we are investigating. Most Detectives only carry essential equipment in their trucks and the specialty equipment is stored in the Identification Unit. Having an enclosed trailer where we can store our oversized and specialty equipment would be beneficial and improve our efficiency and response time. When the equipment is needed, the trailer can be hooked up to the truck and towed to the scene. This will also allow Detectives to haul large pieces of evidence or bulk amounts of evidence from scenes without having to seek alternative transport methods.

The trailer can also serve as a mobile command station where Detectives can gather, plan, prepare equipment/collection samples and escape the elements if needed. The ID trucks are equipped with towing packages which will allow us to haul the trailer without having to outfit the trucks with additional equipment.

Cost:

Description	Units	Cost per Unit	Total
10ft x 6ft single axel trailer with a walk in, side door and a large rear dropdown door, previously owned	1		\$6,000
Total Project			\$6,000

Objectives: Obtaining a trailer will allow the Unit to be more time efficient. This means during callouts and investigations occurring outside of normal working hours the department in theory will save money in paying overtime wages if Detectives don't have to spend as much time loading/unloading equipment or making multiple trips to transport equipment/evidence to and from scenes. This will improve overall efficiency and staffing issues as Officers and Detectives won't have to wait as long for a response or have to hold a scene longer as they are waiting for evidence or equipment to be hauled away. Having a trailer will allow all specialty equipment to be stored together making inventorying equipment more efficient.

Performance Measure: 1) Receipt of purchase

2) number of times used as measured by the annual ID Unit report

Project Title: Bike patrol equipment (e-bikes)

Benefitting: Pueblo Police Department (primary grantee)

Description: The Bike Patrol Unit is requesting assistance with equipment that would benefit our police officers assigned to the team. The request is for two new TREK Service Electric, pedal assisted bicycles. These bicycles are specifically designed for serving the public, supporting communities, providing safety/security, and preserving natural resources. The Bike Patrol Unit covers patrol related calls for service, community events and other large pre-planned gatherings such as the annual Colorado State Fair within the City of Pueblo.

Bicycles are an invaluable piece of equipment that allows officers to maneuver in smaller spaces as well as work within larger crowds to provide a safer environment and improve the quality of life for all. Electric assisted bicycles would ultimately enhance officer's ability to respond to various parts of town without exhaustion, better engage and communicate with community members at events, cover other officers in need, respond to other calls for service with a much quicker response time.

Adding these specialty bicycles to the unit would improve and enhance community programs such as community bike safety education, embracing technology, improving law enforcement response to crime in business districts, residential neighborhoods, and the miles and miles of bike trails within our community.

Need: The Pueblo Police Department currently has eight active members on the Bike Patrol Unit. Adding these electric, pedal assisted bicycles would allow officers to respond to emergency calls for service with the confidence of not being overly exhausted on arrival. These bicycles would provide officers better access into areas such as, large community events much better than a vehicle could offer. Adding this newer technology/equipment would energize and engage newer members of our organization to join the Bike Patrol Unit. The unit also provides a healthy alternative to engage in patrol related activities.

Cost:	Description	Units	Cost per Unit	Total
	Trek Service Electric Bicycle 5283882	2	\$4,100	\$8,200
	Gear (bags, light/sirens) and installation	2	\$610	\$1,220
	Reflective stickers	2	\$32	\$64
	Total Project			\$9,484

Objectives: purchase (2) e-Bikes for use by bike patrol officers.

Performance Measure:

- 1) Receipt of purchase
- 2) Number of times used
- 3) Community feedback
- 4) officer feedback

Project Title: Bullet proof shields

Benefitting: Pueblo Police Department (primary grantee)

Description: This project would allow for the purchase of two bullet proof vests for BATTLE officers. BATTLE is an auto theft task force in the city of Pueblo and surrounding counties. As part of the BATTLE groups' tactical operation, they sometimes have to pin stolen vehicles with known felons and unknown occupants inside the stolen vehicles.

Need: Occupants of stolen vehicles are frequently armed and do not want to be taken into custody. Right now, the Pueblo Police BATTLE members operating the pin vehicles do not have any protection against pistol or rifle rounds that the occupants of the stolen vehicle may fire towards the officers in the pin vehicle, other than the engine block. Bullet proof shields would allow the Officers to be protected and allow them to keep eyes on the suspect and suspect vehicle.

Cost:	Description	Units	Cost per Unit	Total
	Vanguard-V 20X30 shields with viewport model, rifle rated shields	2	\$8,919	\$17,839
	Total Project			\$17,838

See attached Project Quote: Bullet proof shields (PD)

Objectives: The objective of the BATTLE task force is to reduce the auto theft crimes in the city of Pueblo and surrounding counties. One part of accomplishing this goal is to arrest and prosecute the offenders in a safe, ethical, and legal manner. At this time the BATTLE group is attempting to meet this goal but due to a lack of ballistic protection in the two pin vehicles that the Pueblo Police department uses the safety factor is not being met one hundred percent. With the addition of ballistic shields this BATTLE group goal would be meet.

Performance 1) Receipt of purchase

Measure: 2) Reduction of injury/loss of life

Project Title: Archival storage boxes

Benefitting: Pueblo Police Department (primary grantee)

Description: Volunteers Assisting Pueblo Police (VAPP) are requesting 130 archival storage boxes (90 large and 40 small) to move the Pueblo Police Department's historical files into proper protective storage.

Need: In support of the Community Services Division (CSD), VAPP maintains records and files related to the Pueblo Police Department's history of over 135 years. The volunteer historian is currently working with files that date back to 1921 (earlier records dating back to the formation of the department in 1886 were destroyed in a flood event on the Arkansas river). Many of the Pueblo Police Department's historical records are stored in simple boxes that do not protect and preserve the documents, and those records are slowly being destroyed by time.

Cost:	Description	Units	Cost per Unit	Total
	12-1/4 x 5 x 10-1/4" storage	90	\$6.75	\$607
	12-1/4 x 2-1/2 x 10-1/4" storage	40	\$6.25	\$250
	Total Project			\$857

Objectives: The history of the Pueblo Police Department is preserved.

Performance 1) Receipt of purchase

Measure: 2) Transfer of documents from inadequate storage to new storage

Project Title: Electronic circuit training kits

Benefitting: Pueblo Police Department (primary grantee)

Description: The Pueblo Metro Bomb Squad is in need of training tools for electronic circuits. Current trends in Improvised Explosive Devices have moved to electronic circuits. One of the missions a public safety bomb squad is tasked with is defeating IED's and rendering them safe in situations where they pose an extreme risk to life or critical infrastructure.

Need: In order for the Pueblo Metro Bomb Squad to remain up to date with current trends and techniques, training aids are needed to help build their skills. These training kits will assist each team member with better understanding basic and some advanced circuitry. The training kits can also be utilized in training scenarios which help identify components of suspected IED's.

Cost:	Description	Units	Cost per Unit	Total
	Keywishbot Upgraded Basic Electronics Component Starter Kit w/Power Supply Module, Breadboard, Jumper Wires, Led, Resistors, Capacitor,830 tie-Points Breadboard for Arduino UNO R3, Mega2560 Mega328 Nano	9	\$19	\$171
	BOJACK NE555 Timer IC NE555P Pulse Generator DIP-8 (Pack of 50 pcs)	2	\$6.50	\$13
	EEEE 10 Values 70 Pcs Logic Level PMOS NMOS Kit MOSFET Transistor Assortment Kit N Channel P Channel MOSFET Driver IRFZ44N IRF530N IRF540N IRF640N IRF740 IRF840 RFP30N06LE 2N7000 IRF3205 IRF9540	1	\$18	\$18
	2200 pcs Electronic Component Assortment Kit, Capacitors, Resistors, Transistors, Inductors, Diodes, Potentiometer, IC, LED and PCB	1	\$70	\$70
	BOJACK 14 Vaules 840 pcs 2-125mm Solderless Flexible Breadboard Connecting Line Cables Breadboard Jumper Wires kit@	1	\$14	\$14
	Total Project			\$286

Objectives: Improve and advance each team member's knowledge and understanding of electronic circuits. Having access to training aids that offer basic to advances circuitry projects allows team members to better identify potential threats during an operation involving a potential IED. These components will also allow the team to build training devices that are more realistic for hands on training and evaluation.

Performance 1) Receipt of purchase

Measure: 2) officer feedback/testing

PSO Projects

Project Title: Bike Patrol Equipment (e-Bikes)

Benefitting: Pueblo County Sherriff (sub grantee)

Description: Electric bicycles are great work tools for law enforcement applications. More law enforcement agencies are realizing the advantages of light electric bikes for patrolling events and community celebrations. When patrolling a community event, its important that deputies are highly visible and can cover a large area in a timely manner. E-bikes are a significant advantage compared to typical marked cruisers. Electric bikes are proving to be a popular choice for deputies on the move.

Need: Electric bikes are more quickly deployable than patrol cruisers, allowing deputies to respond to call more quickly in a targeted area, and are more maneuverable. Compared to pedal bikes, deputies using electric bikes can cover more ground in the same time, respond quicker to calls, and arrive at a scene less winded, making it easier to perform their duties, once they arrive on a scene or making a personnel contact. Electric bikes also allow officers to be more visible in the community, covering more ground in less time with the assistance of an electric motor.

Cost:

Description	Units	Cost per Unit	Total
Himiway Cobra 750 Watt E-Bikes	3	\$2,399	\$7,197
Build and inspection	3	\$50	\$150
Spare batteries	3	\$690	\$2,070
Total Project			\$9,517

See attached Project Quote: Bike Patrol Equipment (e-Bikes) (SO)

Objectives: To better serve our community during high profile events where standard patrol cruisers are not efficient to be amongst the crowds of people. Examples include Colorado State Fair; Chile fest; Bands in the Backyard; 4th of July Water Parade; Colorado State Fair; parades (Kids Day, Veterans Day, Fiesta Day, Parade of Lights). Use of e-Bikes over all-manual bikes will produce:

- Faster response times
- Reduced fatigue
- Expanded patrol range
- Increased carrying capacity
- Enhanced community engagement and customer service

Performance Measure:

- 1) Receipt of purchase
- 2) Number of times used
- 3) Recorded response time
- 4) Community feedback
- 4) officer feedback

Project Title: Ballistic Shields

Benefitting: Pueblo County Sherriff (sub grantee)

Description: Safety Equipment for Patrol, SWAT, Narcotics, Civil Fugitive, and Detectives to have access to for their safety. The Ballistic Shields are rifle rated and light weight. They can easily be thrown in a vehicle and transported to the area they are needed. Old rifle rated shields are large, very heavy and cumbersome. The old rifle rated shields also cannot be easily transported to a place of need. The new technology provides the deputy with a lightweight rifle rated shield that can be used easily for felony traffic stops, searches, initial contact in high-risk areas and entries. The new light weight shields would be easily accessible for the deputies to add additional safety.

Need: The Pueblo County Sheriff's Office needs additional safety equipment for the Law Enforcement division. In 2021, two deputies were shot while trying to make contact at a home. Having rifle rated shields easily accessible for the responding officers as well as detectives, civil fugitive and narcotics detectives for use when conducting any high-risk job function is an additional safety measure. The new shields fit in a vehicle and are easily transported to where they are needed.

Cost:

Description	Units	Cost per Unit	Total
SH3OASVSV1H2L0 VANGUARD 20X30 W/VIEWPORT, NO LIGHT	2	\$8,000	\$16,000
From Pueblo County Sherriff's general fund			-4,105
Total Project			\$11,895

See attached Project Quote: Ballistic Shields (SO)

Objectives: Increase officer safety by providing additional safety equipment for high risk calls for service.

Performance Measure: 1) Receipt of purchase
2) reduction in injuries/loss of life
3) officer feedback

DA Projects

Project Title: Technical Assistance

Benefitting: Pueblo County District Attorney's Office (sub grantee), 10th Judicial District

Description: Training, information systems for criminal justice and equipment upgrades to replace or enhance those items currently in place. Purchases may include purchase the technology, supplies, equipment and system upgrades, including the potential purchase of computers, monitors, color printers, and fax machines.

Need: The project will support:

- The law enforcement and court programs that support the investigative collaboration with the Sheriff's Office, Police Department and Colorado District Attorney's Council.
- The dissemination of information for case prosecution and court programs.
- The enhancement of special programs and initiatives.

Cost:

Description	Units	Cost per Unit	Total
Technical Assistance			\$5,352
Total Project			\$5,352

Objectives: To support the prosecution and investigative activities with local and statewide law enforcement entities.

Performance Measure: 1) Receipts of purchase.

**MEMORANDUM OF UNDERSTANDING
CONCERNING RECEIPT AND DISBURSEMENT OF
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)
FUNDS FOR FY 2023
(GRANT OPPORTUNITY#_O-BJA-2023-171790)**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 17th day of July, 2023, by and between the City of Pueblo, a Municipal Corporation (hereafter referred to as the “City”) and Pueblo County, Colorado (hereafter referred to as the “County”).

WITNESSETH:

WHEREAS, the parties recognize that for FY 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) funding, administered by the U.S. Office of Justice Programs, Pueblo County has been certified as a disparate jurisdiction by the Colorado State Attorney General’s Office; and

WHEREAS, Federal Edward Byrne Memorial Justice Assistance Grant funding requires that a certified disparate county and the city or cities within the county are to divide available funds to their mutual satisfaction, and that if the parties are unable to reach a mutual agreement, no jurisdiction is eligible to receive funds; and

WHEREAS, the parties reached an agreement over the receipt of \$111,507.00 in JAG funds and the disbursement of those funds and wish to set such agreement as follows.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in accordance with Federal law, the parties agree as follows:

1. The \$111,507.00 JAG Grant Funds will be allocated as follows: The City will receive \$84,746.00 and will use these resources to fund one or more projects/programs that are outlined in the Program Narrative attachment of the application. The County will receive \$26,762.00 of which the Pueblo County Sheriff’s Department will receive \$21,409.00 to fund one or more different projects/programs that are outlined in the Program Narrative attachment of the application. The Pueblo County District Attorney will receive \$5,352.00 of the County’s allocation to fund one or more different projects/programs that are outlined in the Program Narrative attachment of the application. The City will serve as the applicant/fiscal agent.

2. The City, County, Pueblo County Sheriff’s Department and Pueblo County District Attorney shall each meet and comply with the assurances, certifications, general and special conditions set forth in the FY 2023 JAG Grant Funds Award which are incorporated herein as if set out herein in full and shall expend their respective funds solely for their approved projects.

Concerning Receipt and Disbursement of
Edward Byrne Memorial Justice Assistance Grant Funds for FY 2023

Page – 2

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

ATTEST:

PUEBLO COUNTY, COLORADO

By _____
Clerk to the Board

By _____
Chairman, Board of County Commissioners

ATTEST:

CITY OF PUEBLO, A Municipal Corporation

By _____
City Clerk

By _____
Mayor

ATTEST:

PUEBLO COUNTY SHERIFF

By _____

By _____
David Lucero, Sheriff

ATTEST:

CITY OF PUEBLO POLICE DEPARTMENT

By _____

By _____
Chris Noeller, Chief of Police

ATTEST:

10TH JUDICIAL DISTRICT ATTORNEY

By _____

By _____
Jeff Chostner, District Attorney

Attachment: Project Quotes

Project Quote: Desktop Computer Replacements (PD)

eQuote Name	Optiplex Plus - I7 basic
Saved By	lpinz@pueblo.us
eQuote Description	
Authorized Buyer	
Notes/Comments	
Account Name	City of Pueblo NASPO ValuePoint 2016-0000-0000-0000-0105/NASPO/WN05AGW
Contract Code	C000000013246
Contract Name	Dell NASPO Computer Equipment PA - State of CO
Customer Agreement #	2016-0000-0000-0105

Description	Quantity	Unit Price	Subtotal
OptiPlex Tower Plus - Build Your Own	40	\$1,365.30	\$54,612.00
Dell 23 Monitor - P2319H	25	\$148.79	\$3,719.75

Project Quote: Bullet proof shields (PD)

VANGUARD



V

- 20" x 30" - 14.4 lbs with viewport
- 20" x 30" - 14.9 lbs with viewport & light



VL (Large)

- 21" x 36" - 17.4 lbs with viewport
- 21" x 36" - 18.2 lbs with viewport & light



VR (Rectangle)

- 21" x 36" - 19.4 lbs with viewport
- 21" x 36" - 21.1 lbs with viewport & light

FEATURES

- Lightweight (20" x 30" with viewport) weighs only 14.4 lbs
- 3" x 9" Reinforced Viewport
- Weapon Mount System (WMS)
- Shooting platform for accurate handgun and long-gun deployment
- Solid handle system
- Thick high density foam pad
- Unique Hook and Loop forearm strap attachment system
- Reinforced Bolt System for added protection

THICKNESS = 0.4"

BALLISTIC PERFORMANCE

Special Threats Rounds Tested

- 7.62 x 39mm, 123-grain PS Ball/MSD
- 7.62 x 51mm, 149-grain M80
- 5.56 x 45mm, 55-grain M193 Ball

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Project Quote: Bike Patrol Equipment (e-Bikes) (SO)



E-Bike Sales & Rental

Quote #32

7 Jul 2023 10:20am | Main Outlet

Served by: Gregory Cobble

Register: Main Register

3	Cobra King Cobra (Grey)	@ \$2,399.00	\$7,197.00
3	Initial Build & Inspection (Includes Additional Free Inspection) Disc: 50% / \$50.00 off	@ \$50.00	\$150.00 \$300.00
3	Cobra Battery	@ \$689.99	\$2,069.97
Subtotal			\$9,416.97
Total Tax (Sales Tax, 9.03%)			\$186.92
TOTAL 9 items			\$9,603.89
TOTAL SAVINGS			\$150.00
TO PAY			\$9,603.89

NOTE: Tax has been removed from this price quote for the purpose of budgeting.

Project Quote: Ballistic Shields (SO)



1687 W Acomita Dr
Pueblo West, CO 81007

Estimate

Date	Estimate #
7/7/2023	WKE23-212
Rep	
John Schaerfl	
E-mail	
john@warriorkit.com	

Name / Address
Pueblo County Sheriff 909 Court St. Pueblo, CO 81003 Attn: Shelley Bryant

Project

Description	Qty	Rate	Total
SH3OASVSV1H2L0 VANGUARD 20X30 W/VIEWPORT, NO LIGHT MSRP: \$14,719.00 NASPO: \$8,242.64 Shipping Included Pricing below current (2023) NASPO Master Agreement Number: 164719	2	8,000.00	16,000.00
Thank you for allowing Warrior Kit the opportunity to provide you with protective equipment. We appreciate it very much!		Total	\$16,000.00

Phone #	Web Site
(505) 690-7082	www.warriorkit.com

Customer Signature: _____



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Greg Pedroza, Director Aviation

SUBJECT: AN ORDINANCE APPROVING AN AMENDMENT TO THE RENTAL AGREEMENT FOR THE USE OF AN OFFICE SPACE AND THE FIRE FIGHTING RELOAD BASE AT THE PUEBLO MEMORIAL AIRPORT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE PREVENTION AND CONTROL, AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME.

SUMMARY:

The State of Colorado Department of Public Safety, Division of Fire Prevention and Control, ("State") is desirous of extending their lease existing office space of approximately 1,400 square feet and the Fire Fighting Reload Base, also known as the tanker base reload pit, ("Base") at the Pueblo Memorial Airport and adding additional via an Amendment at 524 Cherokee Lane, Pueblo, CO 81001 (the "Building"), comprised of Eight Hundred and Ninety-Three (893) rentable square feet, as well as relating to the leasing portion of the building located at 31501 Bryan Circle, Suite 110, Pueblo, Colorado 81001, (the "Building"), comprised of three hundred and fourteen (314) rentable square feet, exclusive use parking apron for aircraft at 31851 Walt Bassett Ave, Pueblo, Colorado 81001, (the Apron), consisting of twenty-one thousand (21,000) sq. ft.

PREVIOUS COUNCIL ACTION:

City Council approved the Lease Agreement through Ordinance 10243 on August 8, 2022.

BACKGROUND:

The City owns 31501 Bryan Circle (Hangar), 524 Cherokee Lane ("Building") and 31851 Bryan Circle (Base/Apron). The hangar office space has been occupied by the Colorado Division of Fire Prevention and Control since August 1, 2023. The Base is

used to reload airplanes with fire retardant during the fire season. The Base became the property of the City on March 14, 2022.

FINANCIAL IMPLICATIONS:

Not applicable to this Ordinance.

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 additional space will not be added to the leasehold.

RECOMMENDATION:

The Department of Aviation recommends the approval of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10578

AN ORDINANCE APPROVING AN AMENDMENT TO THE RENTAL AGREEMENT FOR THE USE OF AN OFFICE SPACE AND THE FIRE FIGHTING RELOAD BASE AT THE PUEBLO MEMORIAL AIRPORT BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND THE STATE OF COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE PREVENTION AND CONTROL, AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME.

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

SECTION 1.

The Standard Lease Amendment [Improved Real Property] ("Lease"), by and between the City of Pueblo, a Colorado Municipal Corporation, and the State of Colorado Department of Public Safety, Division of Fire Prevention and Control, to lease office space at 31501 Bryan Circle, Suite 110, 524 Cherokee Lane, and parking apron at 31851 Bryan Circle at Pueblo Memorial Airport, a copy of which is attached hereto and made a part hereof by reference, after having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The Mayor is hereby authorized to execute the Lease in the name and on behalf of the City of Pueblo, where the Mayor may execute the Lease 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 any and all acts consistent with the intent of this Ordinance and the attached Lease to effectuate the terms and conditions described therein.

SECTION 4.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Greg Pedroza, Director Aviation

SUBJECT: AN ORDINANCE ACCEPTING A BARGAIN AND SALE DEED FROM PUEBLO HISTORICAL AIRCRAFT SOCIETY, A COLORADO NONPROFIT, FOR A HANGAR LOCATED AT 508 SKYWAY STREET AT THE PUEBLO MEMORIAL AIRPORT, AND AUTHORIZING THE MAYOR TO EXECUTE SAME.

SUMMARY:

Attached is an Ordinance approving and authorizing the Mayor to accept ownership of the annex hangar building (the "Annex") located at 508 Skyway Street, adjacent to the Museum premises. The Annex is to be used for the restoration of aircraft and other equipment by the Pueblo Historical Aircraft Society ("PHAS"), a Colorado nonprofit corporation through an Amendment of the Management Agreement for the Pueblo Weisbrod Aircraft Museum.

PREVIOUS COUNCIL ACTION:

In 2017, Council approved an Agreement to Manage the Pueblo Weisbrod Aircraft Museum.

BACKGROUND:

In 2021, Pueblo Historical Aircraft Society proposed building an annex building at the Pueblo Memorial Airport for the express purpose of restoring aircraft for display at the museum. The Annex construction would be entirely funded by PHAS.

On July 14, 2021, the Pueblo Planning and Zoning Commission reviewed and approved the building. The building was constructed and completed.

FINANCIAL IMPLICATIONS:

Approval of this Ordinance would clarify that the Annex belongs to the City, and that it may be used by The Pueblo Historical Aircraft Society. Total invoiced cost of the

project was \$1,175,976.45, paid by the Society.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

If this Ordinance is not approved, the City will obtain ownership of the Annex hangar through legal action and by operation of law.

RECOMMENDATION:

The Department of Aviation recommends approval of this Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10579

AN ORDINANCE ACCEPTING A BARGAIN AND SALE DEED FROM PUEBLO HISTORICAL AIRCRAFT SOCIETY, A COLORADO NONPROFIT, FOR A HANGAR LOCATED AT 508 SKYWAY STREET AT THE PUEBLO MEMORIAL AIRPORT, AND AUTHORIZING THE MAYOR TO EXECUTE SAME.

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

SECTION 1.

The Pueblo Historical Aircraft Society built a hangar at 508 Skyway Street and would like to convey deeded ownership of the building to the City of Pueblo, a Colorado Municipal Corporation, and the acceptance of the structure is hereby approved.

SECTION 2.

The Mayor is authorized to execute and accept ownership in the name of the City and the City Clerk is authorized to affix the seal of the City thereto and to attest same.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with this Ordinance and the attached Amendment which are necessary or desirable to conduct the transactions described therein.

SECTION 4.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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: October 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
Marisa Pacheco, Director Human Resources
Robert Jagger, Deputy City Attorney

SUBJECT: AN ORDINANCE APPROVING AN AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE PUEBLO ASSOCIATION OF GOVERNMENT EMPLOYEES RELATING TO SALARY CLASSIFICATION AND PAY RANGE ADJUSTMENTS AND INCREASES FOR EIGHT SPECIFIED AND ENUMERATED CLASSIFICATIONS

SUMMARY:

Attached is a proposed Ordinance which would approve an amendment to the City's Collective Bargaining Agreement with the Pueblo Association of Government Employees. The amendment provides for salary classification and pay range adjustments and increases for eight classifications beginning January 1, 2024.

PREVIOUS COUNCIL ACTION:

Pursuant to Ordinance No.10212 approved June 27, 2022, the City entered into a collective bargain agreement ("Agreement") with the Union for calendar year 2023. The Agreement granted the City the option to extend the Agreement for two successive one-year terms.

Pursuant to Ordinance No. 10416 approved March 13, 2023, the parties extended the Agreement, and as extended, the Agreement provided for a wage increase of 5.3% according to the calculation within the Agreement, which reflects the Consumer Price Index for wage earners in the Denver area regionally adjusted by the difference in the cost-of-living between Pueblo and the Denver area.

BACKGROUND:

The City and the Union have been working cooperatively to make positive amendments to the Agreement based on some unintended internal equity issues caused by specific

classification salary adjustments accomplished in 2023 when the current Agreement was first implemented.

The proposed Amendment reflects some of these needed adjustments. The Amendment provides for following salary classification and pay range adjustments and increases ("2024 Class Adjustments") beginning January 1, 2024:

Amendment of the following salary schedules:

	<i>Entrance</i>	<i>Step 2</i>	<i>Step 3</i>	<i>Step 4</i>	<i>Step 5</i>	<i>Step 6</i>	<i>Step 7</i>	<i>Step 8</i>	<i>Step 9</i>
Accounting Technician III	\$ 3,900.17	\$ 3,996.38	\$ 4,187.12	\$ 4,381.30	\$ 4,474.15	\$ 4,768.43	\$ 4,878.88	\$ 5,008.08	\$ 5,137.25
Accounting Technician IV	\$ 4,153.22	\$ 4,255.08	\$ 4,463.83	\$ 4,670.89	\$ 4,776.04	\$ 4,999.59	\$ 5,066.16	\$ 5,224.35	\$ 5,293.78
Probation Officer	\$ 5,367.18	\$ 5,506.59	\$ 5,795.30	\$ 6,062.71	\$ 6,203.76	\$ 6,271.04	\$ 6,359.63	\$ 6,446.51	\$ 6,531.87
Parks Area Crew Leader	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80
Area Crew Leader	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80
Stormwater Crew Leader	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80
Auto Mechanic	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80
Gardener	\$ 3,875.24	\$ 3,973.37	\$ 4,167.08	\$ 4,362.96	\$ 4,505.71	\$ 4,572.38	\$ 4,634.82	\$ 4,697.26	\$ 4,758.20

The 2024 Class Adjustments include the 5.3% wage increase for the 2024 extended term, and no additional wage increases for calendar year 2024 are provided under Section 15.1 for the above referenced classes other than as set forth in the 2024 Class Adjustments.

FINANCIAL IMPLICATIONS:

The total estimated cost to amend the salary schedules of the classifications noted above within the agreement for FY 2024 is approximately \$28,742.91.

BOARD/COMMISSION RECOMMENDATION:

None.

STAKEHOLDER PROCESS:

Pueblo Association of Government Employees has agreed to and is supportive of the amendments to the Agreement.

ALTERNATIVES:

Retain the current Agreement and all terms as approved via Ordinance No. 10416 on March 13, 2023.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. Amendment to Collective Bargaining Agreement

ORDINANCE NO. 10580

AN ORDINANCE APPROVING AN AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF PUEBLO AND THE PUEBLO ASSOCIATION OF GOVERNMENT EMPLOYEES RELATING TO SALARY CLASSIFICATION AND PAY RANGE ADJUSTMENTS AND INCREASES FOR EIGHT SPECIFIED AND ENUMERATED CLASSIFICATIONS

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

SECTION 1.

The Amendment to the Collective Bargaining Agreement between the City of Pueblo and the Pueblo Association of Government Employees, a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved and enacted as an Ordinance

SECTION 2.

The Mayor is authorized to execute and deliver the Amendment in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same

SECTION 3.

The officers of the City are directed and 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 on the date of final action by the Mayor and City Council

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

AMENDMENT TO COLLECTIVE BARGAINING AGREEMENT

This Amendment to Collective Bargaining Agreement ("Amendment") is entered into this ____ day of _____, 2023, by and between the Pueblo Association of Government Employees ("Union") and Pueblo, a municipal corporation ("City").

WHEREAS, City and Union are parties to a collective bargaining agreement effective January 1, 2023 (herein "Labor Agreement");

WHEREAS, the parties mutually agree to the amendment of the Labor Agreement according to the terms and conditions herein provided.

NOW THEREFOR, in consideration of the foregoing and mutual covenants contained herein, the parties agree as follows:

1. Section 15.1 of the Labor Agreement is amended to provide that, effective January 1, 2024, employees covered by the Agreement and occupying the classifications listed below shall be paid in accordance with the following monthly salary schedule ("2024 Class Adjustments"):

	<i>Entrance</i>	<i>Step 2</i>	<i>Step 3</i>	<i>Step 4</i>	<i>Step 5</i>	<i>Step 6</i>	<i>Step 7</i>	<i>Step 8</i>	<i>Step 9</i>	<i>Step 10</i>
Accounting Technician III	\$ 3,900.17	\$ 3,996.38	\$ 4,187.12	\$ 4,381.30	\$ 4,474.15	\$ 4,768.43	\$ 4,878.88	\$ 5,008.08	\$ 5,137.25	\$ 5,489.56
Accounting Technician IV	\$ 4,153.22	\$ 4,255.08	\$ 4,463.83	\$ 4,670.89	\$ 4,776.04	\$ 4,999.59	\$ 5,066.16	\$ 5,224.35	\$ 5,293.78	\$ 5,683.89
Probation Officer	\$ 5,367.18	\$ 5,506.59	\$ 5,795.30	\$ 6,062.71	\$ 6,203.76	\$ 6,271.04	\$ 6,359.63	\$ 6,446.51	\$ 6,531.87	\$ 6,748.77
Parks Area Crew Leader	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80	\$ 6,348.14
Area Crew Leader	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80	\$ 6,348.14
Stormwater Crew Leader	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80	\$ 6,348.14
Auto Mechanic	\$ 4,852.17	\$ 4,975.20	\$ 5,227.13	\$ 5,480.51	\$ 5,605.01	\$ 5,749.71	\$ 5,831.58	\$ 5,910.43	\$ 5,993.80	\$ 6,348.14
Gardener	\$ 3,875.24	\$ 3,973.37	\$ 4,167.08	\$ 4,362.96	\$ 4,505.71	\$ 4,572.38	\$ 4,634.82	\$ 4,697.26	\$ 4,758.20	\$ 5,281.80

The 2024 Class Adjustments include the wage increase for the 2024 extended term, and no additional wage increases for calendar year 2024 are provided under Section 15.1 for the above referenced classes other than as set forth in the 2024 Class Adjustments.

2. This Amendment represents the entire agreement between the City and Union with respect to its subject matter and supersedes all prior discussions or understandings that the parties may have with respect to same.

3. The person signing this Amendment on behalf of Union represent and warrant that they have the requisite power and authority to enter into, execute, and deliver this Amendment and that this Amendment is a valid and legally binding obligation of Union enforceable against Union in accordance with its terms.

Executed in Pueblo, Colorado as of the date first above written.

CITY OF PUEBLO

By: _____
Mayor

ATTEST:

City Clerk

PUEBLO ASSOCIATION OF
GOVERNMENTAL EMPLOYEES

By:  _____

 STENARD
ATTEST.  Steward.

9-25-2023



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 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: AN ORDINANCE APPROVING AN AGREEMENT FOR RESEARCH AND ARTS STUDY SERVICES BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND ROXANNE PIGNANELLI AND AUTHORIZING THE MAYOR TO EXECUTE SAME

SUMMARY:

This ordinance approves a Professional Services agreement in the amount of \$10,000.00 for the Research and Arts Study of the Pueblo Arts Community for the purpose of collecting and analyzing data for consideration of establishing a Municipal Arts & Cultural Commission.

PREVIOUS COUNCIL ACTION:

No previous Council Action is applicable to this Ordinance.

BACKGROUND:

The research and study of the Arts organizations in Pueblo, including the collection and analysis of data, will provide a platform and road map for consideration of forming a Municipal Arts and Culture Commission to serve the cultural and artistic growth of Pueblo and Pueblo artists. The study will research and report data collection from artists and organizations currently contributing and providing culture and economic development to the community and region at large. The scope will include data from fine artists, Actors, Theatres, Dancers, Musicians, Symphonies, Ballet Galleries, Museums, Film Production, Commercial Artists, Music Halls, and Bands. The report will be completed by November 30, 2023.

FINANCIAL IMPLICATIONS:

The Professional Services contract is in the amount of \$10,000 and funded through the Mayor's Contingency Account.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Decline this Ordinance will not approve the Study and Professional Services contract.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 09-11-23 Pignanelli Consulting.Services.contract.Arts StudyServices.8.24.2023

ORDINANCE NO.

AN ORDINANCE APPROVING AN AGREEMENT FOR RESEARCH AND ARTS STUDY SERVICES BETWEEN THE CITY OF PUEBLO, A COLORADO MUNICIPAL CORPORATION, AND ROXANNE PIGNANELLI AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

SECTION 1.

The Agreement for Research and Arts Study Services ("Agreement") between the City of Pueblo, a Colorado Municipal Corporation, and Roxanne Pignanelli, 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 for this Agreement shall be paid from the Mayor's Contingency Account.

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 therein.

SECTION 5.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.

President of City Council

Action by the Mayor:

☐ Approved on _____.

☐ Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Ordinance re-adopted on a vote of _____, on _____
- ☐ Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

AGREEMENT FOR RESEARCH AND ARTS STUDY SERVICES

THIS AGREEMENT entered into as of _____, 2023 between Pueblo, a municipal corporation, 1 City Hall Place, Pueblo, Colorado, 81003 (the "City") and Roxanne Pignanelli, 211 W 2nd Street #303, Pueblo, Colorado 81003 (the "Contractor").

WHEREAS, City of Pueblo requires the services of a Contractor to provide research and arts study services with respect to the establishment of an arts and culture commission for City ("Services"); and

WHEREAS, the Contractor represents herself as capable and qualified to perform those services required by the City of Pueblo which are set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

I. OBLIGATIONS OF CONTRACTOR

The Contractor agrees to perform the Services for City of Pueblo, including but not limited to, the following:

1. **Purpose of Platform**

The outcome platform is intended to provide the necessary data to move to the next step and either create a solid solution to a need or solution for advancement. We believe the outcome of this study will provide the implicit platform for a road map and narrative to solicit consideration and funding to form an "Arts and Culture Commission" to serve the cultural and artistic growth of Pueblo and Pueblo artists. The study will research the existence of all "artists and organizations" currently contributing and providing culture and economic development to the community and region at large. These entities will include but not be limited to:

<i>Fine Artists</i>	<i>Actors</i>	<i>Theatres</i>	<i>Dancers</i>
<i>Technicians</i>	<i>Musicians</i>	<i>Symphonies</i>	<i>Academies</i>
<i>Culinary Arts</i>	<i>Ballet</i>	<i>Galleries</i>	<i>Museums</i>
<i>Film Production</i>	<i>Commercial Artists</i>	<i>Music Halls</i>	

2. Process for Survey

1. *Historical data research on all arts in the region, past and present.*
2. *In-depth surveys to artists, organizations, audiences, and community..*
3. *Focus group forums with artists in specific disciplines.*
4. *In person interviews with individual artists and organization management.*
5. *Study of audience attendance and revenue outcome.*
6. *Analysis of economic sustainability and audience retention.*

3. Final Data

Final data will provide the specific details of the cultural overlay in the region, determining the foundation for the creation of the "arts and cultural commission," and clarifying the needs both strategically and economically on potential for growth and endorsement. Categorically, the data will illustrate strengths and weaknesses to solicit partnerships and funding support that inevitably is required to be funded as well as the study of audience awareness, development, and sustainability both locally and on a tourism level. This comprehensive and concise data, provided to the mayor for his determination of the right individuals to comprise the "commission" will establish the needed credibility and foundation to move forward and make our city a thriving and creative community. The specific data will include but not limited to:

Status: 501c, LLC, Sole Proprietor
Address, EIN,
Members
Staff: Salaried, Volunteers
Officers
Board
Producing schedule
Project calendar
Productions and festivals
Professional Status
Union Affiliations
Registry
Venue: Owned, Rent, Shared
Funding Sources (years of funding)

Operating Budget (3 - 5 years)
Earned Income Opportunities
Strategic Plan for growth
Tourism potential
Grants, Government, Private,
Educational
Donors
Audience demographics and reach
Audience Development
Marketing
Advertising
Association
Collaborations artistic and commercial

4. Outcome and Recommendations

The established data, under analysis, will render recommendations for the "arts and culture commission" to establish the needed to reach out to the study group and how to begin the process of providing training, funding opportunities, and economic potential as they are established within the levels of professionalism and producing in the community and region. The recommendations will include but not be limited to:

*Structure of the
commission Structure of
board members
Community Outreach
Collaborations
Tourism Opportunities
Job description for executive
director Staffing requirements
r, 2- & 3-year plan for budgeting
Feasibility of funding on the local, state, and national level*

II. FEES

City will pay to Contractor as full compensation for all services required to be performed by Contractor under this Agreement an amount not to exceed \$ 10,000. Payments shall be provided as follows: (1) \$5,000 upon execution of this Agreement and (2) \$5,000 upon satisfactory performance of this Agreement including delivers of data and recommendation on or before November 30, 2023.

III. TERMINATION

- A. The City of Pueblo may terminate this Agreement, at any time and for any reason, by giving thirty (30) days prior written notice to the Contractor. Unless sooner terminated as provided herein, this Agreement shall terminate at the end of the contract period set forth in paragraph III.A. above.
- B. This Agreement shall be subject to the availability of appropriated funds within the annual budget of the City. If the City does not appropriate funds during the term hereof sufficient to pay the amounts due hereunder and the City has exhausted all funds legally available for payments due under this Agreement, the City may, by giving advance written notice, terminate this Agreement without further liability to the Contractor. In any event, the City of Pueblo shall track expenditures for

professional services under the City's annual budget and notify the Contractor as soon as an event of insufficient appropriation is discovered. Upon receiving such notice, the Contractor shall be entitled to cease performance hereunder at such time as he is directed to do so by the City of Pueblo Attorney, and the Contractor shall be fully compensated for all work performed hereunder prior to receiving that direction.

IV. STATUS OF CONTRACTOR

The parties understand and agree that Contractor shall, at all times during the term of this Agreement, be deemed an independent contractor and not an employee of the City of Pueblo, and shall be responsible for, and obligated to pay, all withholding taxes, social security, unemployment, worker's compensation, and/or other taxes and shall indemnify and hold the City harmless from and against any and all claims for the same period. Contractor or its employees are not entitled to worker's compensation benefits from City of Pueblo.

V. INDEMNIFICATION

Contractor shall be solely responsible for it and its employees' and officers' acts and conduct and shall indemnify, defend and same harmless City and its officers, agents, and employees from and against any and all claims and liabilities caused by or arising, directly or indirectly, out of the negligent acts or omissions of Contractor, its officers, agents, or employees.

VI. WORK PRODUCT

Any and all work products which are the result of this Agreement will be the property of City of Pueblo for its use.

VII. CONFIDENTIALITY

Contractor shall maintain the confidentiality of City of Pueblo proprietary information at all times in accordance with applicable law.

VIII. NON-ASSIGNMENT

This Agreement is personal in nature and none of the rights or duties accruing under the terms of this Agreement may be delegated or assigned by Contractor without the prior written consent of City of Pueblo.

IX. SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect for any reason, the validity, legality, or enforceability of the remaining provisions of this Agreement shall not be impaired.

X. OTHER

- A. This Agreement constitutes the entire agreement between the parties and supersedes and replaces all prior and contemporaneous agreements, representations, and understandings between the parties. No variation or modification of this Agreement, and no waiver of any of the Agreement's provisions or conditions, shall be binding unless made in writing and signed by the authorized representatives of Contractor and City of Pueblo. This Agreement shall be governed by, and constructed according to, the laws of the State of Colorado.
- B. All notices to be given under this Agreement shall be made in writing and shall be sufficient if delivered personally or mailed by First Class United States mail.

City of Pueblo, Colorado Pueblo City Attorney's Office
1 City Hall Place
Pueblo, CO 81003

and

Roxanne Pignanelli, 211 W 2nd Street #303, Pueblo, Colorado 81003

- C. The person signing this Agreement on behalf of a Contractor 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.

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

ATTEST:

CITY OF PUEBLO, COLORADO

By: _____
City Clerk

By: _____
Nicholas A. Gradisar, Mayor

CONTRACTOR

By: _____
Name: Roxanne Pignanelli



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: October 23, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Laura Solano, Chief of Staff

SUBJECT: AN ORDINANCE APPROVING A SUBRECIPIENT AGREEMENT AUTHORIZING PAYMENT IN AN AMOUNT OF UP TO \$400,000 OF COMMUNITY DEVELOPMENT BLOCK GRANT – COVID-19 FUNDS TO THE PUEBLO RESCUE MISSION THROUGH A SUBRECIPIENT AGREEMENT TO PURCHASE REAL PROPERTY LOCATED AT 710 WEST 4TH STREET, PUEBLO, CO AND MAKE CERTAIN IMPROVEMENTS TO THE PROPERTY TO PROVIDE A WARMING SHELTER FOR THE PUEBLO COMMUNITY DURING WEATHER EMERGENCIES DECLARED BY THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

SUMMARY:

This ordinance authorizes the transfer of funds in the amount of up to \$400,000 from the City's available Community Development Block Grant – COVID-19 Funds to the Pueblo Rescue Mission through a subrecipient agreement to purchase real property and make necessary improvements required to operate the real property as a warming shelter for the Pueblo community during weather emergencies declared by the City. This payment is authorized by under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93- 383, and 24 C.F.R. § 570.208. .

PREVIOUS COUNCIL ACTION:

By Ordinance No. 9951, approved June 14, 2021, the City Council approved and adopted the City of Pueblo FY2020 Action Plan for listing projects and programs for funding from CDBG, CDBG-CV, and HOME federal funds. On October 10, 2023, the City Council approved and adopted an ordinance to amend the FY2020 Action Plan to include the expenditure of CDBG-CV funds for the purchase of property to facilitate the operation of a warming shelter within the City.

BACKGROUND:

March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) (CARES Act), which makes available \$5 billion in CDBG coronavirus response (CDBG-CV) funds to prevent, prepare for, and respond to coronavirus. City has applied for and received Community Development Block Grant CARES Act (CDBG-CV) funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93- 383.

The Pueblo Rescue Mission supports, empowers, and provides high-quality resources to the Pueblo community in a safe and secure environment. It provides services that increase access to stable housing, food, physical and mental health care, addiction support services, and wellness resources intended for improved quality of life for the Pueblo Community; and

The effects of COVID-19 have negatively impacted local employment, increased the number of evictions, and resulted in an increased number of homeless individuals and families in our community. Acquiring additional shelter space within the City will allow the City of Pueblo to prepare for future emergencies, expand its shelter capacity, and allow the city to isolate the spread of illness within the shelter population and increase the ability to respond to future emergencies should there be a need to administer aid.

FINANCIAL IMPLICATIONS:

Funding for this project will be paid out of available CDBG-CV Funds, Project CDCV-070 in accordance with the City's amended FY2020 Action Plan.

BOARD/COMMISSION RECOMMENDATION:

The Citizens Advisory Committee heard a presentation on the project during the July 18, 2023 CDBG Presentations Hearing. The CAC reviewed and ranked the project during this CDBG funding cycle.

STAKEHOLDER PROCESS:

None

ALTERNATIVES:

City Council could not authorize payment for the purchase of the real property and improvements necessary to operate a warming shelter within the City of Pueblo.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

1. 09-25-23 Pueblo Rescue Mission CDBG COVID 19 Funds Subrecipient Agreement

ORDINANCE NO. 10581

AN ORDINANCE APPROVING A SUBRECIPIENT AGREEMENT AUTHORIZING PAYMENT IN AN AMOUNT OF UP TO \$400,000 OF COMMUNITY DEVELOPMENT BLOCK GRANT – COVID-19 FUNDS TO THE PUEBLO RESCUE MISSION THROUGH A SUBRECIPIENT AGREEMENT TO PURCHASE REAL PROPERTY LOCATED AT 710 WEST 4TH STREET, PUEBLO, CO AND MAKE CERTAIN IMPROVEMENTS TO THE PROPERTY TO PROVIDE A WARMING SHELTER FOR THE PUEBLO COMMUNITY DURING WEATHER EMERGENCIES DECLARED BY THE CITY AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

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

SECTION 1.

The Subrecipient Agreement (“Agreement”) between Pueblo, a municipal corporation and Pueblo Rescue Mission, attached hereto, and the Award of CDBG-CV funds is hereby approved.

SECTION 2.

After the Agreement is approved as to form by the Department of Law, 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 for this Agreement shall be paid from available CDBG-CV Funds, Project CDCV-070.

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 therein.

SECTION 5.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

**COMMUNITY DEVELOPMENT BLOCK DEVELOPMENT GRANT PROGRAM – CV
SUBRECIPIENT AGREEMENT**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM SUB RECIPIENT AGREEMENT (“Agreement”) is entered by and between the City of Pueblo, a municipal corporation and home rule city formed under the laws of the State of Colorado (“City”) and Pueblo Rescue Mission, a Colorado non-profit corporation (“Subrecipient”) (individually “Party”, collectively “Parties”).

WITNESSETH:

WHEREAS, on March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) (CARES Act), which makes available \$5 billion in CDBG coronavirus response (CDBG-CV) funds to prevent, prepare for, and respond to coronavirus; and

WHEREAS, City has applied for and received Community Development Block Grant CARES Act (CDBG-CV) funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93- 383; and

WHEREAS, Subrecipient mission is to support, empower, and provide high-quality resources to the Pueblo community in a safe and secure environment. Subrecipient provides services that increase access to stable housing, food, physical and mental health care, addiction support services, and wellness resources intended for improved quality of life for the Pueblo Community; and

WHEREAS, the effects of COVID have negatively impacted local employment, increased the number of evictions, and resulted in an increased number of homeless individuals and families in our community. Providing emergency shelter during extreme weather, administrative offices to assist the Pueblo Rescue Mission to deliver shelter services, provide navigation programming to assist homeless individuals with urgent needs and obtain more stable housing and legal services.

WHEREAS, acquiring additional shelter space will allow the City of Pueblo to prepare for future emergencies. An additional standalone facility and expanded shelter capacity, allow the city to isolate the spread of illness within the shelter population and increase the ability to respond to future emergencies should there be a need to administer aid.

WHEREAS, Subrecipient has submitted an application to City requesting some \$400,000 in CDBG-CV funds to purchase the real property located at 710 West 4th Street, Pueblo, CO, 81003, (“Subject Property”) and make certain improvements to the property, to provide a warming shelter for the Pueblo community during weather emergencies declared by City’s Mayor, administrative office space, navigation programming, and legal services to the unhoused population of the City. Subrecipient’s grant application to the City is incorporated herein by reference; and

WHEREAS, as a condition of receipt of CDBG-CV funds, Subrecipient has agreed to use available beds in its existing shelter as a warming shelter during any weather emergency declared by City’s Mayor before the purchase and improvements being made on the Subject Property; and

WHEREAS, the City, in exchange for a Deed of Trust and continuous operation as a warming shelter, agrees to loan Subrecipient CDBG-CV funds for purchasing, making certain improvements, and operating the Subject property as a warming shelter under this Agreement.

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities of Each Party

The Subrecipient shall purchase, make certain improvements, and operate the Subject Property as a warming shelter during weather emergencies declared by the City's Mayor for individuals within Pueblo, Colorado. City shall loan Subrecipient the funding, as described herein, that shall be solely used by Subrecipient to fund the purchase, improvement, and operation of the Subject Property as a warming shelter during weather emergencies declared by the City's Mayor, as administrative office space, navigation programming space, and space for other legal services, as more particularly described in the application submitted by Subrecipient to City, and incorporated herein by reference, and Activity Budget in Section III of this Agreement. Subrecipient shall execute a Promissory Note and record a Deed of Trust securing City's interest in the Subject Property in the attached form and incorporated herein as **Exhibit C**.

B. National Objectives

All activities funded by the CDBG-CV program must meet a National Objective as defined in 24 C.F.R. § 570.208 and allow the community to prepare for, prevent, and respond to an urgent need. The Subrecipient certifies the activity carried out under this Agreement will exclusively benefit low and moderate-income households, which qualify as meeting a CDBG National Objective.

C. Levels of Accomplishment – Goals and Performance Measures Goals:

Provide warming shelter and other services safely to the maximum allowable number of unhoused people within the City of Pueblo.

D. Performance Measures:

Documentation of the number of unhoused people within the City of Pueblo assisted with CDBG-CV funds during the program year.

E. Performance Reporting

The Subrecipient will submit quarterly performance reports using the approved form(s) required by the City and included in **Exhibit E**. The subrecipient's performance report shall be submitted on the 15th of the month immediately following the end of the quarter. Failure to submit complete performance reports of activities by the due date will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period after being notified by the City, contract suspension, termination, or foreclosure proceedings will be initiated by City.

F. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the City will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period after being notified by the City, contract suspension, termination, or foreclosure proceedings will be initiated by City.

II. TIME OF PERFORMANCE

Services of the Subrecipient may begin as of October 12, 2023, and will end upon the expiration of the statutory requirements for CDBG-CV funds or upon the release of City's Deed of Trust, whichever occurs first. The term of this Agreement and the provisions herein may be extended, depending upon the Pandemic impact and conditions.

III. ACTIVITY BUDGET

The City reserves the right to require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to the budget must be approved in writing by both the City and the Subrecipient without the need for a formal amendment to this Agreement.

Expenditure Category	CDBG-CV Funds	Other Funds
Building Acquisition Costs	\$365,000	\$0
Improvements Costs	\$35,000	\$0
Total Budget	\$400,000	\$ 0

IV. LOAN PAYMENT

The City will loan to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments and the terms of this Agreement. Subrecipient agrees to use loan funds made available under this Agreement only for eligible expenses actually incurred by the Subrecipient and not to exceed actual cash requirements. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the Subrecipient.

It is expressly agreed and understood that the total amount to be loaned by the City under this Agreement shall not exceed four hundred thousand dollars (\$400,000) ("Loan"). Advancement of Loan proceeds may be contingent upon certification of the Sub recipient's financial management system per the standards specified in 2 CFR parts 200.302 and 200.303.

Loan funds shall be made available by wire transfer or by certified funds to the title company

closing the real estate transaction. Rehabilitation funds shall be provided to the subrecipient on a cost reimbursement basis. Reimbursement documentation submitted shall be in accordance with **Exhibit F**.

The Loan shall accrue at a zero percent (0%) interest rate, and so long as Subrecipient complies with the terms and conditions stated herein, no payments shall be due upon the loan. If Subrecipient does not comply with the terms and conditions stated herein, and subject to Section H hereunder, City may accelerate repayment of the Loan and foreclose on its Deed of Trust.

V. REPAYMENT REQUIREMENTS RELATED TO DUPLICATED BENEFITS:

In accordance with the Stafford Act, CDBG-CV funds may not be used for costs where other assistance was already provided for the same purpose if no unmet need remains.

Duplication of benefits (DOB) occurs when a beneficiary receives assistance from multiple sources, such as any Federal agency, private insurance companies, non-profits, city, state, etc., for a cumulative amount exceeding the total need for a specific recovery purpose. The duplication amount is the excess assistance provided above the need.

Subrecipient is responsible for ensuring that any payment request it sends the City will not result in a DOB. If the City discovers that a DOB has occurred, the Subrecipient will resolve the DOB by reimbursing the City in the amount of the DOB or in another manner agreeable to the parties within thirty (30) days of receiving written notice from the City that such DOB has occurred. It is expressly agreed and understood that the total amount to be repaid by the Subrecipient under this Agreement shall not exceed the total amount received from Community Development Block Grant funds. Subrecipient agrees to execute and deliver the form attached hereto as **Exhibit C**, certifying there is no duplication of benefits under this Agreement.

Re-payments shall be submitted to the City using a format and timetable agreed to by the Subrecipient and the City, as federal regulations allow.

VI. NOTICES

Notices this Agreement requires shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

City
Mayor's Office
City of Pueblo
1 City Hall Place
Pueblo, Co 81003

Subrecipient
Melanie Rapier
Pueblo Rescue Mission
P.O. Box 9167
Pueblo, CO 81008

CC: City Attorney's Office
1 City Hall Place

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 2 C.F.R. Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 C.F.R. § 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independence of Subrecipient

Nothing contained in this Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between the Parties. The Subrecipient shall always remain an "independent contractor" concerning the services under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. No Monetary Damages Against City

In consideration for City entering into the Agreement, Subrecipient waives and discharges City, its officers, agents, and employees from all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

D. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments arising from the Subrecipient's performance or nonperformance of the services or subject matter called for under this Agreement.

E. Non-Discrimination

In connection with the performance of work under the Agreement, Subrecipient may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, protective hairstyle, or disability. Subrecipient agrees to comply with all applicable federal and state anti-discrimination laws. The Subrecipient shall insert the foregoing provision in all subcontracts.

F. No Employment of a Worker Without Authorization to Perform Work Under the Agreement

Subrecipient certifies that:

At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this agreement in the future.

It will participate in the E-Verify Program, as defined in § 8-17.5-101 (3.7), C.R.S., and confirm the employment eligibility of all newly hired employees to perform work under this Agreement.

It will not enter into a contract with a consultant or subcontractor that fails to certify to Subrecipient that it shall not knowingly employ or contract with a worker without authorization to perform work under the Agreement.

It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with all federal requirements related to the use of the E-Verify Program, including, by way of example, all program requirements related to employee notification and preservation of employee rights.

If it obtains actual knowledge that a consultant or subcontractor performing work under the Agreement knowingly employs or contracts with a worker without authorization, it will notify such consultant or subcontractor and the City within three (3) days. The Concessionaire shall also terminate such consultant or subcontractor if, within three (3) days after such notice, the consultant or subcontractor does not stop employing or contracting with the worker without authorization, unless, during the three days, the consultant or subcontractor provides information to establish that the consultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

It will comply with a reasonable request made during an investigation by the Colorado Department of Labor and Employment under the authority of § 8-17.5102(5), C.R.S.

G. Availability of Funds

Financial obligations of the City payable after the City's current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

H. Pera Liability

Subrecipient shall reimburse City for the full amount of any employer contribution required to be paid by City to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing services for City under this Agreement. 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.

I. Reservation of Rights

Failure to insist upon strict enforcement of any terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of any right or

power granted through this Agreement at any time be construed as a total and permanent waiver of such right or power.

J. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

K. Insurance & Bonding

The Subrecipient shall carry Commercial General Liability (CGL) insurance, covering claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work under this agreement by the Subrecipient, and Subrecipient's agents, representatives, employees or subcontractors, with limits of insurance of not less than \$500,000 for each occurrence and \$1,000,000 annual aggregate. The CGL shall apply as Primary and non-contributory insurance before any other insurance or self-insurance, including any deductible maintained by or provided.

The Subrecipient shall comply with the bonding and insurance requirements of 2 C.F.R. Part 200, Bonding and Insurance.

L. Recognition of HUD, City

The Subrecipient shall ensure recognition of the role of the CDBG-CV in providing services through this Agreement whenever possible. All activities, facilities and items utilized under this Agreement shall be prominently labelled as to funding sources. In addition, the Subrecipient will reference the support provided herein in all printed materials, project descriptions and other activities undertaken with funds provided under this Agreement, Subrecipient shall provide recognition that funds have been provided by the U.S. Department of Housing and Urban Development and the City of Pueblo. Recognition shall be accomplished by prominent disclosure of the role of HUD and the City in all such printed materials and project signage, if any.

M. Amendments

City or Subrecipient may request amendments to this Agreement in writing. For this agreement, an amendment is defined as a change to the budget, scope or term which does not increase or decrease the original by ten percent (10%) or more. Amendment requests must be signed by a duly authorized representative of the Subrecipient, and approved by the City. Such amendments shall not invalidate this Agreement nor relieve or release the City or Subrecipient from its obligations under this Agreement.

At its discretion, the City may amend this Agreement to conform with Federal, state, or local governmental guidelines, policies, and available funding amounts, or other reasons. If such amendments result in a change in the funding, the scope of services, or the schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both City and Subrecipient.

N. Suspension or Termination

Per 2 CFR 200, Subpart D, the City may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to), the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the City reports that are incorrect or incomplete in any material respect.

Per 2 CFR 200, Subpart D, this Agreement may also be terminated for convenience by either the City or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

O. System For Award Management (SAM.GOV) Registration

Subrecipients must be registered on SAM.gov to be considered for award and must submit proof of registration and good standing prior to executing this agreement.

P. Prevailing Wage Requirements/Davis-Bacon Act

HUD-4010 Form plus Public Works Article 2A document.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 2 CFR 200, Subpart E and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with CFR 200, Subpart E as applicable.

B. Documentation and Record Keeping

1. Records to be maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 C.F.R. § 570.506, which are pertinent to the activities funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 C.F.R. § 570.502;
- g. Records documenting that the Subrecipient has an active registration in SAM.gov, and is not disbarred, suspended or ineligible from participation in federally funded activities as required at 2 C.F.R. Part 25, Appendix A and 2 C.F.R. § 200.213; and
- h. Other records necessary to document compliance with Subpart K of 24 C.F.R. Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for ten (10) years. The retention period begins on the date of the submission of the City's annual performance and evaluation report to HUD, in which the activities assisted under the Agreement are reported on for the final time. On May 28, 2024, City shall report on all activities completed prior to February 29, 2024. Projects completed after February 29, 2024, will be reported on May 28, 2025. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the seven years, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, demographics, or other basis for determining eligibility, and service description provided. Such information shall be made available to City monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities for services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Sub recipient's obligation to the City shall not end until all close-out requirements are completed, using the required Close Out form provided by the City. Activities during this close-out period shall include, but are not limited to, making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances not used to accomplish the work set forth in the Scope of Services, and accounts receivable not to be used to accomplish the work set forth in the Scope of Services to the City), application for release of federal requirements, and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG-CV funds.

6. Program Income; Reversion of Assets.

- a. City authorizes Subrecipient to retain any portion of program income on the condition that it shall only be used to accomplish the work set forth in the Scope of Services. and the amount of grant funds payable by City to Subrecipient shall be adjusted.
- b. Any real property under Subrecipient's control that was acquired or improved in whole or in part with funds provided pursuant to this Agreement in excess of U.S. \$25,000 shall either: (i) be used to provide shelter and shelter services for the benefit of homeless individuals until expiration or termination of this Agreement, or (ii) not be used in accordance with subparagraph (c)(i), in which event Subrecipient shall pay to City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of funds not provided under this Agreement for the acquisition of, or improvement to the property. The use restriction and repayment obligation set forth in this subparagraph shall survive termination or expiration of this Agreement and shall be fully enforceable and subject to collection by City in accordance with applicable laws. If requested by City, Subrecipient shall execute a deed of trust or mortgage instrument which shall be and constitute a lien upon all real property acquired or improved with funds provided hereunder, and which shall secure all obligations of Subrecipient hereunder.

7. Special Requirements Applicable to Improvements to Property

- a. In addition to all procurement requirements otherwise applicable to Subrecipient pursuant to any other provision of this Agreement or pursuant to any requirement of law or regulation incorporated in this Agreement by reference, if any portion of the funds provided to Subrecipient under this Agreement is to be used for making improvements to real property, including new construction, rehabilitation, or remodeling, then in such event Subrecipient shall comply with all requirements of this Paragraph.
- b. No structural improvements shall be undertaken to real property with funds (or reimbursement) provided hereunder unless and until: (i) plans and specifications therefore have been prepared by a registered Professional Engineer in good standing and duly licensed to practice in the State of Colorado or an Architect duly licensed and authorized to conduct a practice of architecture in the state of Colorado; and (ii) such plans and specifications have been filed with the City and approved by both the City's designated representative and the City's Director of Public Works.

- c. If this Paragraph is applicable, no disbursement of funds to Subrecipient shall be made by City hereunder unless and until all conditions precedent to payment specified elsewhere in this Agreement have been satisfied and Subrecipient files with City's Director of Housing and Citizen Services a written request for payment signed by an officer of Subrecipient that certifies (i) that the amounts included in the request for payment have not been included in any prior request for payment, and (ii) that the improvements listed therein for which payment is sought have been completed in accordance with the approved plans and specifications therefore.

8. Audits & Inspections

All Subrecipient records for any matters covered by this Agreement shall be made available to the City, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within thirty (30) days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will violate this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted per current City policy concerning Subrecipient audits as set forth at 24 C.F.R. § 570.502 and 2 C.F.R. § 200.330.

9. Use and Disposition of Property

a. Disposition of Expendable/Non-Expendable Real and Personal Property:

The Subrecipient agrees to follow 2 CFR § 200.311 through 200.315 in regard to all real and personal property purchased in whole or in part with funds under this Agreement. These sections of 2 CFR Part 200, Subpart D govern the title, use, management, and disposition of real and personal property, including but not limited to the following:

Management requirements: The Subrecipient must have procedures in place for managing real property and equipment, whether acquired in whole or in part under a Federal award, until disposition takes place. These procedures at a minimum, must meet the following requirements:

Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property;

A physical inventory of the personal property purchased with funds disbursed under this Agreement, if any, must be taken, and the results reconciled with the property records at least once every two (2) years;

A control system must be developed to ensure adequate safeguards to prevent property loss, damage, or theft. Any loss, damage, or theft must be investigated;

Adequate maintenance procedures must be developed to keep the property in good condition; and

If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

b. Disposition:

Barring any changes in regulations for CDBG-CV Funds by HUD, the Subrecipient must obtain written authorization from the City before disposing of an item of real or personal property with an original cost exceeding \$1,000 (City's threshold) that was purchased with funds disbursed under this Agreement.

All proceeds from the sale of real or personal property purchased with any funds disbursed under this Agreement must be returned to the City within thirty (30) days of receipt and include a notation of the grant the funds were received under. The Subrecipient agrees City may file the appropriate legal instrument(s) necessary to protect the City's financial interest and that the City has not waived any rights in property purchased with funds under this Agreement. City will then be responsible for returning the funds to its local grant restricted account, the appropriate Federal agency, or using them for a purpose under Federal regulations.

10. Procurement

a. Compliance

The Subrecipient shall comply with current federal policy concerning equipment purchase and maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income (if authorized), property, equipment, etc.) shall revert to the City upon termination of this Agreement.

b. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services per the requirements of 2 C.F.R. Part 200, Subpart D.

IX. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act (HCDA) of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Orders 12259, and implementing regulations at 24CFR107, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the City's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own sub recipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it 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 worker's representative of the Sub recipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs IX.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the program's administration for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

3. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this

Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

4. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

5. Conflict of Interest

The Subrecipient and its Board of Directors agrees to abide by the provisions of 24 CFR 570.611 and 2 CFR 200.317 and 200.318, which include (but are not limited to) the following:

a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in awarding and administering contracts supported by Federal funds.

b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement concerning the CDBG-assisted activity, or concerning the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Subrecipient, or any designated public agency.

6. Lobbying

The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (a.) and (b.) of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

7. Lobbying Certification

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.C. 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.

8. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

9. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 C.F.R. § 570.200(j), such as worship, religious instruction, or proselytizing.

X. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. 7401, and et seq;
2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under;
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C.

4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The sub recipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

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);

(14) HUD environmental criteria and standards [24 CFR Part 51, Environmental Criteria and Standards];

(15) 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));

(16) 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;

(17) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1272 et seq.) as amended; particularly section 7 (b) and (c) [16 U.S.C. 1278 (b) and (c)];

(18) 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;

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

(21) It will comply with the 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.);

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

(24) 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 provisions of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

XI. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

XII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIII. WAIVER

The City's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XIV. ENTIRE AGREEMENT

This agreement and its Exhibits A through H constitutes the entire agreement between the City

and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Subrecipient with respect to this Agreement.

[SIGNATURE PAGE AND EXHIBITS FOLLOW]

SIGNATURE PAGE

IN WITNESS OF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE LAST DAY
STATED ON THE UNDER THE MAYOR’S SIGNATURE BELOW.

City of Pueblo, Municipal Corporation

By: _____

Date: _____

Nick Gradisar, Mayor

ATTEST:

By: _____

Date: _____

Marisa Stoller, City Clerk

APPROVED AS TO FORM:

Attorney for City of Pueblo

By: _____

Date: _____

City Attorney

Pueblo Rescue Mission

By: _____

Date: _____

**EXHIBIT A
DEED OF TRUST**

**DEED OF TRUST
HOMELESS SHELTER**

THIS DEED OF TRUST, made this ____ day of October, 2023, between Pueblo Rescue Mission, a nonprofit corporation, whose address is P.O. Box 9167, Pueblo, Colorado 81008, hereinafter referred to as "Grantor", and the Public Trustee of the County of Pueblo, in the State of Colorado, hereinafter referred to as "Trustee", WITNESSETH:

WHEREAS, Pueblo Rescue Mission, a Not-For-Profit Development Corporation, a Colorado corporation, hereinafter referred to as "Developer," has entered into the City of Pueblo Homeless Shelter Development Agreement dated the ____ day of August, 2019 with the City of Pueblo, a Municipal Corporation, hereinafter referred to as the "Agreement;" and

WHEREAS, Grantor has agreed to undertake and perform the obligations of Developer under the Agreement; and

WHEREAS, the Developer has executed a Promissory Note, hereinafter referred to as the "Note," dated the ____ day of October, 2023 for the principal sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00), payable to the order of the City of Pueblo, a Municipal Corporation, which amount is an indebtedness of Grantor payable with interest in accordance with the terms of said Note; and,

WHEREAS, the Grantor is desirous of securing performance of all obligations of Developer and Grantor under said Agreement and Note and payment of the indebtedness as specified therein.

NOW, THEREFORE, the Grantor, in consideration of the premises and for the purposes aforesaid, does hereby grant, bargain, sell and convey unto Trustee in trust forever, for the use and benefit of the City of Pueblo, a Municipal Corporation (the "Beneficiary"), the following described property, situate in the County of Pueblo, State of Colorado to wit:

LOTS 2 + 3 BLK 24 STATE ADD LOTS 26, 27, 28 + 29 BLK 3 THATCHER + GAST SUB FORMERLY #05-361-21-002 + 05-362-05-009

also known as street and numbers 710 W. 4th Street, Pueblo, Colorado, 81003. TO HAVE AND TO HOLD the same, together with all and singular the privileges and appurtenances thereunto belonging: In Trust Nevertheless, That in case of default in the Note or any part thereof or payment as specified therein, according to the tenor and effect of said Note, or in the payment of any prior encumbrances, principal or interest, if any, or in case of a breach of any term of the Agreement, or in case default shall be made in or in case of violation or breach of any of the terms, conditions, covenants or agreements herein contained, the Beneficiary hereunder may declare a violation of any of the covenants herein contained and elect to advertise said property for sale and demand such sale, then, upon filing notice of such election and demand for sale with the Trustee, who shall upon receipt of such notice of election and demand for sale cause a copy of the same to be recorded in the recorder's office of the county in which said real estate is situated, it shall and may

be lawful for said Trustee to sell and dispose of the same (en masse or in separate parcels, as the said Trustee may think best), and all the right, title and interest of Grantor, its successors or assigns therein, at public auction at the south front door of the Court House, in the County of Pueblo, State of Colorado, or on said premises, or any part thereof as may be specified in the notice of said sale, for the highest and best price the same will bring in cash, four weeks' public notice having been previously given of the time and place of such sale, by advertisement, weekly, in some newspaper of general circulation at that time published in said County of Pueblo, a copy of which notice shall be mailed within ten days from the date of the first publication thereof to the Grantor at the address herein given and to such person or persons appearing to have acquired a subsequent record interest in said real estate at the address given in the recorded instrument; where only the county and state is given as the address then such notice shall be mailed to the county seat, and to make and give to the purchaser or purchasers of such property at such sale, a certificate or certificates in writing describing such property purchased, and the sum or sums paid therefor, and the time when the purchaser or purchasers (or other person entitled thereto) shall be entitled to a deed or deeds therefor, unless the same shall be redeemed as is provided by law; and said Trustee shall, upon demand by the person or persons holding the same certificate of purchase, when said demand is made, or upon demand by the person entitled to a deed to and for the property purchased, at the time such demand is made, the time for redemption having expired, make and execute to such person or persons a deed or deeds to the said property purchased, which said deed or deeds shall be in the ordinary form of a conveyance, and shall be signed, acknowledged and delivered by the said Trustee, as grantor, and shall convey and quit-claim to such person or persons entitled to such deed, as grantee, the said property purchased as aforesaid and all the right, title, interest, benefit and equity of redemption of the Grantor, its successors and assigns therein, and shall recite the sum or sums for which the said property was sold and shall refer to the power of sale therein contained, and to the sale or sales made by virtue thereof; and in case of an assignment of such certificate or certificates of purchase, or in case of the redemption of such property, by a subsequent encumbrancer, such assignment or redemption shall also be referred to in such deed or deeds; but the notice of sale need not be set out in such deed or deeds and the said Public Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges and costs of making said sale, pay to the Beneficiary hereunder or the legal holder of the indebtedness, all moneys and amounts due, according to the tenor and effect thereof, and all moneys advanced by such Beneficiary or legal holder of said indebtedness for insurance, taxes and assessments, with interest thereon at 12 per cent per annum, rendering the overplus, if any, unto the said Grantor, his legal representatives or assigns; which sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against the Grantor, its successors and assigns, and all other persons claiming the said property, or any part thereof, by, from, through or under said Grantor, or any of them. The Beneficiary or holders of the indebtedness may purchase said property or any part thereof; and it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the purchase money. If a release deed be required, it is agreed that Grantor, its successors and assigns, will pay the expense thereof.

And the Grantor, for itself and for its successors and assigns covenants and agrees to and with the Trustee, that at the time of the ensealing of and delivery of these presents he is well seized of the said land and tenements in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in the manner and form as aforesaid; hereby fully and absolutely waiving and releasing all rights and claims he may have in or to said lands, tenements and property as a Homestead Exemption, or other exemption, now existing or which may hereafter be enacted in relation thereto and that the same are free and clear of all liens and encumbrances

whatsoever, except for deeds of trust described hereinbelow and the above bargained property in the quiet and peaceable possession of the said Trustee, his successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said Grantor shall and will Warrant and Forever Defend.

And that during the continuance of said Note or the indebtedness arising thereunder, the said Grantor will in due season pay all taxes and assessments levied on said property; all amounts due on account of principal and interest on prior encumbrances, if any; and will keep all buildings that may at any time be on said lands, insured against loss by fire with extended coverage endorsements in a company authorized to issue such insurance in the State of Colorado, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness and any prior encumbrances, except at the option of said Grantor, with loss, if any, payable to the Beneficiary hereunder, as its interest may appear, and will deliver the policy or policies of insurance to the Beneficiary hereunder, as further security for the indebtedness aforesaid. And in case of the failure of Grantor to thus insure and deliver the policies of insurance, or to pay such taxes or assessments or amounts due or to become due on any prior encumbrances, if any, then the Beneficiary may procure such insurance, or pay such taxes or assessments or amount due upon prior encumbrances, if any, and all moneys thus paid, with interest thereon at 12 per centum per annum, shall become so much additional indebtedness, secured by this Deed of Trust, and shall be paid out of the proceeds of the sale of the property aforesaid, if not otherwise paid by Grantor, and Beneficiary may for such failure declare a violation of this covenant and agreement.

If all or any part of the property or an interest therein is sold or transferred by Grantor without Beneficiary's prior written consent, excluding the creation of a lien or encumbrance subordinate to this Deed of Trust, Beneficiary may, at Beneficiary's option, declare all the sums secured by this Deed of Trust to be immediately due and payable.

AND THAT IN CASE OF ANY DEFAULT, Whereby the right of foreclosure occurs hereunder, the Trustee or the Beneficiary or holder of certificate of purchase, shall at once become entitled to the possession, use and enjoyment of the property aforesaid, and to the rents, issues and profits thereof, from the accruing of such right and during the pendency of foreclosure proceedings and through the period of redemption, if any there be; and such possession shall at once be delivered to the Trustee or the Beneficiary or the holder of the certificate of purchase on request, and on refusal, the delivery of such possession may be enforced by the Trustee or the Beneficiary or holder of the certificate of purchase by any appropriate civil suit or proceeding, and the Trustee or Beneficiary or the holder of the certificate of purchase, or any thereof, shall be entitled to a Receiver for said property, and of the rents, issues and profits thereof, after such default, including the time covered by foreclosure proceedings and the period of redemption, if any there be, and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of the Grantor or of the then owner of said property and without regard to the value thereof, and such Receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice--notice being hereby expressly waived--and all rents, issues and profits, income and revenue therefrom shall be applied by such Receiver to the payment of the indebtedness hereby secured, according to the law and the orders and directions of the Court.

AND, That in case of default in any of said payments of principal or interest, according to the tenor and effect of said Note aforesaid, or any part thereof, or a breach of any term of the Agreement, or of a breach or violation of any of the covenants or agreements herein, by the

Grantor, its successors or assigns, then and in that case the whole of the indebtedness hereby secured, and the interest thereon to the time of the sale, may at once, at the option of the Beneficiary or the legal holder of the indebtedness, become due and payable, and the said property be sold in the manner and with the same effect as if said indebtedness had matured, and that if foreclosure be made by the Public Trustee, a reasonable attorney's fee for services in the supervision of said foreclosure proceedings shall be allowed by the Public Trustee as part of the cost of foreclosure, and if foreclosure be made through the courts a reasonable attorney's fee shall be taxed by the court as a part of the costs of such foreclosure proceedings. Notwithstanding any other provision of this Deed of Trust, Grantor and Beneficiary hereby expressly agree that this Deed of Trust is subject to and subordinate in all respects to the construction loan deed of trust securing a loan of \$1,300,000.00 in favor of the State of Colorado and to all liens, terms, covenants and conditions of said deed of trust and to all advances heretofore made or which may hereafter be made pursuant to said deed of trust, including all sums advanced for the purpose of: (a) protecting or further securing the liens of the construction loan deed of trust, curing defaults by the Grantors under the construction loan deed of trust or for any other purpose expressly permitted by the construction loan deed of trust, or (b) constructing, furnishing, fixturing or equipping the said property. The terms and provisions of the construction loan deed of trust are paramount and controlling, and they supersede any terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the construction loan deed of trust, any provisions herein or any provisions in any collateral agreement restricting the use of said property to low or moderate income households or otherwise restricting the Grantor's ability to sell said property shall have no effect on subsequent owners or purchasers of said property. Any person, including his successors or assigns (other than the Grantor or a related entity of the Grantor), receiving title to said property through a foreclosure or deed in lieu of foreclosure of the construction loan deed of trust shall receive title to said property free and clear from such restrictions.

If any notice of default under the Note or this Deed of Trust or notice of acceleration of the maturity of the indebtedness is given to Grantor, irrespective of any legal obligation to do so, a copy of said notice shall also be given to the Primary Lender; provided, however, that nothing in this paragraph is intended, nor shall it be construed, to grant any rights whatsoever to Grantor or create any condition precedent to the exercise of any right or remedy by the Beneficiary; nor shall any noncompliance with the requirements of this paragraph constitute any defense against enforcement of the Note or this Deed of Trust, including without limitation, Beneficiary's right to accelerate maturity of the entire indebtedness and demand sale of the said property.

Should any provisions of this Deed of Trust be found to violate the statutes or court decisions of the State of Colorado, or of the United States, such provision shall be deemed to be amended to comply with and conform to such statutes and decisions.

[SIGNATURE PAGE FOLLOWS - PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal the day and year first above written.

GRANTOR:
PUEBLO RESCUE MISSION
a Colorado Nonprofit Corporation

By

Melanie Rapier, Its Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF PUEBLO)

On _____ before me,
_____, Notary Public, personally appeared
Melanie Rapier, personally known to me to be the person whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his authorized capacity, and
that by his signature on the instrument the person, or entity upon behalf which the person acted,
executed the instrument.

WITNESS my hand and official seal.

EXHIBIT B
PROMISSORY NOTE

PROMISSORY NOTE

Principal Amount: U.S. \$400,000.00

Date of Note: _____

FOR VALUE RECEIVED, the undersigned Pueblo Rescue Mission, a Colorado nonprofit corporation, hereinafter referred to as "Borrower," and its successors in interest, promises to pay to the City of Pueblo, a Municipal Corporation, hereinafter referred to as the "Note Holder," the principal sum of Four Hundred Thousand and No/100 (U.S. Dollars \$400,000.00), provided payment is made in accordance herewith, and payable at the Note Holder's office at 1 City Hall Place, Pueblo, Colorado, 81003, or such other place as Note Holder may designate, upon demand of the Note Holder after occurrence of the events specified in this Note.

The indebtedness shall be reduced by .5556% of the principal sum for each full calendar month, starting from the date of substantial completion of the Project, that the Borrower owns and operates the property as a homeless shelter, serving and assisting homeless individuals.

The grant evidenced by this Note is being made to finance a homeless shelter project (hereinafter referred to as the "Project") per the City of Pueblo Community Development Block Development Grant Program – CV Subrecipient Agreement by and between Borrower and Note Holder (the "Agreement"). This Note and all principal payable hereunder are secured by a Deed of Trust of even date herewith upon real property, upon which the Project is located or to be located, and all improvements thereon, situated in the County of Pueblo, State of Colorado (hereinafter referred to as the "Property") and described more particularly as:

LOTS 2 + 3 BLK 24 STATE ADD LOTS 26, 27, 28 + 29 BLK 3 THATCHER + GAST SUB
FORMERLY #05-361-21-002 + 05-362-05-009

also known as street and numbers 710 W. 4th Street, Pueblo, Colorado, 81003.

The terms, conditions, covenants, provisions, stipulations, and agreements of said Deed of Trust and said Agreement are hereby made a part of this Note by reference in the same manner and with the same effect as if they were fully set forth herein, and the Borrower hereby covenants and promises to abide by and comply with each and every covenant and condition set forth in this Note, the Deed of Trust, and the Agreement. The Borrower reserves the right to prepay all or any part of the principal owing on this Note at any time or times prior to maturity without notice and payment of any premium or penalty.

Upon the occurrence of any of the following events, the entire unpaid principal hereof shall, at the option of the Note Holder, and without notice, become at once due and payable and shall accrue interest at the default rate of twelve percent (12%) per annum thereafter until paid in full, and no failure by the Note Holder to exercise such option shall be deemed or construed as a waiver of the right to exercise the same in the event of any subsequent default or breach:

1. Any default in the payment when due, or any part of the principal or interest hereunder.
2. Any breach or failure of the Borrower to perform within the allotted time any term or condition of the Agreement, the Deed of Trust, or any other instrument securing to the Note Holder payment or performance of any obligation of the Borrower.

3. If the Borrower shall be involved in financial difficulties as evidenced: (i) by an admission in writing of the Borrower's inability to pay its debts generally as they become due; (ii) by filing a petition in bankruptcy or for the adoption of an arrangement under the federal Bankruptcy Code (as now or in the future amended) or an admission seeking the relief therein provided; (iii) by making an assignment for the benefit of creditors; (iv) by consenting to the appointment of a receiver or trustee for all or a substantial part of the Borrower's assets or to the filing of a petition against the Borrower under said Bankruptcy Code; (v) by being adjudicated as bankrupt; (vi) by the entry of a court order appointing a receiver or trustee for all or a substantial part of the assets of the Borrower or approving as filed in good faith a petition filed against the Borrower under said Bankruptcy Code; (vii) by the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of the assets of the Borrower; (viii) by an attachment for an amount in excess of \$25,000 on any substantial part of the assets of the Borrower which shall not be discharged within thirty (30) days from the making thereof; or (ix) by a judgment or decree for the payment of money in excess of \$25,000 being entered against the Borrower, or if an attachment, execution or levy is made upon any of the Borrower's assets and the judgment, execution or levy, as the case may be, is not discharged or stayed within thirty (30) days from the date of the judgment, attachment, execution or levy as the case may be.
4. If the Borrower shall have made any misrepresentation or a material nature in its application for the grant, or in any document furnished by it to the Note Holder relative to the Project.
5. If there is pending or threatened litigation with respect to the grant or the performance by the Borrower of any of its duties or obligations hereunder.6.
If the Project cannot proceed because of inability to continue land option or secure zoning or due to any action by any branch of government which impairs use of the Property herein described for proposed Project purposes.
7. If the Note Holder in its sole and absolute discretion determines that the Borrower has abandoned or discontinued the acquisition, construction, rehabilitation, or completion of the Project.

The Borrower, and any and all endorsers, sureties, guarantors and assumers hereof, hereby jointly and severally waive presentment, protest, notices of dishonor and of protest, and all defenses whatsoever on the ground of any extension(s) of the time of payment or of the due dates of this Note, in whole or in part, before or after maturity, with or without notice, it being further agreed by the Borrower and all such parties that they will pay all collection expense, court costs, and reasonable attorneys' fees which may be incurred in the collection or enforcement of this Note or any part hereof. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Agreement or Deed of Trust.

This instrument shall be governed by the laws of the State of Colorado and any dispute regarding its terms and conditions shall be resolved in the District Courts of the State of Colorado.

Executed and delivered this _____ day of _____, 2023.

Pueblo Rescue Mission
a Colorado nonprofit corporation

By: _____

Name: _____

Title: _____

EXHIBIT C
DUPLICATION OF BENEFITS CERTIFICATION

To be submitted by the Subrecipient with its reimbursement requests.

The undersigned, on behalf of and as a duly authorized agent and representative of the Subrecipient, certifies and represents that all information contained in and enclosed with the reimbursement request is true to the best of his or her knowledge and acknowledges City has relied on such information to award ARPA assistance. The Subrecipient also certifies that they have not received assistance or reimbursement from any other funding sources for the specific expenses included in this reimbursement request.

The Subrecipient acknowledges that it may be prosecuted by Federal, State, or local authorities and/or that repayment of all ARPA funds must be repaid to the City if it makes or files false, misleading, or incomplete statements, documents or reimbursement requests.

Month of Reimbursement Request: _____

Signature of Recipient: _____

Printed Name: _____

Title: _____

Date: _____

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

Name

Address

Address

Social Security Number

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.

EXHIBIT E
REPORTING FORMS

EXHIBIT F
REIMBURSEMENT DOCUMENTATION

EXHIBIT G
AFFIRMATIVE ACTION PLAN

CITY OF PUEBLO

DEPARTMENT OF HOUSING AND CITIZEN SERVICES

Affirmative Fair Housing Marketing Procedures

It is the policy of the Department of Housing and Citizen Services to administer its housing programs affirmatively, as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, sexual orientation, handicap, familial status or national origin. Each applicant for participation in the Department's housing programs shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions.

METHODS AND PRACTICES FOR INFORMING THE PUBLIC

In order to inform the public, owners, and prospective tenants about federal fair housing laws and the City's affirmative marketing policies, the developer will include the Equal Housing Opportunity logotype and/or slogan, and a logotype and/or slogan indicating equality, non-discrimination, and equal access, in all press releases, solicitations, and program information materials.

The City shall develop an outreach plan each year, which will include, singularly or in combination, advertisements in local newspapers, public service announcements, distribution of fair housing brochures at relevant events, community presentations, or other outreach activities to inform the community about fair housing rights and responsibilities.

REQUIREMENTS AND PRACTICES FOR OWNERS

All developers who receive funds from the City are required to enter into loan and regulatory agreements with the City prior to receiving any funds. These agreements are designed to bind the recipients to all of the program requirements, including the affirmative fair marketing procedures. Developers receiving federal funds are required to create units that are accessible to people with disabilities. At least five percent of the new units must be accessible to people with mobility impairments and at least two percent must be accessible to people with hearing or vision impairments.

In addition to Federal laws requiring units for people with physical disabilities, Fair Housing laws require owners to make reasonable accommodations or modifications for people with all types of disabilities. In doing so, recipients are required to make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation for tenants or applicants with disabilities. In such cases where providing a requested accommodation would result in an undue financial and administrative burden, developers are required to take any other action that would not result in an undue burden.

Recipients must submit proposed marketing and management plans on the form HUD-935.2(a) for multifamily projects or 935.2(b) for single-family projects, along with supporting documentation to the City for review and approval. Prior to commencing marketing activities, owners will be required to meet with City staff to review the proposed marketing strategy to ensure that affirmative marketing efforts will be employed.

Management plans must include policies for ensuring reasonable accommodation for persons with disabilities. Management plans must also contain policies and provisions for recordkeeping and monitoring.

Marketing plans must include information on strategies for reaching persons and groups not likely to apply including, but not limited to, households with a disabled member. Marketing plans must also include procedures for ensuring that accessible units are occupied by people with disabilities who require accessible features, as described below.

Marketing plans must include the use of the fair housing logotype and/or slogan, and use of a logotype and/or slogan and fair housing posters must be displayed at the project rental or sales office. Owners are required to advertise in newspapers of general circulation, and to provide notice to community groups when units become available.

Marketing strategies must include use of a welcoming statement to encourage people with disabilities to apply for units, as well as a description of available units, accessible features, eligibility criteria, and the application process.

Marketing plans must indicate that qualified applicants with disabilities who request accommodations shall receive priority for the accessible units. Open houses and marketing offices must be accessible to allow disabled persons to visit the site and retrieve information about accessible units.

PROCEDURES FOR OUTREACH TO PERSONS LEAST LIKELY TO APPLY

Owners are required to engage in special outreach to persons and groups in the housing market area who, in the absence of such outreach are not likely to apply for the housing. In determining what special outreach is needed, Owners should take into account past patterns of discrimination, the racial and ethnic makeup of the neighborhood, language barriers, location, or other factors that might make it less likely that some persons and groups (a) would be aware of the availability of the housing or (b) would be likely to apply for the housing.

In particular, owners are required to advertise in media, which are reasonably likely to reach such targeted groups, and to provide notice to community organizations, fair housing agencies, and other similar organizations. A list of local disability organizations and community development boards will be provided by DHCS upon request. Multilingual advertising is encouraged where such efforts would result in reaching persons and groups not likely to apply.

SPECIFIC PROCEDURES FOR ENSURING THAT ACCESSIBLE UNITS ARE OCCUPIED BY PEOPLE WITH DISABILITIES WHO REQUIRE ACCESSIBLE FEATURES

Outreach by owners to the community shall include the distribution of notices describing:

- ◆ the availability of all units;
- ◆ specific information regarding the availability and features of accessible units;
- ◆ eligibility criteria; and
- ◆ application procedures.

All application forms shall include information indicating that people with disabilities requiring accessible features shall receive priority for accessible units. The application must include a section to be filled out by any applicant requesting an accommodation with details on the

applicant's special needs for accessible features or other accommodations. Under no circumstance should an applicant be required to disclose a disability unless requesting an accommodation. This will allow developers to provide, upfront, any necessary accessible features and/or accommodations for those people requesting accommodations.

Owners shall take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, any vacant, accessible unit should first be offered to a current, disabled tenant of the same project or comparable project under the owner's control.

The disabled occupant must require the features in the vacant unit and must be occupying a unit not having such features. If no such occupant exists, the developer shall then offer the unit to a qualified applicant on the waiting list who has a disability requiring the accessibility features of the unit.

Furthermore, when offering an accessible unit to applicants without disabilities, the owner may require such applicants to agree to move to a non-accessible unit when one becomes available or when the accessible unit is needed by a disabled household. Such an agreement may be incorporated into the lease.

Note: An owner may not prohibit an eligible family with a member who has a disability from accepting a non-accessible unit, which may become available before an accessible unit. Owners are required to modify such a non-accessible unit as needed or move a disabled household into a unit that can be altered, unless the modifications would result in an undue financial and administrative burden or alteration in the nature of a program. All applicants should be provided information about how to request a reasonable accommodation at the time they apply for admission and at every recertification.

RECORDKEEPING AND MONITORING

Owners must maintain records for at least five years regarding marketing and tenant selection practices. Upon request, Owners are required to submit to the City copies of all advertisements indicating the date the advertisements were placed and the media outlets which were used.

Owners must also provide copies of notices sent to community groups and a listing of those groups to which notices were sent. Owners must maintain records regarding the characteristics of persons applying for vacant units, and the characteristics (including race and familial status) of persons actually selected for the units. Owners' records must also include the number, location, and description of accessible units, and success in filling such units with people who need accessible features or other accommodations. In addition, Owners should document any reasonable accommodations made to, or requested by, tenants during the reporting year.

As part of the City's monitoring of assisted housing developments, the City will review the Owners' records to verify that each qualified household living in an accessible unit has at least one household member who needs the accessible features of the unit.

The duration of monitoring of Affirmative Fair Housing Marketing (AFHM) Requirements varies with each housing program. For homeownership programs, AFHM requirements apply through the completion of initial sales transactions on units covered by the approved AFHM plan. For assisted rental housing, AFHM requirements apply throughout the term of the loan and regulatory agreements, including those periods when the project does not maintain sustaining occupancy.

ANNUAL SURVEY AND CERTIFICATION

Housing providers should complete an annual survey and certification regarding its AFHMP and submit it to the City. The Annual Survey and Certification must respond to all of the following:

1. A current Affirmative Fair Housing Marketing Plan (AFHMP) (Form HUD-935.2A) is required of all City-assisted housing projects.
 - a. What is the date of the current AFHMP on file?
2. Does your site office / web site have the Equal Opportunity logo and statement posted?
3. How many units are currently vacant or have given notice to vacate?
4. How are vacant units advertised?
5. In the last year, have any applicants for units been rejected?
 - a. If yes, please provide reasons for rejection.
 - b. Did any rejected applicants have Housing Choice Vouchers (Section 8) or other rental subsidy sources of income?
6. In the last year, have any residents been evicted?
 - a. If yes, provide list of evicted households including building and unit number and reasons for eviction.

Project Name:

Project Address:

Owner Name:

Owner Address:

Signature of Owner or its Agent / Representative:

Date:

Printed name and Title:

ASSESSMENT OF SUCCESS AND CORRECTIVE ACTIONS

The City will review records maintained by owners to ensure that Affirmative Fair Housing Marketing requirements are being met. Where the characteristics of applicants are significantly different from the make-up of the City's population (i.e., in cases where specific groups are over-represented or under-represented), the City will examine in more detail the owner's actions to determine if a violation of the requirements has occurred.

The City employs a variety of corrective actions. Initially, owners who have not fully complied with the requirements are directed to engage in targeted marketing efforts to reach groups not initially reached. In cases where owners refuse to comply with the affirmative fair marketing procedures, the City may take additional actions to secure performance under the loan agreement, including declaring the loan in default and recapturing the funds.

**EXHIBIT H
PREVAILING WAGE SCALE**

"General Decision Number: CO20230027 08/25/2023

Superseded General Decision Number: CO20220027

State: Colorado

Construction Type: Building

County: Pueblo County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:		Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.	
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:		Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all	

	hours spent performing on	
	that contract in 2023.	

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date

0	01/06/2023
1	02/24/2023
2	04/07/2023
3	05/12/2023
4	06/02/2023
5	07/07/2023
6	07/14/2023
7	08/04/2023
8	08/25/2023

ASBE0028-002 03/01/2022

Rates Fringes

ASBESTOS WORKER/HEAT & FROST
INSULATOR - MECHANICAL (Duct,
Pipe & Mechanical System
Insulation).....\$ 32.98 15.47

ELEC0012-005 06/01/2023

Rates Fringes

ELECTRICIAN.....\$ 30.40 14.41

ENGI0009-017 05/01/2023

Rates Fringes

POWER EQUIPMENT OPERATOR
(Crane)
141 tons and over.....\$ 38.63 14.25

50 tons and under.....	\$ 34.77	14.25
51 to 90 tons.....	\$ 35.07	14.25
91 to 140 tons.....	\$ 36.27	14.25

IRON0024-009 05/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 35.24	12.50

IRON0024-010 05/01/2023

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 35.24	12.50

PAIN0079-009 08/01/2022

	Rates	Fringes
PAINTER (Spray).....	\$ 25.11	10.95

* PLAS0577-002 05/01/2023

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 32.62	13.50

PLUM0058-005 07/01/2023

	Rates	Fringes
PIPEFITTER, Excludes HVAC Duct and Pipe Installation.....	\$ 39.40	16.83

PLUM0058-006 07/01/2023

	Rates	Fringes
PLUMBER (Excludes HVAC Duct and Pipe Installation).....	\$ 39.40	16.83

SHEE0009-008 07/01/2023

	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct and Pipe Installation).....	\$ 38.47	20.83

* SUCO2013-013 07/31/2015

	Rates	Fringes
BRICKLAYER.....	\$ 21.96	0.00
CARPENTER.....	\$ 20.64	0.00
LABORER: Common or General.....	\$ 13.67 **	1.36
LABORER: Mason Tender - Brick...	\$ 15.99 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 16.00 **	0.00
LABORER: Pipelayer.....	\$ 16.96	3.68
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.26	8.62
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 18.58	2.42
OPERATOR: Grader/Blade.....	\$ 21.50	0.00
PAINTER (Brush and Roller).....	\$ 17.20	0.00
ROOFER.....	\$ 16.71	0.00
TRUCK DRIVER: Dump Truck.....	\$ 17.34	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours

they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing

this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination

- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"



**Background Paper for Proposed
Ordinance**

COUNCIL MEETING DATE: October 10, 2023

TO: President Heather Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: George Hypolite, City Attorney

SUBJECT: AN EMERGENCY ORDINANCE AMENDING ORDINANCE NO. 10058
TO AUTHORIZE THE MAYOR TO ENLARGE THE TIME FRAME
WITHIN WHICH THE MAYOR MAY DECLARE TEMPORARY HOUSING
AND SHELTER EMERGENCIES BEFORE NOVEMBER 1ST OF EACH
YEAR SUBJECT TO COUNCIL RATIFICATION

SUMMARY:

Attached is a proposed Emergency Ordinance which expands the time frame within which the Mayor may declare temporary housing and shelter emergencies for the City's homeless residents prior to November 1st of each year, subject to ratification by City Council.

PREVIOUS COUNCIL ACTION:

On November 22, 2021, by Ordinance No. 10058, City Council authorized the Mayor, when temperatures reach dangerous levels between December 1st and March 31st of each year, to declare temporary housing and shelter emergencies for the City's homeless residents and also allowed buildings utilized by the City's churches, synagogues, mosques, temples and other religious institutions to be used as temporary warming shelters for the City's homeless population during such temporary emergencies. The City's Zoning, Fire and Building Code ordinances and regulations in conflict with such use were temporarily suspended during such temporary emergencies. On November 14, 2022, City Council enlarged this authority from December 1st to November 1st.

BACKGROUND:

Due to a warming climate, extreme cold night temperatures, which pose significant dangers to the health of the City's homeless persons, may infrequently occur prior to November 1st of each year. Temporary overnight warming shelters may be needed prior to November 1st for the City's unhoused residents.

FINANCIAL IMPLICATIONS:

Not applicable to this Ordinance.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

A “no action” alternative would prevent the Mayor from declaring a temporary housing and shelter emergency before November 1st of each year.

RECOMMENDATION:

Approve the Ordinance.

ATTACHMENTS:

None

ORDINANCE NO. 10582

AN EMERGENCY ORDINANCE AMENDING ORDINANCE NO. 10058 TO AUTHORIZE THE MAYOR TO ENLARGE THE TIME FRAME WITHIN WHICH THE MAYOR MAY DECLARE TEMPORARY HOUSING AND SHELTER EMERGENCIES BEFORE NOVEMBER 1ST OF EACH YEAR SUBJECT TO COUNCIL RATIFICATION

WHEREAS, due to global warming, extreme cold night temperatures, which pose significant dangers to the health of the City's homeless persons, have and may continue to occur prior to November 1st of each year; and

WHEREAS, temporary overnight warming shelters may be needed prior to November 1st of each year for the City's unhoused residents. NOW, THEREFORE,

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

SECTION 1.

The City of Pueblo hereby declares that a housing and shelter emergency currently exists for the City's homeless residents and that the City's homeless citizens do not have current access to appropriate warming shelters to protect their health against dangerous temperatures when they are outdoors at night.

SECTION 2.

Ordinance No. 10058, dated November 22, 2021, shall be and hereby is amended to enlarge and expand to allow the Mayor to declare temporary housing and shelter emergencies for the City's homeless residents before November 1st of each year, subject to subsequent ratification of the temporary housing and shelter emergency by City Council through resolution. Except as amended hereby, Ordinance No. 10058, as previously amended, is hereby ratified and shall remain in full force and effect.

SECTION 3.

Savings Clause: The immediate enactment of this Ordinance is necessary in order to preserve and protect the health, safety and welfare of the residents of the City. Pursuant to Sec. 3-20 of the City Charter, this Ordinance shall become effective on the date of final action by the Mayor and City Council *nunc pro tunc* October 1, 2023.

SECTION 4.

The Mayor is hereby authorized to declare temporary housing and shelter emergencies for the City's homeless residents on or before October 1st of each year effective and *nunc pro tunc* October 1, 2023.

SECTION 5.

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

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on October 10, 2023.

Final adoption of Ordinance by City Council on October 23, 2023.



President of City Council

Action by the Mayor:

☒ Approved on October 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

25 September 2023

TO: Clerk of the City Council

RE: Ethics Complaint

This ethics complaint addresses two points from the:

Code of Ethics Chapter 9.

Article I - Uniform Standards of Conduct

Sec. 1-9-1. - Legislative declaration.

The City Council recognizes the importance of the participation of the citizens of the City in all levels of government in the City.

And

Sec. 1-9-2. Framework and Purpose of Code of Ethics.

5. Respectability. Safeguard public confidence in the integrity of government by being honest, fair, caring and respectful, and by avoiding conduct creating the appearance of impropriety or which is otherwise unbecoming a public servants.

The Incident: On 15 March 2023 Council President Heather Graham sent an email (via HGraham@pueblo.us) to Patty [Erjavec, president, Pueblo Community College] complaining that “your” Executive Director Martha Simmons of the PCC Foundation “of course in her capacity as a citizen” sent a “nasty email” to City Council members. (Email is attached.)

The concern: That a city council member would contact an employer after receiving an uncomplimentary communication from an individual in the individual’s capacity as a private citizen.

If council members continue to act in this way, would not private citizens hesitate to submit a communication in fear of retribution via reprimand or termination by their employer.

Requested Action: That city council members **pledge** not to engage in retaliatory actions when confronted by citizens opinions with which council members disagree.

W. Jeanne Gardner
Pueblo 3rd District

One can only hope that each member will take note of how they are perceived individually and in total and will make a commitment to spend the next several months working as a cohesive group to combat the most serious issues at hand. This plan would build consensus for each of you, the town government in total and would send a clear message to our citizens and beyond that Pueblo means business!

Thanks for allowing me the opportunity to comment, Sarah!

Most Sincerely,
Martha Simmons

Following the distribution of my memo to Sarah et all members, I received an email from Lori Winner and I had a follow-up lunch with Sarah Martinez. I did not hear from any other members...until...

I was made aware that President Graham had sent an email to PCC President Dr. Patty Erjavec on March 15.

When I asked Dr. Erjavec for her input on Graham's email, she brushed it off explaining that she responded that she was not my professional superior.

On July 21, I met with Dr. Erjavec and asked her to forward President Graham's email to me and her response, which se did the following week.

Below is the email chain.

On Mar 15, 2023, at 10:57 AM, Heather Graham <HGraham@pueblo.us> wrote:

Good Afternoon Patty,

I hope all is well with you. The reason I am writing to you today is yesterday the entire council received a letter from your Executive Director Martha Simmons of the PCC foundation, of course in her capacity as a citizen.

Although I understand there is a difference I find it incomprehensible that she would send such a nasty email, with clear personal attacks not only on myself but my fellow councilors. She refers to us as being "Punch Drunk Crazy" with our ARPA spending. I find this comment very disrespectful and disheartening because this very council that sits up here today is the same council that funded PCC in the neighborhood of \$400,000 with ARPA money last year for new programming. When Mrs. Simmons's states we had major missteps at our council retreat the retreat is for the council to work together on our goals for the year, and to be criticized by one of our external partners as the city is distasteful in my opinion. This is where we are allowed to get our bugs out and try to problem solve. I would assume institutions of higher education rarely make any kind of a political statement, especially in local politics unless it directly impacts them or their students which this doesn't. I do find it interesting that Martha is directly working for Nicks campaign and maybe that's the motive. I just wanted you to be aware that this came to us. I have attached it.

President Graham

Sent from my iPhone

Glenn Parker
5527 Bellagio Way
Pueblo, CO 81005

To: Pueblo City Clerk
From: Glenn Parker, Pueblo Resident
Date: October 11, 2023
RE: Code of Ethics Violation
Heather Graham, President Pueblo City Council

I am writing in regard to what I believe are multiple ethic violations by Pueblo City Council Member-at-Large and Council President Heather Graham as those pertain to an email that Martha Simmons sent to all members of Pueblo City Council in March 2023 (attached).

Please note that Ms. Simmons did not attempt to grandstand her commentary by attending a City Council meeting and/or sending her comments to the Letter to the Editor form of public admonishment. She intended the information that she observed and recollected as purely input for those attending or absent from the specific meeting.

Following Ms. Simmons' personal investigation of responses pertaining to her critique of the 2023 City Council Retreat, she has found that Ms. Graham felt the need to contact Dr. Patty Erjavec, whom she thought was Ms. Simmons' employer/professional superior to complain of the critique.

These are the facts:

1. Ms. Simmons and I attended the Pueblo City Council Retreat as interested citizens of the City of Pueblo. We both were made aware that this meeting was "open to the public" in a statement during the City Council meeting by Representative Sarah Martinez.
2. Ms. Simmons attended this retreat on her own time (Saturday) and did not represent herself as affiliated with any business or organization.
3. Ms. Simmons wrote a critique of the meeting on her own time, on her personal computer and sent her critique to Council Member Sarah Martinez via her personal email.
4. At no time during the meeting or via correspondence did Ms. Simmons represent herself as affiliated with Pueblo Community College or the Pueblo Community College Foundation.

NOTE: The PCC Foundation is not part of Pueblo Community College. It is a 501 C 3 entity separate from the College.

Pueblo Code of Ethic #2. Objective Judgment. Employ independent, objective judgment in performing duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.

Pertaining to the above, I question whether Heather Graham acted in accordance with the role of her office by corresponding with Dr. Patty Erjavec and signing the initial correspondence as President Graham.

EXHIBIT 1: I hope all is well with you. The reason I am writing to you today is yesterday the entire council received a letter from **your Executive Director Martha Simmons of the PCC foundation**, of course in her capacity as a citizen.

EXHIBIT 2: *I would assume institutions of higher education rarely make any kind of a political statement, especially in local politics unless it directly impacts them or their students which doesn't.*

EXHIBIT 3: *I just wanted you to be aware that this came to us. I have attached it.*

Pueblo Code of Ethic #5. Respectability. Safeguard public confidence in the integrity of government by being honest, fair, caring and respectful, and by avoiding conduct creating the appearance of impropriety or which is otherwise unbefitting a public servant.

Pertaining to the above, I also question if Ms. Graham sought to demonstrate what could be conceived as apparent improper influence when she corresponded with who she thought was Simmons direct professional superior and bringing to light previously awarded funding to PCC from the Pueblo City Council.

NOTE: *This inference was perceived by many that President Graham had the ability to put future PCC funding in jeopardy if someone from that entity would call other allocations into question.*

EXHIBIT 4: *I find this comment very disrespectful and disheartening because this very council that sits up here today is the same council that funded PCC in the neighborhood of \$400,000 with ARPA money last year for new programming.*

And yet again in her follow up email to Dr. Erjavec, Ms. Graham makes note that the PCC Foundation Board of Directors should become involved with Ms. Simmons' first amendment rights when expressing information to her elected officials:

Pueblo Code of Ethic #2. Objective Judgment. Employ independent, objective judgment in performing duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.

And yet again in her follow up email to Dr. Erjavec, Ms. Graham makes note that the PCC Foundation Board of Directors should become involved with Ms. Simmons' first amendment rights when expressing information to her elected officials:

EXHIBIT 5: *it would appear her board doesn't care how she represents them.*

EXHIBIT 6: And then reiterating to Dr. Erjavec that she *just wanted you* (Dr. Erjavec) *to know since it came to all of us.*

Ms. Simmons, myself and anyone reading Ms. Graham's second email are confused her statement of *I guess desperate times call for desperate measures* and we are left to wonder why this statement was interjected into the email copy if not to make one more attempt to try to stifle Ms. Simmons' individual rights to make comment and/or support any political candidate or referendum.

I am hopeful that the Pueblo City Council will take note of Ms. Graham's actions on behalf of her office and the other members will move to vote in favor of these ethic violations thus making a statement to one and all that she nor any other elected official may act in a

manner that would attempt to stifle citizen input as it pertains to jeopardizing someone's first amendment rights.

Thank You for your consideration of action!

Background Information

Ms. Sarah Martinez
Council Member
City of Pueblo
One City Hall Place
Pueblo, CO 81003

Dear Sarah:

I am writing with public commentary on the March 4 Pueblo City Council Work Retreat that took place from 9 a.m. – 2 p.m. at the Convention Center. As a community member and one of your constituents, I appreciated the opportunity to attend this meeting and be privy to the informative presentations.

I had thought that this meeting might have involved an outside facilitator working with each of you and the City leadership in a joint effort to establish a consensus on the goals and objectives for the upcoming year. That did not take place and yet again this gathering of council members proved to demonstrate the level of disarray that this group demonstrates on a regular basis. Each one of you – who presented goals and objectives – gave a buckshot approach to legislating for the next year vs. coming together to devise a plan of action that will take on our community's greatest needs with total commitment by all!

It was with dismay that Ms. Winner was not in attendance for any part of the meeting and did not present via proxy her priorities for each of you to hear and digest. That goes double President Graham who did attend the session but did not feel the need to present her priorities for the upcoming year. Both are at-large members and represent the total community; thus, not hearing any input from either leaves in question their commitment to their positions within the council.

After digesting the total meeting, below are a few of the items that were of concern:
PURAs offer of providing funding for many city projects and the enthusiastic response from the bulk of you to expend funds to pursue unfounded opportunities.

I greatly appreciate what PURA has done for the Pueblo community but when making offers of opportunities abounding, I would think that before jumping in with both feet that the members of the City Council would ask for additional information and feasibility studies on each opportunity.

The only time I heard the word feasibility used was when the Mayor was speaking with Councilman Atencio on his plan for a softball complex on the east side and the Mayor's suggestion was poo-pooed by the Councilman, stating the need to move quickly on this project.

As representatives of the citizens of Pueblo, each of you are charged to exercise fiduciary responsibility with the utmost of due diligence in your review and actions. Your responsibility - individually and in total - is to conduct a complete evaluation of the pros and cons relating to all opportunities prior to casting your vote to proceed or to reject any presentation.

As noted by the quick inference of supporting the building skinny housing by Lake Minnequa just because the money is there is a prime example of the council's unfounded positive response(s) which was demonstrated throughout the meeting. Do low-income residents understand what skinny houses are? Are skinny houses adequate for the needs of low-income residents? Maybe before moving forward with a plan to proceed, a feasibility study should be solicited to prove or disprove this housing idea.

Safety Presentation

If it is the Mayor's Idea: Vote No syndrome continues to resonate throughout the current council membership.

I highly recommend that President Graham and all Council Members adopt the ability to take in information presented by the Mayor without political bias.

When Mayor Gradisar presented his idea for offering incentives to recruiting new police candidates for the City of Pueblo, President Graham immediately negated the presentation.

While her message of wanting to incentivize current police officers has merit, Ms. Graham's presentation of wanting to stonewall the mayor's presentation was more than evident to those of us watching from the sidelines (at this and other meetings.)

As the President of the Council, Ms. Graham should obtain the abilities to facilitate both sides of the conversation vs. negating one that she does not personally agree with. This immediate negative response is perceived as purely political. And in most instances does not represent those constituents which she serves.

I would highly suggest that President Graham or anyone else in her position should be charged with taking some sort of facilitation training.

I felt that the Mayor's comments pertaining to how incentives run through a union were lost on Ms. Graham and although the Mayor tried to explain the process for collective bargaining to Ms. Graham, she may want to talk to the Police Union to present the information that she has obtained from current police officers as it relates to their needs for maintaining their employment with the City of Pueblo. Upon those discussions, the Union should then address the Mayor with a revised benefit package to consider.

What seemed in direct conflict with the above issue and Ms. Graham's response to the proposal for police recruitment lands squarely in line with what Councilman Flores presented as one of his priorities for the upcoming year; with total support from those council members present. Councilman Flores is pushing for a program to incentivize the recruitment of remote workers; encouraging them to move to Pueblo to work from their homes vs. a plan to incentivize those Pueblo citizens who have resided here for years and throughout the pandemic and have kept our community moving forward with little if any recognition and/or pay raise.

Ms. Graham made a point to support Councilman Flores' plan vs. offering any incentives for her current constituents; those of us who never left our community during the pandemic and have continued to show up for work every day so that our businesses and industries continue to provide goods and services to our citizens.

One wonders if Ms. Graham has offered incentives to those employees at Graham's Grill, Ruby's or the Pueblo Athletic Club for their continuation of work during and post pandemic?

The next item that really needs to be addressed by this Council is diversity training.

Between Councilmen Atencio and Martinez-Ortega, there were many derogatory statements made as to gender and age during the meeting.

As an older white woman, I am amazed at the blatant disregard that each had when addressing specific elements of their community and as such, I am asking that the Pueblo City Council Members engage in a diversity training program and that the Council adopts a policy for a public admonishment should this type of behavior happen again.

My final comment relates to how punch drunk crazy the current council seems to be in relationship to their recommendations for reckless spending of the ARPA funds. There was instance upon instance of funding available and desires to expend without a single call for further examination and/or the need for a feasibility study to proceed.

As someone who is tied to addressing our mission within all decisions made for program expansion/funding, I find this reckless behavior most concerning!

The development of a softball complex in northeast Pueblo with the hope that "if you build it, they will come" to play, stay and spend is bizarre.

Councilman Atencio's statement of "it could generate \$10 Million" should be concerning to each of you. Could generate???

Again, has anyone broached the subject of:

A Feasibility Study?

A survey of local and regional softball teams regarding adding new tournaments and their abilities to travel and travel to Pueblo?

A conversation with Gold Crown or the Colorado Rockies for their potential involvement and/or investment?

Conversations with the Colorado Lottery, other recreational grantors?

Giving \$200,000 to the current SEER program with the hope that they can find the funds to continue their programs.

WOW!?!?

Is there a backup plan if they cannot find the funding to fill in for this program?

Feasibility Study?

Giving ourselves raises this year because I had to attend _# of meetings this week and I needed to look after my pet.

This one just boggles the mind. Did Councilman Montoya-Ortega not investigate the time allocation for the position prior to running for office?

But the best part was...a higher pay scale will encourage others to run other than white-haired citizen.

Where do I begin to address this major misstep?

One other priority that came from the meeting was the need to combat crime and homelessness.

In my personal surveying hundreds of local residents, this should be THE top priority of each Pueblo City Council Member!

I would think that the majority of our community would support the Council in its effort to dissect these problems and come up with immediate and long-term solutions for both issues.

Would Council's time and energies be better spent in making a joint agreement to designate the majority of their time and efforts to addressing these community issues vs. politicizing lesser community concerns?

By joining together to find viable solutions for the crime and the homeless situations will allow every citizen to win!

The Pueblo City Council should look into taking the lead to develop a Gold Ribbon Task Force - with commitments from the Mayor, the Board of County Commissioners, the Police Chief, the Fire Chief, the heads of both hospitals, the Director of the Colorado State Hospital, the Directors of our local mental health agencies, the District Attorney, each of our state and national elected officials, and a variety of community leaders and concerned citizens. With commitments from all, this project could pick up steam quickly and could start to make perceptible and physical differences almost immediately.

If the above plan of action could be prioritized by each Council member and driven to become initiated in the weeks ahead, this City Council could become the impetus for not only our community but for all communities in southern Colorado and beyond!

If the above plan of action could be prioritized and initiated, Pueblo would be recognized for its ability to come together and conquer vs. its present perception of dividing and conquering no one!

I hope that you might take the information contained within these pages (concerns and proposed solutions) and share with your peers on City Council as a way for each to consider their future methods of operation. The time is now to make changes for the better in Pueblo!

Be assured that there are concerned citizens who are watching each of you during your time in meetings and the messaging that you are disseminating about the community, and we are all evaluating how your actions and reactions affect our community. This group of concerned citizens will be the voters in the next set of elections; casting their votes on behalf of our community vs. individuals who say that they care about Pueblo but have ulterior motives to advance agendas that are not favorable to the masses.

One can only hope that each member will take note of how they are perceived individually and in total and will make a commitment to spend the next several months working as a cohesive group to combat the most serious issues at hand. This plan would build consensus for each of you, the town government in total and would send a clear message to our citizens and beyond that Pueblo means business!

Thanks for allowing me the opportunity to comment, Sarah!

Most Sincerely,
Martha Simmons

Heather Graham Emails to PCC President Dr. Patty Erjavec

*On Mar 15, 2023, at 10:57 AM, Heather Graham wrote:
Good Afternoon Patty,*

I hope all is well with you. The reason I am writing to you today is yesterday the entire council received a letter from your Executive Director Martha Simmons of the PCC foundation, of course in her capacity as a citizen.

Although I understand there is a difference I find it incomprehensible that she would send such a nasty email, with clear personal attacks not only on myself but my fellow councilors. She refers to us as being "Punch Drunk Crazy" with our ARPA spending. I find this comment very disrespectful and disheartening because this very council that sits up here today is the same council that funded PCC in the neighborhood of \$400,000 with ARPA money last year for new programming.

When Mrs. Simmons's states we had major missteps at our council retreat the retreat is for the council to work together on our goals for the year, and to be criticized by one of our external partners as the city is distasteful in my opinion. This is where we are allowed to get our bugs out and try to problem solve. I would assume institutions of higher education rarely make any kind of a political statement, especially in local politics unless it directly impacts them or their students which this doesn't.

I do find it interesting that Martha is directly working for Nicks campaign and maybe that's the motive. I just wanted you to be aware that this came to us. I have attached it.

President Graham
Sent from my iPhone

From: Erjavec, Dr. Patricia
Date: Wednesday, Mar 15, 2023, 2:24 PM
To: Heather Graham
Subject: Re: Just some info 🍌

Hi Heather-

Ugh!!!! I am really sorry to learn of this. Please know that Martha does not represent Pueblo Community College. We are extremely grateful for the ARPA funding and continue to be committed to being good stewards of the award.

The Pueblo Community College Foundation is a separate 501(c)3 governed by a separate board. She does not report to me, and I am afraid her board does not refer to me on much.

What can I do to help you? Again, this is so damaging to everyone involved and so unnecessary.

Patty Erjavec, PhD
Pueblo Community College
President

*From: Heather Graham
Sent: Wednesday, March 15, 2023 3:48 PM
To: Erjavec, Dr. Patricia
Subject: RE: Re: Just some info 🤔*

Thanks for the clarification, it would appear her board doesn't care how she represents them. I just wanted you to know since it came to all of us. It was kinda a shock I guess to be so criticized.

I will reiterate to the board on the two separate board issues. I guess desperate times call for desperate measures. Thank you for your comments and I know PCC does great work and we were proud to allocate the funds. Definitely progress we can see with our own eyes.

Have a great night!

Heather

Sent with BlackBerry Work